
(2008) 03 MAD CK 0085
In the Madras High Court
Case No : Writ Petition No. 17497 of 2001

N. Palaniappan

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 05-03-2008

Acts Referred:

Citation : (2008) 3 MLJ 1382

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : T.M. Hariharan, for the Appellant; Hasan Fizal, Government Advocate, for the Respondent

Judgement

P. Jyothimani, J.—This writ petition is directed against the order of the second respondent dated 20.03.98, under which the second

respondent has rejected the claim of the petitioner for payment of Freedom Fighter's Pension as per the Pension Scheme on the basis that the

Certificate issued in favour of the petitioner is general in nature and it is not a certificate issued by a co-prisoner. According to the second

respondent, the petitioner has not obtained certificate from approved co-prisoner and in view of the same, the impugned order came to be passed.

2. On the face of it, it is the most unfortunate case, wherein, the second respondent instead of taking a pragmatic approach has only taken a

technical stand for the purpose of denying the legitimate right of a person who has fought for the country in the freedom struggle for which there are

abundant records, but taking impossible grounds.

3. The case of the petitioner is that he is aged 82 years and he has participated in the individual Satyagraha as permitted by Mahatma Gandhiji on

31.05.1941. He was arrested and lodged in Thiruvaadaanai Sub Jail from 31.05.1941 to 06.08.1941. In fact the Tamil Nadu Congress

Committee has nominated him to participate in the said Satyagraha. He has also participated in the 1942 Quit-India Movement and was arrested

and lodged in Madurai Central Jail from 27.08.1942 to March 1943 for a period of seven months. He was unable to produce the jail records as

they have been destroyed by lapse of time.

4. As correctly pointed out by the learned Counsel appearing for the petitioner in the Ramnad District Gazette published on 09.11.1949, by the

Government of Madras, while notifying the list of persons declared as eligible for grant of lands under the Political Sufferers List, the name of the

petitioner finds place in Serial No.11, the said notification is extracted below:

Registered No. M890

Government of Madras

Ramnad District Gazette

Extraordinary

Published by authority

November 9, 1949

Notification.

List of persons declared eligible for grant of lands under the scheme sanctioned in G.O.Ms. 3102 Rev. dated 23rd December, 1947 at the meeting

of the District Non-official Advisory Committee held on 28th October, 1949.

Political Sufferers' List

Tiruvadanai Taluk:

11 N. Palaniappan, s/o Nagalingam, Gandhi Vilas,

Veerapandiapuram, Devakottai.

Madurai,

29th October, 1949,

Date: Sd. A. Uthandarama Pillai,

Station: Collector./true copy

5. Further, late Mr. P. Kakkan, President, Tamilnad Congress Committee and former Minister of this State, who has undergone imprisonment in

the freedom struggle has issued a certificate stating that the petitioner is a political sufferer and he was remanded to jail for eight months. In fact he has stated that the petitioner was with him in Madurai Central Jail during 1942 Freedom Movement. The said certificate is extracted below:

Tamilnad Congress Committee

Grams: CONGRESS Sathiamurthi Bhavan

Phone: 82535 54, General Patters Road,

Ref: No. R.D. 3. Madras-2.

21st Oct., 1970.

Shri. N. Palaniappan, S/o Ramalingam, Devakottai Post, Ramanathapuram District is a Political Sufferer and he was in remand for eight months.

He was along with me in the Madurai Central Jail, during 1942 Freedom Movement.

Sd. P. Kakkan, President

Ex. Minister.

Tamilnad Congress Committee,

Sathyamurthi Bhavan,

54, General Patters Road,

Madras-2./true copy/Seal of District Treasur Office.

Sd. Xxxxx

23.10.80.

Treasury Officer,

Ramanathapuram at Madurai

Id... 23.10.70. Id., 23.10.70

/true copy/

6. Sri. S. Ramakrishna Thevar, Ex. M.L.A. & M.L.C., Tiruvadanai Constituency and President of Tiruvadanai Taluk Congress Committee and a

freedom fighter has also issued a certificate dated 21.10.80, stating that the petitioner who belonged to Devakottai, Ramanathapuram District is a

freedom fighter and he was in remand along with him for eight months from the last week of August 1942 upto 27th March 1943, at Madurai

Central Jail during 1942 National Congress ""Quit-India"" Freedom Movement.

7. It is seen that the Secretary to Government by a letter dated 22.11.82, has directed the petitioner to produce the original copy of the co-

prisoner certificate issued by Thiru. S. Ramakrishnan Thevar, Ex. M.L.A. & M.L.C. Based on that, the petitioner has submitted the original

certificate to the Under Secretary to Government on 22.12.82.

8. It is also seen that the Joint Secretary to Government has in fact recommended to the Deputy Secretary to Government of India, by referring to

the documents submitted by the petitioner including the certificate of Mr. P. Kakkan, former Minister of Tamil Nadu and Mr.S.Ramakrishnan

Thevar, Ex. M.L.A. & M.L.C., for sanction of ""Swatantrata Sainik Samman Pension"". When that was rejected by the Government of India, by its

communication dated 30.07.1984, the petitioner has made a fresh representation on 28.12.95. The State Government through its Secretary vide.

letter dated 26.05.97, has directed the petitioner to produce evidence to show that for a minimum period of 21 days he was imprisoned during the

freedom struggle or produce certificate from a co-prisoner in Pasumpon Muthuramalinga Thevar District from either Mr. P. Subramanian of

Sivaganga or Mr. R.M. Karuppan Chettiar of Karaikudi.

9. The District Collector, Sivaganga after conducting enquiry, by his communication dated 05.02.98, addressed to the Secretary to Government

has referred to the above said documents and after satisfying that he was a genuine freedom fighter has recommended for payment of pension by

the State Government by enclosing various documents viz.,

(i) Xerox copy of co-prisoner certificate for having being detained in Madurai Central Jail from August, 1942 to 27.03.1943,

(ii) Certificate from Ramnad District Gazette showing that the petitioner name is in Sl. No. 11 in the Political Sufferers List,

(iii) Residence Certificate,

(iv) Income Certificate,

(v) Identification Certificate along with Photo and Specimen Signature attested by Special Tahsildar, and

(vi) Certificate issued by Mr. R.M. Karuppan Chettiar

However, the impugned order came to be passed by the second respondent only on the ground that the certificate produced by the petitioner

relates to a different period and on the ground that the petitioner has not produced the certificate from the person approved by Government for this purpose.

10. The respondents have filed counter affidavit. In the counter affidavit it is stated that as per the Tamil Nadu Freedom Fighters Pension Rules,

co-prisoners certificate are to be produced from any two of the fifteen freedom fighters who were specified in the Government Order and they

must certify about the morality and integrity of the person and documentary evidence like arrest warrant are to be produced. It is the case of the

respondents that by G.O.Ms. No. 30, Public (Political Pension. II) Department, dated 07.02.1996, the Government has introduced a modified

procedure regarding acceptance of co-prisoner's certificate by forming District Level Screening Committee consisting of the Collector of the

District as its Chairman and on the recommendation of the District Level Screening Committee as per the guidelines, the Government will consider

for payment of pension. In the counter affidavit, it is admitted that when the petitioner has subsequently applied to the District Collector of

Sivaganga on 18.06.99, he produced certificates from Thiru. R.M. Karuppan Chettiar, Thiru. S. Ramakrishnan Thevar, Ex. M.L.A. & M.L.C.,

along with a copy of notification issued in Ramnad District Gazette. Thereafter, the District Level Screening Committee was convened on

12.01.1998 and the District Collector has recommended the claim of the petitioner for sanction of State Freedom Fighters Pension. However, the

counter affidavit proceeded to show as if the certificate issued by Thiru. R.M. Karuppan Chettiar is general in nature and therefore the request of

the petitioner was rejected. It is also stated in the counter affidavit that Thiru. R.M. Karuppan Chettiar has issued two certificates to the petitioner

and in each certificate the jail term is different. It is further stated in the counter affidavit that in one certificate it is found that there are full of over

writings. Also in the counter affidavit it is stated that the certificate issued by Thiru S. Ramakrishnan Thevar, Thiru. K.R.S. Muthu and Thiru. P.

Kakkan are not approved.

11. Heard Mr. T.M. Hariharan, learned Counsel appearing for the petitioner and Mr. L.S.M. Hasan Fizal, learned Government Advocate

appearing for the respondents and perused the entire records.

12. On the face of it, as I have stated earlier, it is a classic instance where the Executive instead of taking a pragmatic approach considering the valuable service rendered by Freedom Fighters during the "Quit-India" movement and other freedom struggle along with Mahatma Gandhiji, had simply thrown out the claim of the petitioner on the basis that certificate issued even by an authority who is authorised by the Government is not believable. It is astonishing to note that certificate issued by a former Minister of this State whose reputation and integrity is beyond doubt by anybody in this country like that of Mr. P. Kakkan, has been rejected by the Executive for no reason whatsoever but merely because such certificate is not authorised. It is also relevant to point out that in this case there is another certificate issued by a co-prisoner Thiru. S.

Ramakrishanan Thevar, who subsequently became a Member in the Legislative Assembly as well as Legislative Council of the State. When it is the specific case of the respondents in the counter affidavit that the District Level Screening Committee has been constituted with the District Collector as its Chairman and the District Collector as Chairman, after enquiry, on personal verification has come to the conclusion and recommended sanction of pension, it is not known as to how the second respondent has come to such a conclusion with flimsy reason which is not only shocking to conscience of any person who is interested in the nation and if this is the way a freedom fighter is to be treated, certainly the same cannot be in consonance with the cultural heritage of this great Nation. The notion of the respondents appear to be as if the payment of such amount made under this scheme are only gracious or compassionate in nature. On the other hand, it is but honouring the persons who have fought for the country without expecting anything, at that time, but, without whom, the present hierarchy of setup would not have been possible.

13. The contention of the learned Government Advocate appearing for the respondents that the present writ petition was already dismissed for default and after considerable time, the petitioner filed a restoration petition to restore the present writ petition and therefore the petitioner has no intention to pursue the case is unsustainable. Admittedly, at the time of filing of the writ petition, the petitioner was aged 82 years and as on date he should be nearly 90 years old. In such circumstances, the failure to pursue the matter cannot be held against him considering his advanced age.

14. While dealing with such an application for pension, the Hon"ble Supreme Court in R. Narayanan Vs. Union of India and another, considering a

similar objection as it is raised in the present case, has held in para 11 as follows:

11. ...There is neither justice nor grace in the respondent's putting forth such objections. No one can really expect official records to have been

preserved for a period of 40 years to prove the treatment given to the petitioner for the injuries sustained by him during the freedom struggle.

Hence the objection relating to non-production of official records of the relevant period by the appellant to prove the sustainment of injury by him

deserves outright rejection as well as outright condemnation. As regards the criticism that the appellant's claim under Clause (e) appears to be an

afterthought, this too merits instantaneous rejection. As we have already pointed out, the government doctors who have examined the appellant

have found his claim of permanent incapacitation of the left eye to be true and the State Government authorities have, after due enquiry, accepted

the bona fides of the appellant's claim and recommended his case for grant of pension under the S.S.S. Scheme by the respondents.

Consequently, merely because the appellant, perhaps out of ignorance of the several heads under which the claim of pension could be made, had

applied initially for grant of pension under Clause (a), it can never be said that the present claim of the appellant is an afterthought.

15. In A. Gopal Mudaliyar v. Government of India and Anr. 2004 MHC 722 Hon"ble Mr. Justice P.K. Misra, while dealing with similar situation

of rejection of pension to a freedom fighter by the Central Government under the Swadantara Sainik Samman Pension Scheme has referred to the

observations made by the Hon"ble Supreme Court in Mukund Lal Bhandari and others Vs. Union of India and others, wherein the Hon"ble

Supreme Court has held that giving compensation to the freedom fighters is not for the purpose of rewarding but for the purpose of honouring the

person. The relevant para 4 is extracted below:

4. The manner in which the Central Government appears to have dealt with the application can be best described as cavalier, callous and

capricious. Keeping in view the practical difficulty in obtaining first hand records relating to imprisonment of a particular person in connection with

freedom struggle, the Supreme Court of India and this Court in several decisions

have indicated that the matters require to be examined in a liberal manner. In *Mukund Lal Bhandari and others Vs. Union of India and others*, it was observed as follows:

The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour

and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of

those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of

patriotism with which they plunged in the Freedom Struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge

the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the

result if the benefit is directed to be given retrospectively whatever the date the application is made. The Scheme should retain its high objective

with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and

this is equally important to note, since we are by this decision making the benefit of the scheme available irrespective of the date on which the

application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only

benefit made available to the freedom fighters or their dependents. The preference in employment, allotment of accommodation and in admission to

schools and colleges to their kith and kin etc., are also the other benefits which have been made available to them for quite sometime now.

The learned Judge has also referred to a similar Judgment of the Hon"ble Supreme Court in *Gurdial Singh v. Union of India* AIR 2001 SCW

3843, wherein the Hon"ble Supreme Court has made it very clear that the object of grant of such pension to the living freedom fighters must be

considered in the context that millions of masses of this Country had participated in the freedom struggle without any expectation of grant of any

scheme at the relevant time and in such circumstance the cumbersome procedure imposed for the purpose of such benefit can only be tiresome and

whittle down the very object of such scheme. Ultimately, the learned Judge has allowed the petition by condemning the conduct of the respondents

in rejecting the claim of pension mechanically on technical reason and directed payment of the amount from the date of application with interest.

The relevant para 8 is as follows:

8. Keeping in view the various uncontroverted materials on record, I have no doubt in mind that in the present case, the first respondent has mechanically rejected the application by taking the hyper technical view of the matter and such order cannot be sustained. The petitioner is now aged about 81 years. It would not be appropriate at this stage to direct the first respondent to consider the matter again, in view of the advanced age of the petitioner. Following the course adopted by the Supreme Court as well as the High Court in the decisions cited, I feel it proper to give a direction to the first respondent to grant freedom fighters pension. Since the District Level Committee under the Chairmanship of Collector recommended the case of the petitioner on 23.12.1997, it is directed that such pension should be paid with effect from 01.01.1998. Following the decision of this Court in 2002 (3) CTC 107 (cited supra), I further direct that such amount payable from January, 1998 till December 2003 should be paid with interest at the rate of 10%. This direction should be carried out within a period of three months from the date of communication of the order.

16. The Division Bench of this Court consisting of Hon''ble Mr. Justice P. Sathasivam (as he then was) and Hon''ble Mr. Justice N. Paul

Vasanthakumar in The State Government of Tamil Nadu, rep. By its Under Secretary, Public (Political Pension II) Department v. K.S.

Annapparaja (died) by LR.s. and Anr. 2007 MHC 1012 while dismissing the appeal filed by the Government, directed payment of Pension from

the original date of application has held as follows:

3.....It is clear from the above, taking note of the lapse of time and peculiar circumstances of the case, the Honourable Supreme Court granted

pension with effect from March, 1996 when the petitioner therein filed W.P. No. 12350/1996, considering the special circumstances mentioned

therein, we are of the view that the same cannot be applied to all cases as argued by the learned Government Advocate. In fact, the said issue has

been considered by a learned Single Judge of this Court in the judgment reported in 1991 W.L.R. 49 (Gabriel, D v. The Government of India)

wherein the learned Judge directed the authority to grant pension from the date of the application of the petitioner. It is also brought to our notice

that the same has been approved by a Division Bench of this Court in the judgment reported in 1994 WL.R.137 Thangavelu R. v. Government of

India and Anr. It is further brought to our notice that the Honourable Supreme Court in Mukund Lal Bhandari and others Vs. Union of India and

others, directed the authorities to sanction Freedom Fighters' Pension to the petitioner from the date on which the original application was received

whether the application is filed with or without the requisite evidence.

4. In the light of the above discussion, we do not find any merit in the writ appeal filed by the Government. Consequently, the same is dismissed. In

view of the dismissal of the writ appeal, the appellant is directed to settle the arrears payable to the impleaded 2nd respondent within a period of 8

weeks from the date of receipt of a copy of this order. No costs.

17. In fact in Gurdial Singh Vs. Union of India and Others, the Supreme Court has held that in cases of freedom fighters pension scheme, the

standard of proof required is not that of any criminal case or cases of any adjudication, by holding that such schemes are to honour and to mitigate

the sufferings of freedom fighters. The following passage of the Hon'ble Supreme Court is relevant to appreciate the real purpose of such scheme:

8. We have noticed with disgust that the respondent authorities have adopted a hypertechnical approach while dealing with the case of a freedom

fighter and ignored the basic principles/objectives of the Scheme intended to give the benefit to the sufferers in the freedom movement. The

contradictions and discrepancies, as noticed hereinabove, cannot be held to be material which could be made the basis of depriving the appellant

of his right to get the pension. The case of the appellant has been disposed of by ignoring the mandate of law and the Scheme. The impugned order

also appears to have been passed with a biased and closed mind, completely ignoring the verdict of this Court in Mukund Lal Bhandari case. We

further feel that after granting the pension to the appellant, the respondents were not justified in rejecting his claim on the basis of material which

already existed, justifying the grant of pension in his favour. The appellant has, unnecessarily, been dragged to litigation for no fault of his. The High

Court has completely ignored its earlier judgments in Mohan Singh v. Union of

India decided on 1-6-1995 and CWP No. 14442 of 1995 decided on 11-12-1995.

18. This Court while considering the relevancy of the co-prisoner certificate lodged in the prison, in K.P. Natraj v. The State of Tamil Nadu and

Anr. 2004 MHC 069 , the Hon"ble Mr. Justice P. Sathasivam, as he then was, has held in para 7, 8 and 9 as follows:

7. The other essential condition is that the petitioner has to produce co-prisoner certificate as notified by the Government. It is the claim of the

petitioner that he had produced a certificate from the Freedom Fighter V.N. Arunachalam, who is getting pension as per order PPO 2147/S, who

was lodged in Coimbatore Central Prison and Alipuram Jail in Bellary District during the period 14.09.1942 to 11.09.1944. The petitioner also

produced another certificate from the Freedom Fighter one Nachipallan, who was lodged in Central Prison, Coimbatore during the period

29.09.1942 to 11.09.1944, who is also getting pension from the State Government vide order No.2706/S. Unfortunately, these certificates issued

by the Freedom Fighters, who were also lodged in the prison during the relevant period, who participated in the freedom struggle along with the

petitioner, were not accepted by the Government, as these freedom fighters are not recognised or given in the list of 15 freedom fighters identified

by the Government. Inasmuch as the two certifiers, namely, V.N. Arunachalam and Nachipallan ½ freedom fighters were lodged in Central

Prison, Coimbatore during the relevant time along with the petitioner, 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 vide page 2 and 3 of the typed set of papers.

8. It is also useful to refer one important fact that when the petitioner made an application for grant of State Freedom Fighter Pension through the

District Collector ½ second respondent herein, the matter was enquired by the District Committee and based on the enquiry, the District

Collector forwarded his report dated 17.02.1999 to the Government, recommending the case of the petitioner for grant of State Freedom Fighters

Pension. The said report finds place at page 4 and 5 of the typed set of papers. The report shows that the petitioner had obtained co-prisoner

certificate from one K.P. Thiruvengadam, Nachipallan and V.N. Arunachalam, who were imprisoned in the same District. The report further states

that the petitioner was a co-prisoner along with Nachipallan and V.N. Arunachalam; the said Nachipallan was getting State Freedom Fighters

Pension and V.N. Arunachalam was getting pension from the Central Government. All those details are available in the report of the District

Collector dated 17.02.1999.

9. In the light of the abundant materials, it is surprising that the first respondent has informed that the petitioner had not furnished details regarding

his confinement and the co-prisoner certificates produced by the petitioner are not acceptable. The Government has also erroneously rejected the

report of the District Collector, which is based on the enquiry made by the District Committee. The impugned order of the first respondent cannot

be sustained in view of the decisions rendered in W.P. No. 19152 of 1996 dated 21.01.2000 (PSJ), W.P. Nos. 15465, 15596 of 2001 dated

12.03.2002 (VKJ), which was affirmed by the Division Bench in W.A. Nos. 2142 & 2143 of 2003 dated 01.07.2003.

19. In the present case, it is seen that the petitioner has made the application for pension on 25.04.1980 as it is seen in the letter of the Under

Secretary to Government dated 14.07.1980 addressed to the Collector of Ramnad at Madurai. After the Government of India rejected he has

renewed his application on 28.12.95 to the State Government which came to be rejected by the second respondent on 20.03.98.

20. In view of the same, the impugned order of the second respondent dated 20.03.1998, is set aside and the writ petition is allowed with

direction to the respondents to admit the petitioner to the Freedom Fighter's Pension Scheme of the State of Tamilnadu from the date of his first

application dated 25.04.1980 and compute the amount to which the petitioner is eligible and such amount shall be paid by the respondents to the

petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs.