

(1998) 09 CAL CK 0046

In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction W.P. No. 1067 of 1998

Gokul Chandra Panja

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 02-09-1998

Acts Referred:

Police Regulations of Bengal, 1943 — Regulation 378, 391, 394

Citation : (1999) 1 CALLT 241

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Judgement

1. The Court : The petitioner claims to be entitled to pension under the Freedom Fighter's Pension Scheme, now renamed as Swatantrata Salnik Samman Scheme. According to the petitioner a proclamation order was issued against him and to avoid arrest he was compelled to go underground.

2. He applied on 13th August, 1981 for such pension on the ground that he had remained underground from October, 1942 to July, 1944. Rabindra Nath Ghil, a recognised freedom fighter, certified his application to the effect that the petitioner was bonafide freedom fighter and a proclaimed offender but he went underground for continuance of his services to the country under R.N. Ghil's guidance.

3. The District Magistrate submitted a Certificate to the State Government to the following effect :

"This is to certify on the basis of reports received from the Officer-in-charge of the concerned police station that no relevant records relating to issue of warrants, proclamations and prosecutions during the period 1930-46 are available."

4. Accordingly, by letter dated 20.12.89/4.2.90 the State Government recommended the petitioner's case for grant of pension to the Government of India on the basis of Rabindra Nath Ghil's certificate.

5. The Union authorities did not consider the petitioner's application. The petitioner moved a writ application being C.O. No. 10486 of 1995 (referred to as the first writ petition) which was disposed of on 4th July, 1995 by directing the respondents to take all steps for grant of freedom fighters' pension to the petitioner in accordance with law. The time was limited to 2 months from the date of communication of the order and it was made clear by the court that the time limit was peremptory.

6. The Union Government rejected the petitioner's application by an order date 28th December, 1995 on the ground that after the earlier recommendation of the State Government, the District Magistrate, Midnapore had inquired into the matter and stated that the earlier certificate were Issued on the basis of non-availability of warrant register. The District Magistrate confirmed that there were other records from where the details of the persons who had taken part in the Freedom Struggle could be ascertained and the most important document was the VCNB which was a permanent record and was available in the police station for the year 1930 to 1946. On the basis of this report the Union Government stated that the State Government had been requested to review all such cases where they have recommended grant of pension relying on the earlier certificate of DM, Midnapore about non-availability of Record Certificate relating to Issue of warrant etc. and the PKCs submitted by the applicants and they agreed to review all such cases. Pending this review, these cases were kept pending.

7. The Central Government found that the petitioner was ineligible for grant of freedom fighters pension under the provisions of the scheme for the following reasons :

(1) In the absence of non availability of records certificate, to the satisfaction of the Govt, the secondary evidence the like Personal Knowledge Certificate produced by the petitioner from Shri R.N. Giri on the basis of which the petitioner's case was recommended by the State Government earlier could not be considered as per provisions of the scheme for grant of pension.

(2) Official records are available and the petitioners had not been able to produce any evidence from such records in support of the petitioner's claimed suffering of absconding.

8. On receipt of this order a contempt application was filed by the petitioner on 3rd April, 1996 against the Under Secretary, Government of India. The contempt application was allowed by a judgment and order dated 17/18th September, 1997. It was found that (he procedure adopted by the Central Government in rejecting the petitioner's application was contrary to the scheme. The learned single Judge relying upon the Division Bench Judgment of this court in FMAT No. 650 of 1994 held that :

"The consequent effect of the said Judgment would be that Central Government being the appropriate authority cannot act de hors the scheme and in total disregard of the provision of the scheme mechanically refer to a report of the

State Government without satisfying itself as to the justification of the facts and circumstances of the particular case necessitating such review."''

9. The court found that there was a certificate of suffering undergone by the petitioner. It has not been challenged as being incorrect or not genuine and held :

"It is only when there is doubt as to the genuineness of certificate and the Central Government is in possession of materials rebutting the presumption of correctness of such certificate, further inquiry can be made in the matter, may be but with utmost expedition."

10. The court noted that the report of the State Government did not say that on examination of the available records it was found that the petitioner was not eligible. It merely stated that the records were now available.

11. Having held the respondents to be guilty of contempt the learned Judge sentenced the contemnors to pay a fine of Rs. 2000/- but suspended the sentence till 29th November, 1997. The contemnors were given the liberty once again to reconsider the application of the petitioner for grant of such pension in accordance with law and In the light of his judgment within 24th November 1997 and to produce the decision on the next adjourned date. The matter was directed to appear again on 26th November, 1997 marked "for orders".

12. An appeal was preferred from the Judgment and order disposing of the contempt application by the respondents. The Appellate Court disposed of the appeal on 15th December, 1997 by setting aside the order dated 17/ 18th September. 1997 and giving liberty to the writ petitioner to file a writ petition challenging the order dated 28th December, 1995.

13. In the meanwhile on 19th November, 1997, the Under Secretary, Government of India communicated an order rejecting the petitioner's application again. This time the reason given for such rejection was :

"With your application dated 13.8.81 you have attached Personal Knowledge Certificate from Shri R.N. Girl claiming underground suffering. Normally, the person goes underground due to any executive order. Fearing that he may be arrested an individual may go underground while no case has been registered against him, he will not be entitled to the pension as voluntarily underground does not make one entitled for freedom fighters pension. Therefore, it was necessary for you to get the details of executive orders from the State Government and furnish the same to us.

3. The State Government who were asked to verify your claim of suffering have vide their letter No. 911-HPS/H1P-4(47001) dated 30.5.96 (copy enclosed) mentioned as under:

"All available Police records including Thana and DIB were duly consulted but nothing transpired about the past political activities of the above noted subject during the period from October, 1942 to July, 1944"

4. Thus there is no proof of your claimed suffering in the official records as furnished by the State Government of West Bengal. As confirmed by the State Government that official records are available, there is no necessity of looking for the non availability of records certificate or considering the PKCs which are considered only when primary records are not available in the custody of the State Government, Therefore, your case has not been found eligible for pension."

14. The basis of the order dated 19.11.97 was the letter of the State Government. This in turn was based on two reports filed by the Superintendent of Police. The report of the Special Superintendent of Police, I.E., West Bengal dated 18th January, 1996 reads :

"Sub : Grant of Pension for SSS Scheme case of Shri Gokul Chandra Panja, S/o. Lt. Sagar Chandra Panja.

Ref : Your Memo No. 2533-HPS dated 22.11.95.

The undersigned writes to inform you that there is no information in respect of the past political sufferings during pre-Independence days of Shri Gokul Chandra Panja, with given particulars on this office records."

15. The report of the Superintendent of Police, Mtdnapore dated 9.1.96 states :

"All available Police records including Thana and DIB were duly consulted but nothing transpired about the past political activities of the above noted subject during the period from October, 1942 to July, 1944."

16. The District Magistrate's Report on the basis of which the State Government proceeded was the same one referred to in the order dated 28.12.95. In his report the District Magistrate referred to the Village Crime Note Book (VCNB) as being the most Important document, as well as the Jail Register and the Khatian inspection Register to say that on the basis of their records that there was no record of the petitioner's political sufferings.

17. The writ application was filed on 29th January, 1998 challenging the order dated 26.12.95 and 19.11.97 passed by the Central Government.

18. The State Government was directed to produce the relevant documents of the case by 2nd March, 1998. Records were produced and the petitioners were giving liberty to inspect the same.

19. The State Government produced the VCNB, two printed Volumes of persons in Bengal warned or dealt with and three volumes covering two periods i.e. pre-1946 and pre-1961 arranged alphabetically. According to the State respondents it was on the basis of these documents that the report was given regarding the absence of record of suffering of the petitioner as a freedom fighter.

20. The Police Regulation of Bengal, 1943 (PRB for short] provides for the maintenance of a Village Crime Note Book (VCNB) for each village or other administrative area which may be chosen as a unit for this purpose at each

district police station. The VCNB is required to contain informations about crime and criminals including conviction aspects under Regulation 391. Regulation 391(b) directs for the crime book to be divided into the following parts :

"Part-I. The Crime Register, which will deal with professional crime occurring in the area.

Part-II. The Conviction Register, which will contain details of the convictions of persons as specified in regulation-394.

Part-III. The Village History, which will contain notes on special outbreaks of crime in the village, etc.

Part-IV. The History sheet of persons residing in the village who are believed to be addicted to professional crime, with an index at the beginning.

Part-IVA. Comprises sheets containing inquires about and movements of surveilles.

Part-V An index of convicted persons whose names have been entered in Part II as well as of persons suspected in cases, but not convicted."

21. The village crime note book with regard to the cases at Tamluk Police Station which was produced is maintained in loose sheets tied together. It is in respect of the following villages : Brajgopal, Dakhin Usadpur, Dhurpa. Gobindapur, Ghorathakur, Ichhabar, Mahisda, Polanda, Panchberia, Pakurya Padnapur, Raghvnathpur, Ranlchak. Soyadighi, Sonapetya, Tanrakhali. The petitioner is from village Ghorathakur.

22. The entries in respect of the petitioner's village have been numbered as pages 25 to 32 of the VCNB produced before this court. The entries are haphazardly arranged. Part I, which might have been relevant, contains entries covering 1964 to 1978, Part II contains two entries relating to 1919 only. Part III which is not material contains only five entries of 1917. 1921, 1938, 1964 and 1965. There is no other part at all as far as this village is concerned. None of the entries in either Part I, II or III relate to the period 1942 to 1944 nor does it contain any entry with regard to political disturbance. The cases recorded relate to theft and disputes relating to land. The record is obviously incomplete and in any event not material on the question relating to the political sufferings of persons in connection with the Quit India Movement during the period in question.

23. Subsequently, on 24.1.98 it was conceded by the State respondents that the volumes of records containing the list of persons warned or dealt with only related to the period 1930-39. It had no relevance to the period during which the petitioner had claimed that he was a proclaimed offender.

24. The Superintendent of Police, Midnapore was directed to personally attend and to explain the records. He said that all the records which had been produced earlier were irrelevant. The records were accordingly returned back to the State

Authorities.

25. It Is thus clear that the District Magistrate's report which formed the basis of the State Government's letter dated 30.5.96 to the Central Government and the orders of the Central Government was wholly incorrect. In acting on the District Magistrate's Report the State Government and consequently the Central Government's decisions were perverse and based on no material and on irrelevant considerations.

26. In fact it was conceded by the District Magistrate in his report that the relevant record would have been the Warrant Register. The Register Is required to be maintained under regulation 378 of the PRB. Regulation 378 provides for the maintenance of a register of inter alia absconded offenders whose usual residence is within the police station in which the register Is required to be kept. There is no dispute that these Registers are not available.

27. By order dated 18th March 1998 the papers and documents forming the basis of the report of the SP, DIB, Midnapore dated 9th January 1996 were also directed to be produced. The Supreintendent of Police, Midnapore stated on oath that the records which were consulted by him were the sheet index of the weekly confidential reports, the card index and the I.B. Index. These according to him were the relevant records. The Superintendent's deposition was taken down verbatim and forms part of the records of the case. Liberty was given to the petitioner's counsel to take inspection of the documents in Court tn the presence of the Registrar, A.S.

28. The documents which have been produced by the intelligence Branch are maintained in terms of the Rules for indexing and Collating of intelligence Branch and District intelligence Branch records in West Bengal. The volume produced before this Court was published in 1960. the first object stated is :

"The object of indexing is to have readily accessible a reference to all the informations concerning any individual, organisation, event or subject useful to the intelligence and District intelligence Branches. The purpose, therefore, is to eliminate information which does not concern the department,"

29. Describing the principles of indexing information it Is stated that the sheet index is the first step and a necessary preliminary to card indexing but all names which are sheet indexed are not necessarily entered in the card index. If, for example, the individual Is not a prominent member of any association or whose name is mentioned for the first time, no card index is prepared as far as he is concerned. The sphere of interest of the IB at the time when the petitioner claims to have gone underground appears under the sub-title mentioned as "Selective indexing". It Is said "the activities of the IB and DIBs are no longer confined to collecting information regarding terrorist groups restricted to the middle-class intelligentsia only". It has now to follow mass movements of a socio-economic political character and hence the number of persons coming to notice Is far beyond what the department can properly tackle."

30. It is therefore clear that previously the intelligence Branch and District intelligence Branch records would not contain information regarding terrorist groups which did not belong to the "middle class intelligentsia". In other words, if a person were a villager or not a prominent member of an association or who did not indulge in violence and who may have participated in the non-violent struggle for independence, his name would not be recorded.

31. Keeping this limited scope of the DIB records in view, the records produced by the Police in connection with the petitioner's case are unlikely to be relevant. His case is that he is a villager, a follower of R.N. Guri and not a leader nor has he claimed to have participated in any violent activity in connection with the underground movement. His case, by definition, would not be included in the IB records.

32. The intelligence Branch index which contained a list of persons alphabetically arranged printed in 1953 for the period 1936 to 14th August 1947 were in two volumes. Vol. I contains names of persons whose surnames begin with the letter "A". Volume II contains the names of persons whose surnames began with the letter "G". These volumes could have therefore no relation to the petitioner whose surname begins with letter "P".

33. The sheet indexes were presented in files. Such files are produced in respect of 1940, 1941, 1943, 1944 and 1945. The file relating to 1942 which is relevant to this case is missing. No explanation is forthcoming for this absence.

34. The Card index is said to have been prepared on the basis of the sheet index and is of recent preparation. This is clear at least from one of the entries at least which relates to one Amulya Mukherjee and who is described as being the son of Late Jogendra of "Bangladesh". As Bangladesh came into being only in 1971, the Card index must have been prepared after that. In any event it is at best secondary evidence of the worst kind as the primary evidence viz. the Sheet indexes for 1942 are not produced. A card index, as already seen is not a complete record, and were selectively prepared.

35. In these circumstances to say that the petitioner's name does not appear from the available records may be literally correct in the sense that the relevant records were missing. But that is just another way of saying that the records which would be relevant to the petitioner's case were not available. In that event the Certificate of Personal Knowledge granted by Shri R.N. Guri must be taken as proof of the petitioner's claim in terms of the Pension Scheme.

36. In my opinion the writ application of the petitioner must therefore be allowed not only in the circumstances mentioned but also on the basis of the reasoning in the Judgment and order dated 17.9.97 and 18.9.97 in the contempt proceedings. The order was set aside in appeal only on the ground that the contempt Jurisdiction was not appropriate proceeding to determine the validity of the order dated 28.12.95 in the circumstances of the case.

37. The reasoning given by the learned single Judge in holding the order dated 28.12.95 to be wrong appears to me to be unexceptionable. I have noted the reasoning in some detail earlier in this judgment. I respectfully adopt the same reasoning for holding that the order dated 28th December 1995 was bad.

38. The second order passed by the Central Government fares no better. Admittedly, it was not passed after considering the Judgment passed on the contempt application where the pension scheme propounded by the Central Government for payment of Freedom Fighter Pension has in my view been correctly analysed. The manner in which the Central Government has proceeded is wholly contrary to the scheme. No doubt the Central Government has a discretion and is not bound to accept the recommendation of the State Government. But it can only reject the recommendation for valid reasons. Those reasons cannot include the kind of report submitted by the State Government in this case which was based on no evidence whatsoever and in fact was misleading.

39. There was no basis for the State Government in the facts of this case to submit a fresh report. It is of significance that it did not withdraw the earlier recommendation made by it of the petitioner's case.

40. To sum up : There are no records which would be material to the question of the petitioner's political suffering. In such circumstances it is the personal knowledge certificate alone which had to be accepted and the recommendation made by the State Government and which has otherwise not been challenged by the Central Government in terms of the Scheme. I therefore set aside the impugned orders and direct the appropriate authority of the Central Government to pass an order with regard to the petitioner's pension in the light of present judgment within a period of two weeks from the date of service of a copy of this order on it and to communicate the same to the petitioner within a week from the taking thereof.

41. Petition succeeds