

**(1993) 03 MAD CK 0030**

**In the Madras High Court**

**Case No : Writ Petition No. 7366 of 1984**

M. Muthuswamy Kandiar

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

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**Date of Decision : 04-03-1993**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226

**Citation : AIR 1993 Mad 243 : (1993) 1 MLJ 217**

**Hon'ble Judges : Janarthanam, J**

**Bench : Single Bench**

**Advocate : V. Sairam, for the Appellant; P. Balasubramani, A.G.P., for the Respondent**

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## **Judgement**

Janarthanam, J.—The Government's (respondent) declining to sanction State Freedom Fighter's pension to one M. Muthuswamy Kandiar,

a resident of Palanjur village, Pattukkottai Taluk, Thanjavur District (petitioner) in its Letter No. 18283/84-1, Public (PPIII) Department, dated 3-

3-1984 is the subject-matter of challenge now praying for the issue of a Certiorarified Mandamus.

2. Learned Counsel appearing for the petitioner, in a bid to assail the impugned order would raise three contentions:

(1) The order impugned is a non-speaking one;

(2) It suffers from the vice of violation of principles of natural justice in not affording any opportunity at all to the petitioner; and

(3) The singling out of the petitioner, in refusing to grant the Freedom Fighter's pension as prayed for by him, pure and simple, discriminatory,

inasmuch as persons placed in similar circumstances had been favoured with the grant.

3. Learned Additional Government Pleader would however strike a discordant note to all these submissions.

4. Before ever falling straight into the arena of discussions, I rather feel that the background history relatable to the grant of State Freedom

Fighter's pension, if traced, would be of immense help in evaluating the tenability or otherwise of the rival submissions of either counsel.

5. A perusal of the file produced reveals startling and interesting details in the matter of discretionary grant of Freedom Fighter's pension by the

Government. In 1966, the Government formulated a scheme for the grant of pension to Freedom Fighters, who had undergone imprisonment for a

period of three months. The period of imprisonment required for the sanction of pension was subsequently reduced to one month and later on to a

minimal period of three weeks. Originally evidence by way of extract of jail records were required to be produced to prove one simple

imprisonment.

6. Difficulties were however experienced in getting the extracts of jail records of yester years and in such process, even the real Freedom Fighters,

who had undergone jail sufferings for the cause of this country were unable to get the doles or pension merely for the non-production of those jail

extracts. The sympathetic Government understanding the predicament plight of such Freedom Fighters decided to change the modalities and

policies in not insisting upon the production of the jail extracts, in proof of jail sufferings. But instead, they ordered to accept co-prisoner's

certificate issued by Legislators and Parliamentarians, former or present. Under this Scheme, the certifying former or present Legislator or

Parliamentarian should have actually been the co-prisoner of the certified prisoner during the entire period in a particular jail. This scheme was

successfully working in alleviating the Freedom Fighter's suffering from impecunious circumstances.

7. The petitioner is one such person, who obtained a co-prisoner's certificate from one A. Vairavan Servai, Ex. MP, who was stated to have

undergone imprisonment in Pattukkottai Sub Jail during the year 1942, in connection with freedom struggle and submitted an application dated 30-

10-1981 for grant of Freedom Fighter's pension, which was received by the Government on 3-11-1981. During the pendency of the application,

the Government received lot of reports as to the indiscriminate grant of co-prisoner's certificate by Thiru A. Vairavan Sarvai, Ex-MP, even to such of those persons, who never suffered imprisonment in jail along with him as a coprisoner. The Government wanted a thorough enquiry into this matter and during the course of enquiry, Thiru A. Vairavan Servai, Ex-MP was examined and he went to the extent of stating that he issued co-prisoner's certificates to all those persons suffering from impecunious circumstances, on verifying from them as to the factum of undergoing jail sentence in various prisons for their participation in the freedom struggle. The enquiry further revealed that he issued certificates to such of those persons, who were not at all undergoing sentence along with him at Pattukottai Sub Jail, The sordid fact is that the said Ex-MP was stated to have undergone the minimum period of imprisonment of 11/2 months only at Pattukottai Sub Jail during 1942.

8. The application of the petitioner was also sent to the Collector of Thanjavur for enquiry and report on 9-11-1981. The certificate produced by the petitioner did not at all reveal the details as to the date and the month of his imprisonment in Pattukkottai Sub Jail in the year 1942. In such a circumstance, the Government was unable to place any reliance on such a certificate for the proof of his having undergone imprisonment along with the co-prisoner, Ex-MP Thiru Vairavan Sarvai, It is in this view of the matter suspecting the genuineness of such a certificate, the Government declined the Freedom Fighter's pension to him and the said order is couched in the following terms:

I am directed to state that the Government are unable to consider your request for the grant of State Freedom Fighter's pension as your claim of imprisonment has not been established beyond doubt.

The reason for refusal of Freedom Fighter's pension to the petitioner is writ large on the face of the impugned order itself, in the sense of himself having been denied of such a pension, for the reason of his not satisfactorily proving his claim of imprisonment with the co-prisoner Ex-MP Thiru Vairavan Sarvai. In such a situation, to say that the order is not a speaking one cannot at all be countenanced.

9. Freedom Fighter's pension is after all a discretionary grant made by the benevolent Government to all those persons, who had undergone jail

sufferings fighting for the cause of the nation. It is only such of those persons, who actually fought for the country, will be entitled to the discretionary grant of pension for the services they have rendered to the cause of the country. Such a grant is subject to the proof of having undergone the jail sufferings for a specified period for such a cause. The opportunity affordable to such a person is the production of a certificate from a co-prisoner. Such an opportunity had been provided to the petitioner concerned and the certificate so produced was not considered to be satisfying the requirements laid down by the Government. Till proper proof forth came for his jail sufferings, no right is stated to have accrued to him to be favoured with a discretionary grant of Freedom Fighter's pension. In this view of the matter, it cannot be stated that no opportunity had been afforded to him for his not being favoured with the discretionary grant of Freedom Fighter's pension. It may however be open to him to produce clinching proof for his having undergone jail sufferings in the freedom struggle for the specified period to make him eligible for the grant of Freedom Fighter's pension and the benevolent Government would be gladly and willingly conferring on him the discretionary grant of Freedom Fighter's pension, if he does so.

10. No doubt true it is that the Government granted Freedom Fighter's pension to certain persons on the basis of the certificates issued by Thiru

A. Vairavan Servai, an Ex-MP. The moment the Government came to know the indiscriminate issue of such certificates by this Ex-MP, without reflecting the reality of the situation, the Government decided, as a matter of policy, not to grant Freedom Fighter's pension to persons, who applied for such a grant on the basis of the certificates issued by the said Ex-MP. While adopting such a policy, the Government, however, thought fit not to disturb the grants earlier made based on the certificates issued by the said Ex-MP to certain persons. It is on this the petitioner would say that he had been discriminated from other persons placed in similar circumstances. One wrong cannot make right another wrong. The moment such a wrong was found out, it does not mean that the same wrong should continue to be committed. The moment such wrong was identified by the Government, they did take efforts not to commit such wrongs any further. To ask the Court by issuance of a direction to the Government to

commit the same wrong, which if allowed to be done, is nothing but perpetuating of the commission of wrongs or illegalities by the Government

under the orders of Court. Article 14, in such a situation, cannot be sought in aid for getting the relief of persons placing themselves on the same

pedestal of persons, who were able to get the relief as a consequence of such commission of wrongs or acts contrary to law.

11. For the reasons above, the Writ Petition deserves to be dismissed and is accordingly dismissed. Rule Nisi issued is discharged. No costs.

12. Petition dismissed.