
(2014) 06 AP CK 0161
In the Andhra Pradesh High Court
Case No : Writ Petition No. 2539 of 2007

M. Jannamma

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-06-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2014) 6 ALD 374 : (2015) 1 ALT 201

Hon'ble Judges : Akula Venkata Sesha Sai, J

Bench : Single Bench

Advocate : Subba Rao Korrapati, Advocate for the Appellant; P. Vishnuvardhan Reddy, Assistant Solicitor General G.P, Advocate for the Respondent

Final Decision : Allowed

Judgement

A.V. Sesha Sai, J.—This writ petition, under Article 226 of the Constitution of India, is filed assailing the proceedings No. 52/CC/48/2002-FF(HC-C), dated 20.11.2006 issued by the 1st respondent-Union of India as arbitrary and illegal, violative of Article 14 of the Constitution of India and Swatantra Sainik Samman Pension Scheme 1980 (for short the Scheme) and for consequential direction to the 1st respondent to reconsider the case of the petitioner for grant of pension under the said Scheme from the date of application.

2. The pleaded case of the petitioner is as follows:

Petitioners husband, late Sri Mohan Reddy, participated in the movement of Anti Nizams Government and the Director General of Police, Nizams Government, Hyderabad, issued arrest warrant against the petitioners husband and several other freedom fighters. In order to evade the arrest, the petitioners husband went underground for more than six months and in view of the same, the Nizams Police could not implement the warrant of arrest. On an application made by the petitioners husband for grant of pension as per the Scheme, the State Government, after getting report from the District Collector, Medak,

recommended the case of the petitioners husband and others vide letter No. 25258/FF-II/A3/92-4, dated 17.12.1992, to the 1st respondent. Challenging the inaction on the part of the 1st respondent in taking action, the petitioner earlier filed W.P. No. 34522 of 1998 and this Court by way of an order dated 11.12.1998, disposed of the said writ petition, directing the 1st respondent to take action within four months from the date of receipt of a copy of the order. Complaining disobedience of the said order, the petitioner filed C.C. No. 1155 of 1999 and after receipt of the notice in the said C.C. the 1st respondent, by way of an order dated 28.07.1999 intimated that the 2nd respondent-State Government did not send the verification report to the 1st respondent, and thereafter, the petitioner filed W.P. No. 8242 of 2002, which was disposed of on 22.08.2006, directing the 2nd respondent to send the copy of verification report dated 03.06.2004 within one month to the 1st respondent and further directing the 1st respondent to consider the case of the petitioners husband within two months thereafter. The 1st respondent, by way of proceedings No. 52/CC/48/2002-FF (HC-C), dated 20.11.2006, rejected the claim of the petitioners.

3. Challenging the said rejection order as being arbitrary, illegal and violative of Article 14 of the Constitution of India and the Scheme, the present writ petition has been filed.

4. Responding to the Rule Nisi issued by this court, a counter affidavit dated 27.05.2014 deposed by the Under Secretary, in the Ministry of Home Affairs, has been filed denying the averments in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action. A counter affidavit, deposed by the Deputy Secretary to Government, Revenue Department and Chairman of the Committee constituted for scrutiny of freedom fighters cases, has also been filed on behalf of the 2nd respondent stating that in pursuance of the orders of this Court in W.P. No. 8242 of 2002 dated 22.08.2006, while furnishing the copies of the Government letter No. 25258/FF-II(2)/92-4, dated 23.10.1992 and 17.12.1992 and Government LR. No. 74520/FF-A2/2004, dated 30.06.2004, the 2nd respondent requested the 1st respondent to take a decision in the matter according to the directions of this Court.

5. Heard Sri Subba Rao Korrapati, learned counsel for the petitioner, Sri P. Vishnu Vardhan Reddy, learned Assistant Solicitor General of India, for the 1st respondent-Union of India, and the learned Government Pleader for Revenue for the 2nd respondent apart from perusing the material available on record.

6. It is contended by the learned counsel for the petitioner that the order of rejection passed by the 1st respondent is arbitrary, illegal and violative of Article 14 of the Constitution of India and opposed to the Swatantra Sainik Samman Pension Scheme. It is further contended by the learned counsel for the petitioner that the 1st respondent erred in rejecting the claim of the petitioner without taking into account the recommendations of the 2nd respondent from proper perspective.

7. Per contra, it is strenuously contended by the learned Assistant Solicitor General appearing for Union of India-1st respondent herein, that the order of rejection is perfectly justified and is in accordance with the Scheme. It is further submitted by the learned Assistant Solicitor General that the petitioner herein is not entitled for the pension in view of the non-compliance of the contents of the Scheme. The learned Assistant Solicitor General placed reliance on the judgment of the Hon''ble Apex Court reported in Union of India v. K. Indrasena Reddy and anr. and a copy of the same is placed on record along with the counter filed on behalf of the 1st respondent.

8. In the light of the above pleadings, submissions and contentions, now the issue which this Court is called upon to deal with is whether the 1st respondent is justified in rejecting the claim of the petitioner for grant of pension under the Scheme?

9. The Government of India during the Silver Jubilee year of independence introduced a scheme for grant of pension for freedom fighters and eligible dependants with effect from 15.08.1972 with a laudable and sacred object of safeguarding them, to the extent possible, from the onslaught of the financial difficulties, which they are exposed to, in view of the sacrifices made by them during the freedom struggle. Subsequently, in the year 1980, the Government of India liberalised the said Scheme and renamed the same as Swatantra Sainik Samman Pension Scheme, 1980 and the said scheme came into force on 01.08.1980. The object and intention of the Union of India in formulating and introducing such a scheme is a sacred one and is obviously in recognition of the sacrifices made by the freedom fighters during the freedom struggle to liberate our country from the shackles and clutches of feudal and colonial forces. The benefit arising out of the said Scheme is neither a charity nor a gratis and on the other hand, it is undoubtedly a right conferred on the freedom fighters, who sacrificed their valuable lives, wealth, health and young age.

10. At this juncture, it is appropriate and apt to refer to the judgments of the Hon''ble Apex Court and this Court in the case of, Kamlabai Sinkar v. State of Maharashtra; Gurdial Singh v. Union of India and ors.; and Swarna Lakshmi Narayana v. The Special Secretary, Freedom Fighters Division, Ministry of Home Affairs, Loknayak Bhavan, New Delhi wherein the Hon''ble Apex Court and this Court categorically held that the standard of proof applicable while assessing participation in the freedom movement shall be on the basis of preponderance of probabilities, but not on the touchstone of the test of probability beyond reasonable doubt.

11. The action of the 1st respondent-Union of India in rejecting the claim of the petitioner is now required to be tested in the light of the relevant Clauses in the Scheme and the principles laid down by the Hon''ble Apex Court and this Court in the above referred judgments. In order to adjudicate the issues involved in the present writ petition as to whether the order of rejection is sustainable and whether the writ petitioner is entitled for grant of pension under the Scheme, it is

appropriate to refer to the relevant Clauses of the said Scheme.

12. Clauses 2.1, 2.2, 2.3, and 2.4 of the said Scheme read as follows.

2.1. Eligible dependents of martyrs:-A martyr is a person who died or who was killed in action or in detention or was awarded capital punishment due to participation in the freedom struggle of India. Relevant documents from official records and newspapers of the relevant time are considered as evidences in such cases.

2.2. Imprisonment:-A person who had suffered minimum imprisonment of six months (3 months in case of women, SC/ST freedom fighters) on account of participation in freedom struggle subject to furnishing of the following evidences:-

(a) Imprisonment/detention certificate from the concerned jail authority, District Magistrate or the State Government. Indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release.

(b) In case records of the relevant period are not available, the secondary evidences in the form of 2 co-prisoner certificates (CPC) from freedom fighters who have proven jail suffering of minimum 1 year and who were with the applicant in the jail could be considered, provided, the State Government/Union Territory Administration concerned, after due verification of the claim and its genuineness, certifies that documentary evidence from the official records in support of the claimed sufferings were not available. In case, the certifier happens to be a sitting or Ex. M.P./M.L.A., only one certificate in place of the two is required.

2.3. Underground:-A person who on account of his participation in freedom struggle remained underground for more than six months provided he was;

(A) a proclaimed offender; or

(B) one on whom an award for arrest was announced; or

(C) one for whose detention, order was issued but not served.

Explanation:

Voluntary underground suffering or self-exile suffering for party work under command of the party leaders, are not covered as eligible sufferings for pension under the Central Scheme.

The claim of underground suffering is considered subject to furnishing of the following evidence:-

(a) Documentary evidence by way of Courts/Govt.'s

(b) Orders proclaiming the applicant as a absconder, announcing an award on his head or for his arrest or ordering his detention.

(c) In case records of the relevant period are not available secondary evidence in

the form of a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who has proven jail suffering of a minimum two years and who happened to be from the same administrative unit could be considered provided the State Government/Union Territory Administration concerned, after due verification of the claim and its genuineness, certifies that documentary evidences from the official records in support of the claimed sufferings were not available.

2.4. Internment/externment:-A person who, on account of participation in the freedom struggle, was interned in his home or externed from his district for a minimum period of six months is eligible subject to furnishing of order of internment or externment issued by the competent authority, from official records. In absence of the official records, NARC from the State Govt./UT Administration concerned, along with a certificate from prominent freedom fighter, who had proven jail sufferings of at least two years; who belonged to the same administrative unit and whose area of operation was same as that of the applicant, should be furnished.

13. A reading and perusal of the above Clauses of the Scheme would make it manifest that whenever a person, who had suffered a minimum imprisonment of six months or who on account of his participation in freedom struggle remained underground for more than six months on whom an order of detention was issued and award for arrest was announced, such a person is entitled for pension and there is absolutely no further need to produce secondary evidence by such persons.

14. In the instant case, the petitioner herein produced the proceedings of the Director General of Police, Nizams Government, Hyderabad, dated 5th Aban, 1356 fasli addressed to the Secretary, Courts & Police, Nizams Government, Hyderabad, which clearly shows that arrest orders were issued against a number of persons including the petitioners husband, viz., late Sri Mohan Reddy, and the list enclosed with the same manifestly shows his name at serial No. 57. The said letter also shows that the arrest warrants were issued against the persons shown in the enclosed list until further orders u/s 25 of the Defence of Hyderabad Rules for their unlawful and destabilisation activities.

In the present case, the 1st respondent rejected the claim of the petitioner by virtue of the impugned order No. 52/CC/48/2002-FF(HC-C), dated 20.11.2006. The reasons for such rejection at para-5 of the said order read as follows.

The claim of Smt. Janamma has been examined as per the provisions of the Scheme and the following discrepancies/shortcomings have been noticed:

(i) She has not furnished requisite, acceptable record-based primary evidence in support of her late husbands claimed suffering (as indicated in para 4 above).

The document furnished in support of her late husbands claimed suffering does not give complete requisite details like particulars of the case, date of disposal, its final fate, etc. Underground suffering for a minimum period of 6 months is not

confirmed or established from this document.

It is not possible to accept the said document as proof of states executive action as per the provisions of the Scheme.

(ii) Thus, acceptable secondary evidence, i.e., Non-availability of Records Certificate (NARC) having all the ingredients prescribed therefore and Personal Knowledge Certificate (PKC) are required to be furnished to establish the claimed suffering (as indicated in para 4 above). This is also not forthcoming.

She has not furnished any valid NARC from the State Government (i.e., the competent authority) having all the ingredients prescribed therefore.

15. Since the petitioners husband produced the order of detention, which is primary evidence as per the Scheme, the question of production of secondary evidence would not arise. The 2nd respondent vide letter No. 25258/FF-II/A2/92-4, dated 17.12.1992, after undertaking field verification at ground level through District Collector, sent a report along with all the documents obviously including the order of detention. It is also pertinent to mention at this juncture that paragraph No. 3 of the letter No. 25258/FF-II/A2/92-4, dated 17.12.1992 reads as under.

I am further to state that the documents produced by the applicants has been confirmed by the Home (OP. II) Dept., in their U.O. Note No. 36754/OP.II/92-1, dated 03.01.1992 as genuine. On verification of the list furnished by them, the applicants names are found at Sl. No. 56, 58 and 57. Sri Gajwel Saidaiah, Ex. MLA and prominent freedom fighter has also certified that the applicants were participated in anti Nizam Government movement and went underground for more than six months to evade arrest warrant till police action was over.

16. The report sent by the State Government clearly shows that the husband of the petitioner herein went underground for more than six months to evade arrest till the police action was over, as such it can be concluded that the husband of the petitioner went underground for a period more than six months to evade arrest. Earlier in pursuance of the orders of this Court in W.P. No. 34522 of 1998 dated 11.12.1988, the 1st respondent passed order of rejection dated 28.07.1999 for want of verification report from the State Government. As per the counter affidavit filed on behalf of the State Government Letter dated 30.06.2004 was also addressed by the State Government. At this juncture it may be appropriate to refer to the order of this Court in W.A. No. 73 of 2005 dated 18.02.2005. The operative portion of the order reads as under.

The Scheme also provided for the manner in which an applicant is required to prove his claim for pension. It says that applicant should furnish the documents indicated in the Scheme. AS regards remaining underground, documentary evidence by way of courts/Government orders proclaiming the applicant as an offender, announcing an award on his head or for his arrest or ordering his detention, is sufficient. For remaining underground, a certificate from veteran

freedom fighter who had himself undergone imprisonment for five years or more, if the official records are not forthcoming due to their non-availability is sufficient, therefore, the only document required to be produced in support of the claim of remaining underground would be in the shape of documentary evidence by way of courts/government order proclaiming the applicant to be a person whose detention has been ordered. Certificate from the veteran freedom fighter who had himself undergone imprisonment for five years or more, would be required only in case when the official record is not forthcoming or not available. In the instant case when the official record is a record available, namely, list of 98 persons against whom detention orders were issued under Rule 119 of Defence of Hyderabad Rules. The petitioner is one of them. Under the scheme, that list itself was sufficient and the application accompanied the affidavit of the petitioner and also the certificate issued by the K. Venkatram Reddy, PPO No. MHAF9901583, certifying petitioners claim to be correct. Nothing else was required to be submitted or proved by the petitioner. Therefore, the order rejecting the claim is for irrelevant and extraneous reasons and is liable to be set aside. Consequently, we allow the Writ Appeal and also the order impugned in the Writ Appeal and also the order impugned in the Writ Petition and allow the writ petition with direction to respondent No. 1 to consider the prayer for grant of pension to the petitioner-appellant. Appropriate decision be taken within a period of three months from the date of receipt of the writ order from this Court. No costs.

17. Further a reading of the impugned order of rejection dated 20.11.2006 shows that except stating that the petitioner did not furnish requisite acceptable record based on the primary evidence, the 1st respondent failed to assign any valid reasons for rejection. The 1st respondent also failed to note that the question of production of secondary evidence arises only in the case of absence of primary evidence. The reasons assigned in the impugned order of rejection are highly irrelevant and absolutely not in consonance with the very object and intention behind the Scheme. In the instant case, the ground verification receipt sent by the 2nd respondent was not taken into account. It is most unfortunate that the wife of a freedom fighter, who is shortly completing 80 years of her age and who is in the evening of her life, is still before this Court with a prayer for recognition of her deceased husband as freedom fighter. It may also be appropriate and apt to note at this juncture that sacrifices made by the wives of the freedom fighters cannot be lost sight of and in the considered opinion of this Court without their support the male freedom fighters would not have effectively participated in the freedom struggle.

18. In the facts and circumstances of the present case, and in view of the primary evidence made available by the writ petitioner in support of her claim, the judgment sought to be relied upon by the 1st respondent i.e., judgment of the Hon'ble Apex Court in the case of Union of India v. K. Indrasena Reddy and anr., would not render any assistance to the 1st respondent to support its contention.

19. For the aforesaid reasons, and having regard to the principles laid down by the Hon"ble Apex Court in the above referred judgments with regard to the preponderance of the probabilities, and keeping in view the laudable object behind the Swatantra Sainik Samman Pension Scheme, 1980, this Court is inclined to allow the present writ petition.

20. Accordingly, the writ petition is allowed and the proceedings No. 52/CC/48/2002-FF(HC-C), dated 20.11.2006 issued by the 1st respondent rejecting the claim of the petitioner herein, are hereby set aside. The respondents are directed to sanction and pay the Freedom Fighters Pension under Swatantra Sainik Samman Pension Scheme, 1980 to the petitioner from the date of application. The arrears shall be paid by the respondents within a period of three months from the date of receipt of a copy of this order. No order as to costs. As a sequel, miscellaneous petitions, if any, shall stand closed.