

(2009) 08 MAD CK 0173
In the Madras High Court
Case No : Writ Petition No. 2498 of 2005

K.S. Varatharasan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 14-08-2009

Acts Referred:

Citation : (2009) 08 MAD CK 0173

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : Su. Srinivasan, for the Appellant; Mani Bharathi, Government Adv, for R1 and R2, for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—The writ petition is filed challenging the proceedings dated 14.06.2004 passed by the 1st respondent and for a direction

to the 1st respondent to grant freedom fighter pension to the petitioner from the date of his application in pursuance to the recommendation given

by the District Collector Na.Ka.O.2/78468/97 dated 18.02.1999.

2. Heard Mr. Su. Srinivasan, learned Counsel for the petitioner and Mr. Mani Bharathi, learned Government Advocate for the respondents.

3. It is the case of the petitioner that during the Indian freedom struggle, there were several freedom fighters in and around Coimbatore District

who had organised various kinds of protests and agitations against the then British Government as part of the National struggle for independence

led by the father of the nation Mahatma Gandhiji. The petitioner having been inspired by the speeches of Gandhiji had participated in the several

anti-British activities as part of the freedom struggle.

4. During the Quit India Movement in 1942, the petitioner along with several others had participated in the movement. The then British

Government had arrested the petitioner and kept him in the Coimbatore Central Prison as an under trial prisoner. The petitioner was in prison from

August 1942 to March 1943 for a period of almost seven months and he also took part in Mysore State freedom movement for merger of Mysore

State with the Indian Union after 15.08.1947 for complete accession with the Independent India. He participated in the second Satyagraha batch

of Tamil Nadu Student Congress and was sentenced to undergo Rigorous Imprisonment for a period of three months from 30.09.1947 to

29.12.1947.

5. Even according to the Certificate, dated 16.06.1973 issued by the Senior Superintendent, Central Jail, Bangalore, the petitioner was lodged in

the Central Jail, Bangalore for the offences u/s 56(1) of D.I.R. sentenced in C.C. No. 409 of 1947-48 by the City Magistrate, Bangalore for a

period of three months from 30.09.1947 to 29.12.1947. However, the petitioner was released on 14.10.1947 as per G.O. No. P.3481-90 dated

13.10.1947. In the proceedings No. 8/4/72 FF.II of Ministry of Home Affairs, Government of India, New Delhi, dated 27.07.1972, it was

notified that ""freedom fighters"" who suffered imprisonment in movements for merger of erstwhile princely states with the Indian Union after

15.08.1947 till the date of accession of each states, will be considered for grant of pension. In view of the said proceedings, the petitioner made an

application to the State Government for sanction of Freedom Fighters Pension and after sustained efforts, he was informed that his application will

be considered in the District Committee Meeting on 29.08.1997.

6. One of the essential conditions for applying for freedom fighters pension is that the applicant had to enclose a copy of the certificate issued by

the Jail authorities, certifying his confinement in prison, specifying the period during which he was kept in custody. The applicants were also asked

to produce the F.I.R. Copies, judgment copies and other documents to prove their participation in the freedom movement. In the present case, the

petitioner had produced the certificates from freedom fighters, namely, V. Ellamma Naidu, who was lodged in Coimbatore Central Prison during

the relevant period and is getting Central Government Pension and from Shri.

P.S. Chinnadurai, who is also getting Pension from the Central

Government vide P.P.O. No. 3555/S dated 29.09.1980. The petitioner had also produced another certificate from the freedom fighter, namely,

Shri. K.P. Thiruvankadam, who is also getting Central Government Pension vide P.P.O. No. 3588/S.

7. It is seen that the Certificates issued by the above mentioned freedom fighters, who were lodged in prisons during the relevant period and who

also took part in the freedom struggle along with the petitioner, were not accepted by the Government, as they were not recognized in the list of 15

freedom fighters identified by the Government. It is further seen that the 2nd respondent, who is the Chairperson of the District Screening

Committee for recommending the freedom fighters' pension had written to the Deputy Secretary, P.P.1, vide letter dated 23.02.1999 stating that

the petitioner had produced Certificates from three freedom fighters and that when the Government has recognized only two freedom fighters in

Coimbatore District, the freedom fighters, from whom the petitioner has obtained certificates cannot be co-prisoners with others who have been

lodged in prison. Since then, the petitioner has been constantly making every efforts to get the freedom fighters' pension from the State

Government as well as the Central Government. Despite the recommendation dated 18.02.1999 of the District Collector, Coimbatore, the

respondents did not sanction the freedom fighters' pension and hence, the petitioner approached this Court by way of a writ petition in W.P. No.

11240 of 2004.

8. This Court, by an order dated 23.04.2004 quashed the impugned order passed by the 1st respondent and remitted the matter back to the

authorities to consider the matter afresh in accordance with law and pass appropriate orders within a period of 12 weeks from the date of receipt

of a copy of the said order. In spite of the said order passed by this Court, the 1st respondent, vide order dated 14.06.2004 rejected the claim of

the petitioner. Left with no other alternative, the petitioner has approached this Court for an efficacious alternative remedy.

9. In the counter affidavit filed by the respondents, it is stated that a scheme for the grant of Freedom Fighters' Pension from State revenue was

introduced in G.O. Ms. No. 2064, Public (General) Department, dated 28.09.1966

with effect from 01.10.1966 and according to that scheme,

Freedom Fighters, who were sentenced to imprisonment or held under detention for not less than three months or killed in action or awarded

capital punishment or died in firing or lathi charge, on account of participation in the National Movement were eligible for sanction of State

Freedom Fighters Pension. Subsequently, the said scheme was amended so as to make the Ex. I.N.A. persons and participants of Naval Mutiny,

1947 and those who suffered imprisonment in Madurai Conspiracy case and Freedom Fighters who went underground or whose property was

confiscated/attached or who were removed/dismissed from service on account of their participation in the Freedom movement eligible for State

Freedom Fighters Pension, provided that such claims are supported by Court order or other official documentary evidence.

10. It is further submitted in the counter affidavit that in G.O.Ms. No. 951, dated 18.05.1981, the period of three months imprisonment prescribed

for sanction of such pension was reduced to three weeks with effect from 01.04.1980 and the income ceiling originally fixed was also removed

with effect from 11.03.1983. According to the revised criteria of the Tamil Nadu State Freedom Fighters Pension Rules, (a) the applicant should

be aged 70 or above as on 15.10.1988 and (b) co-prisoner's certificates are to be produced from any two of the 15 Freedom Fighters authorised

in the said Government Order, whose morality and integrity are beyond doubt in question.

11. According to the respondents, an applicant for Freedom Fighters Pension must have been awarded Tamara Patra or Central Pension or his

name should find place in the book ""who is who"" and that the petitioner herein is not a recipient of Tamara Patra or Central Pension nor his name is

found place in the book ""who is who"". As the petitioner's claim was rejected by the respondents for the reason that he had not produced the vital

proof for his jail sufferings as per the guidelines prescribed by the Government, the respondents would state that the petitioner is not eligible under

any of the norms for the grant of political pension.

12. Learned Counsel for the petitioner has submitted that the petitioner was recommended by the 2nd respondent to the 1st respondent for

sanctioning the freedom fighters' pension vide proceedings dated 18.02.1999

and 02.01.2001. Further, it is submitted that similarly placed persons have been granted freedom fighters' pension by the orders passed by this Court earlier. It is also pointed out that even if the applicant had been imprisoned during the relevant point of time, it would be impossible to get the co-prisoner certificate from either of the two persons named by the State Government for obtaining the certificate. Further, the records, in most cases, could not be traced since most of the documents had been destroyed. In spite of that, some relevant documents had been submitted by the petitioner. However, the State Government had refused to grant freedom fighters' pension to the petitioner.

13. In support of his case, learned Counsel for the petitioner has relied on the following:

(i) a decision of the Supreme Court reported in *Gurdial Singh Vs. Union of India and Others*,

...7. The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival

contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for

the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension

under the Scheme. It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about half-a-

century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom

fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and

object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the

touchstone of the test of "beyond reasonable doubt". Once on the basis of the evidence it is probalised that the claimant had suffered

imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is

rebutted by cogent, reasonable and reliable evidence.

(ii) a decision of this Court in the case of *Bhima Rao v. State of Tamil Nadu* made in W.P. No. 19152 of 1996, dated 21.01.2000.

...It is clear that after considering the claim of the petitioner, the District High Level Committee for Freedom Fighter has recommended the case of

the petitioner for sanction of Freedom Fighters Pension. As rightly observed by the District Collector, Coimbatore, the Government has nominated

only few persons in a District to issue certificates. We cannot expect that the certifiers authorised by the Government to give co-prisoners

certificate in a particular district, had also undergone imprisonment along with other prisoners of their district in the same Jail who claim Freedom

Fighters Pension.

(iii) yet another decision of this Court in the case of S. Somasundaram and Anr. v. The State of Tamil Nadu and Anr. made in W.P. Nos. 15465

& 15596 of 2001, dated 12.03.2002.

...10. Unless all the requirements are satisfied, the District Collector would not have arrived at the conclusion to recommend the cases of the

petitioners and issue in favour of the petitioners granting them freedom fighters pension and the reasons assigned in the impugned orders being

untenable and evasive, in consideration of the totality of the circumstances, it has to be decided that absolutely there is nothing to show on the part

of the Government to take an adverse view than the one taken by the District Collector and for rejecting the recommendations of the District

Collector, no valid or tangible reason has been assigned on the part of the Government, thereby proving that the orders impugned as passed by the

first respondent herein could only be rejected as without merit.

14. A scrutiny of the case on hand would show that the petitioner claims that he had participated in the second Satyagraha batch of Tamil Nadu

Student Congress and was sentenced to undergo Rigorous Imprisonment for a period of three months from 30.09.1947 to 29.12.1947, on the

basis of certain documents. As per the Freedom Fighters' Pension Scheme, the petitioner made an application to the State Government and later,

he was informed that his application will be considered in the District Committee Meeting on 29.08.1997.

15. The object of providing pension under the Freedom Fighters' Pension Scheme is to honour and mitigate the sufferings of those who had given

their all for the country. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the

cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. One of the essential conditions for applying

the Freedom Fighters Pension is that the applicant has to enclose a copy of the certificate issued by the Jail authority, certifying his confinement in

the jail, specifically stating the period in which he was kept in custody. In the light of the letter of the Senior Superintendent, Central Jail, Bangalore,

dated 16.06.1973, the petitioner cannot be insisted for production of the certificate. The other essential condition is that the petitioner has to

produce co-prisoner certificates as notified by the Government. In the instant case, the petitioner has produced certificates from Freedom Fighters,

Shri K.P.Thiruvankadam and V.Ellama Naidu, who were lodged in Prison along with him during the relevant point of time.

16. Therefore, I am of the view that the Government is not justified in rejecting those certificates and insisting that persons named in the list of 15

alone to be given such certificate. The petitioner has also produced copy of those certificates, which are annexed in the typed set of papers. The

Government has also erroneously rejected the recommendations of the District Collector, dated 18.02.1999 and 02.01.2001, which are based on

the enquiry made by the District committee.

17. In the light of the above and taking into account the object of the Scheme and placing reliance on the above decisions, this Court is of the view

that there is nothing to show on the part of the Government to take an adverse view than the one taken by the District Collector and for rejecting

the recommendations of the District Collector, no valid or tangible reason has been assigned on the part of the Government. Therefore, the denial

of freedom fighters' pension to the petitioner cannot be sustained in law and accordingly, the impugned proceedings of the first respondent in

Letter No. 21628/A03/2004-1 dated 14.06.2004 is set aside and the first respondent is directed to consider the claim of the petitioner for grant of

freedom fighters' pension, in the light of the recommendation of the second respondent, the District Collector herein vide proceedings

Na.Ka.O.2/78468/97 dated 18.02.1999, and pass appropriate orders within a period of eight (8) weeks from the date of receipt of a copy of this

order.

With the above observation, the writ petition is allowed. No costs. Consequently,

connected W.P.M.P. No. 2774 of 2005 is closed.