

(2016) 04 OHC CK 0039
In the Orissa High Court
Case No : O.J.C. No. 1385 of 1996

Gajendra Prasad Das

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 27-04-2016

Acts Referred:

Citation : (2016) 2 ILRCuttack 178

Hon'ble Judges : S.N. Prasad, J.

Bench : Single Bench

Advocate : M/s. A.S. Nandy and A.K. Singh, Advocates, for the Petitioner; Mr. Prabhas Ch. Panda, Addl. Govt. Advocate, for the Opposite Parties

Final Decision : Allowed

Judgement

S.N. Prasad, J.—This writ petition is against the order dated 27.12.1995 passed by the Under Secretary to Government, Finance Department whereby and where under the benefit of State Freedom Fighters Pension has been cancelled for want of requisite documentary evidence in support of claim.

2. The brief facts of the case of the petitioner is that he had participated in the Freedom Struggle in 1942 movement and was engaged in

underground activity from November, 1942 till January, 1945 and was acting under the able guidance of eminent Freedom Fighters like Banamali

Babu, Ex-member of Parliament, Prahallad Rai Lath, Ex-Member of the Orissa Legislative Assembly of Sambalpur and Daya Nanda Satpathy, an

ardent Freedom Fighter.

In pursuance to the notice published in Daily Newspaper, i.e. The Samaj dated 1.5.1985, the petitioner had submitted his application accompanied

by relevant documents in support of his case for grant of Freedom Fighter Pension. The application contains the Personal Knowledge Certificate

given in recognition of the petitioner's active participation in the National Freedom Struggle by the celebrated Freedom Fighters of his time as

enclosed in Annexure-1, 2 & 3 and thereafter the case of the petitioner was considered by a committee constituted in terms of order passed by the

State Authorities and thereafter the petitioner was found to be eligible to get the benefit of Freedom Fighter Pension and accordingly the same was

allowed vide order passed in this regard on 4.5.1989.

The benefit was paid up to 30.10.1992, thereafter a show cause notice was issued on 30.10.1992 with a further order by keeping the pension in

abeyance, the petitioner has submitted due reply before the authorities but according to the petitioner without considering the entire facts and

without going into the fact that the petitioner had submitted relevant documents before the committee which was recommended by Government,

the order has been passed on 27.12.1995 cancelling the benefit.

The petitioner has challenged the order of cancellation on the following grounds:-

(i) As per requirement the petitioner has submitted his application along with the certificate submitted by the co-prisoners, as would be evident

from Annexure-1, 2 & 3.

(ii) The petitioner's case was placed before the duly constituted committee and the committee after taking into consideration various documents

submitted by the petitioner has recommended his case for grant of benefit under Freedom Fighter Pension to the tune of Rs. 300/- and he has

started getting the benefit from the State Exchequer, but without appreciating the fact the authorities have issued show cause notice on 30.10.1992

stating therein that the petitioner has not furnished official records in support of jail suffering. But which is the said record, that is not stated in the

show cause.

(iii) The petitioner has replied giving therein the facts that the petitioner has submitted the personal knowledge certificate of two renowned Freedom

Fighters but the authorities without appreciating this aspect of the matter has passed a very non-speaking order, hence the same is not sustainable.

Learned counsel for the petitioner has also demonstrated that the petitioner is also eligible in view of the Swatantrata Sainik Samman Pension

Scheme, 1980 and relying upon the provision as contained in clause 9(b)(ii) which stipulates a condition that certificate from veteran freedom

fighters who had themselves undergone imprisonment for five years or more if the official records are not forthcoming due to their non-availability,

according to the petitioner the certificate from the veteran freedom fighters have been submitted because the official records were not available and

it is the duty of State Authorities to provide official records, since the authorities are the custodian of the same and if the records are not available

the petitioner cannot be put at loss.

It has been submitted that the letter dated 13th April, 1982 as contained in Annexure-D/3 is also in favour of the petitioner since the same also

stipulates a pre-condition of eligibility that the abscondence should be established from the official documents available with the State Government

in the form of a judgment arrest warrant or any other executive order, declaring a person an absconder.

On these grounds the order passed by the authorities is assailed.

3. Opposite party - State has appeared and filed counter affidavit vehemently opposing the claim of the petitioner. It has been submitted by the

learned counsel representing the opposite party - State that there is no infirmity in the decision taken by the authorities for the reason that as per the

scheme the provision has been made making a person eligible to get the benefit of pension which is provided under clause no.4(b) of the

Swatantrata Saomol Samman Pension Scheme, 1980 which stipulates a condition that a person who remained underground for more than six

months provided he was:

1. a proclaimed offender; or
2. one on whom an award for arrest/head was announced, or
3. one for whose detention order was issued but not served.

It has further been submitted that the provision has also been made regarding method of proving the claims as provided under clause no.9(b) which

is being reproduced herein below:-

9.(b)(i). Documentary Evidence by way of Court's/Government's orders proclaiming the applicant as an absconder announcing an award on his

Head, or for his arrest or ordering his detention.

(ii) Certificates from veteran freedom fighters who had themselves undergone, imprisonment for five years or more if the official records are not forthcoming due to their non-availability.

On the basis of these conditions it has been contended that the petitioner has only submitted the certificate issued by the co-prisoners, as would be evident from Annexure-1, 2 & 3 and the same is admitted case of the petitioner that on the basis of which the committee has recommended the case of the petitioner, but subsequently it was found that the petitioner has not furnished the official records in support of the claim and accordingly the benefit has been suspended with a direction to the petitioner to satisfy the authority, however the petitioner has given its reply but the authorities have not found it satisfactory and accordingly the claim has been rejected vide order dated 27.12.1995 (Annexure-12).

According to the opposite party - State there is no infirmity in the decision taken for the reason that if anybody wants benefit under a scheme, he is supposed to fulfil all the eligibility condition as provided under the scheme since not been fulfilled as stated above, the authorities have examined the matter and after providing opportunity of being heard, the benefit extended has been recalled, hence there is no infirmity in the decision taken.

It has further been contended by placing reliance upon the communication dated 13th April, 1982 which contains a pre-condition of eligibility

which also corroborates the condition given in the scheme and the basis upon which the committee has recommended the case of the petitioner.

4. Heard the learned counsels for the parties and perused the documents available on record.

The fact which is not in dispute is that the Government of Odisha has taken a policy decision to extend benefit of Freedom Fighter pension to such persons who have fought for the nation during the time of Freedom Struggle by adopting the Freedom Fighter Pension Scheme, 1972 issued by the Government of India and subsequently renamed as Swatantrata Sainik Samman Pension Scheme, 1980.

From perusal of the said scheme which is on record it is evident that the said scheme has been formulated to extend the benefit of pension to such persons who have fought for the nation which contains eligibility condition as would be evident from Clause no.4, for ready reference the same is

being quoted herein below:-

4. Who is eligible:

For the purpose of grant of Samman Pension under the Scheme, a freedom fighter is:-

(a) A person who had suffered a minimum imprisonment of six months in the mainland jails before independence. However, ex-INA personnel will

be eligible for pension if the imprisonment/detention suffered by them was outside India.

(b) The minimum period of actual imprisonment for eligibility of pension has been reduced to three months in case of women and SC/ST freedom

fighters from 1.8.1980.

Explanation:

1. Detention under the order of the competent authority will be considered as imprisonment.

2. Period of normal remission up to one month will be treated as part of actual imprisonment.

3. In the case of a trial ending in conviction, under-trial period will be counted towards actual imprisonment suffered.

(b) A person who remained underground for more than six months provided he was :

1. A proclaimed offender; or

2. One on whom an award for arrest/head was announced, or

3. One for whose detention order was issued but not served.

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It is further evident that the method of making application has also been provided as also the method to prove the claims have also been given by

proving the claim by producing evidence in this regard which condition contains in clause no.9, for ready reference the same is being quoted herein

below:-

9. How to prove the Claims (Evidence Required):

The applicant should furnish the documents indicated below which ever is applicable:

(a) Imprisonment Detention Etc.:

Certificate from the concerned jail Authorities, District Magistrates or the State Government, in case of non-availability of such certificates, co-

prisoner certificates from a sitting M.P. or M.L.A. or from an Ex-M.P. or an Ex-M.L.A. specifying the Jail period (Annexure-1 in the application form).

(B) Remained Underground:

(I) Documentary evidence by way of Court's/Government's orders proclaiming the applicant as an absconder announcing an award on his Head,

or for his arrest or ordering his detention.

(II) Certificates from veteran freedom fighters who had themselves undergone, imprisonment for five years or more if the official records are not

forthcoming due to their non-availability.

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It is evident from clause 4 and clause 9 that a participant in the freedom struggle is said to be entitled for getting the benefit under the scheme who

remained underground for more than six months provided that he was a proclaimed offender or one on whom an award for arrest/head was

announced or one for whose detention order was issued but not served. While on the other hand in clause 9 it has been provided that the

documentary evidence by way of court's/Government's orders proclaiming the applicant as an absconder announcing an award on his Head, or

for his arrest or ordering his detention and in case of non-availability of such certificate, certificate from veteran freedom fighters who had

themselves undergone imprisonment for five years or more if the official records are not forthcoming.

It further transpires from the order passed in favour of the petitioner extending the benefit that the matter of petitioner was scrutinised by the

committee constituted in this regard by the State Government in pursuant to the resolution No.17643/F dated 23.4.1962, No. 299442/F, dated

27.7.1971, No. 9454/F, dated 8.3.1984, No. 10202/F, dated 3.3.1986 and No. 53867/F, dated 3.11.1987 the case of the petitioner was

considered by the Freedom Fighters Pension Committee to grant pension of Rs. 300/-. The said order has been passed by the authority on being

recommended by the committee and the committee has recommended on the basis of co-prisoner certificate submitted by the petitioner which has

been annexed as Annexure-1, 2 & 3. From perusal of Annexure-1, 2 & 3 it is evident that the certificate has been given by co-prisoner who has

certified that the petitioner is a bona fide freedom fighter and has participated during the freedom struggle and also found involved in underground

activities during the period from November, 1942 to January, 1945. The benefit has been extended almost for about more than three years,

thereafter a show cause notice has been issued on 30.10.1992 asking the petitioner to give reply as to why the benefit extended in his favour

regarding freedom fighter pension will not be recalled since the same has been passed without furnishing any official records in this regard and

simultaneously the benefit has been suspended by a separate order issued in this regard on 30.10.1992 (Annexure-7).

The petitioner has submitted his reply stating therein that the petitioner has submitted certificate issued by co-prisoners but the authorities have

taken a decision on 27.12.1995 cancelling the benefit granted in his favour which was communicated by the Under Secretary to Government to the petitioner.

The opposite party - State has taken ground that the petitioner has not furnished the Jail Suffering certificate or even in absence of jail suffering

certificate he ought to have given the non-availability certificate and as such the benefit granted in his favour was not in consonance with the

scheme, hence the same has been cancelled.

From hearing the learned counsels for the parties and after going through the records it is evident that the petitioner has been extended benefit on

the basis of the certificate given by the co-prisoners after having recommended his case by the committee constituted by the State Government,

while the opposite party - State claims that the required document was not furnished, hence the Government has reviewed its decision.

In the light of this now question which is for paramount consideration is that the sole ground taken by the opposite party - State is that the required

document has not been furnished by the petitioner and that is the reason show cause notice has been issued. But the show cause notice does not

contain which document petitioner has not furnished as because in the show cause only it has been stated that the petitioner has not furnished the

official records. From perusal of the scheme the official records means that a

beneficiary supposed to produce a certificate of proclaimed offender or an award of arrest or an order of detention and in case of non-availability of these documents a non-availability certificate is to be produced if the same is not available in the official records.

Now the question arises that the State Authorities is the custodian of the official records and the petitioner has furnished the certificate given by the co-prisoners and as such the petitioner is fulfilling the condition as provided under clause no.9(b)(ii) which has been quoted herein in above.

The requirement to submit a certificate from veteran freedom fighter will only be given when the documentary evidence is not available and the

certificate should enclose along with the certificate of non-availability of the documents in the official records and as such it can at best be said that

the petitioner has not enclosed along with the co-prisoner certificate the nonavailability certificate of the documents available on record and for that

reason the benefit extended in favour of the petitioner has been rejected. But the foremost consideration would be in this juncture that if the

petitioner has not produced the non-availability certificate, can it not be verified by the State Government being the custodian of the Government

record. But nowhere in the counter it has been stated that the official records, the documents which was necessary for the petitioner to submit, was

not available in the official records.

Further more from perusal of the provision as contained in clause no. 9(b)(ii) it is not evident that the non-availability certificate is to be submitted

by the beneficiaries in whose favour the decision is to be taken to extend the benefit.

Thus there is no such condition that in case of submission of coprisoner certificate the non-availability certificate is to be furnished by the claimant.

It is not the case of the opposite parties that the petitioner has not submitted any document rather it is only the case of the opposite party that he

has not furnished the relevant documents, however the same has not been disclosed even in the show cause or even in the communication dated

27.12.1995, hence it is evident that the authorities in a very mechanical manner has taken away the right of the petitioner by passing a perfunctory

order in this regard.

So far as the eligibility part of the petitioner is concerned, it is the duty of the

State Authority to give specific reason in the show cause by giving specific cause of recall of the decision so that the person in whose favour the show cause notice has been issued will be able to give an appropriate defence reply. But that is lacking and in a very vague way it has been stated in the show cause that the relevant records have not been submitted but what is the relevant records, that is lacking in the show cause notice, however the same has been disclosed in the counter affidavit, likewise even in the impugned order which is not an order rather only a communication of the decision taken by the State Government containing no reasoning therein while the opposite party - State has filed so many affidavits but no order has been annexed in this regard by the State Government disclosing the specific reason.

In sub and substance, what is being gathered from the pleading of the opposite party - State that they are trying to improve the reasoning by way of an affidavit which is not permissible in the light of the judgment in the cases of Commissioner of Police, Bombay v. Gordhandas Bhanji, reported in A.I.R. (39) 1952 SC 16. The relevant paragraph of the judgment is as under:-

9. An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of Government. We are clear that public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

In the case of Mohinder Singh Gill and Another v. The Chief Election Commissioner, New Delhi and Others, reported in (1978) 1 SCC

405 and subsequently reiterated in case of East Coast Railway and Another v. Mahadev Appa Rao and Others, reported in (2010) 7

SCC 678. The relevant paragraph is as under:-

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by

the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the

beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.

Thus it is settled proposition of law that reason which is not mentioned in the impugned order cannot be developed.

In view of these reasoning it is held that the authorities, in a very perfunctory manner, have taken away the right of the petitioner.

5. In such a situation the proper course for the Court would be to remit the matter before the authority but in peculiar facts of this case and

considering the fact that it is a case of benefit to be extended in favour of the freedom fighter who has fought for the nation and given his life without

caring for the lives of his dependents and also considering the fact that the petitioner at the time of filing the writ petition was 70 years old and as

such, as on date, he is more than 90 years of age and hence it would not be proper to remit the matter before the authority for the reasons that

again he is to wait for an appropriate order regarding his claim and it might be that he may not survive to see the result of the order or take the

fruits of his claim, that too for the action of the authorities who have passed a perfunctory order as discussed above, hence taking into

consideration these aspects of the matter, this Court is not inclined to remit the matter before the authority.

6. In view of such situation the writ petition is allowed with a direction to release all consequential benefit in favour of the petitioner within

reasonable period, preferably within six weeks from the date of receipt of copy of this order.