

(2002) 08 MAD CK 0004

In the Madras High Court

Case No : Writ Petition No. 31763 of 2002

N.A. Majid, S.N. Basheer Ahmed, V. Mottaiyan, P.
Velayutham, L. Muthusamy, S. Natesan, N. Rangarasam, V.
Kumarasamy, Pappathi @ Palaniammal and Valliammal

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 01-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 08 MAD CK 0004

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : C. Prakasam, for the Appellant; S. Venkatesh, A.G.P., for the Respondent

Judgement

V. Kanagaraj, J.—Mr.S.Venkatesh, the learned Additional Government Pleader (Writs) takes notice on behalf of the respondents.

Writ Petition praying to issue a Writ of Mandamus directing the respondents to sanction and disburse the pension to the petitioners for the agitation

conducted for Merger of Tamil Areas in Northern Belt of Tiruttani and Tirupathy.

2. In the affidavit filed in support of the writ petition, the petitioners would submit that the petitioners 1 to 8 and the husband of the petitioners 9

and 10 participated in the Agitation conducted for Merger of Tamil Areas in Northern Built of Tiruttani and Tirupathy, launched by Late

Sri.M.P.Sivagnanam and other leaders and they were arrested at the time of agitation and were remanded to judicial custody in the month of

January 1956 for 14 days and another time of October, 1956 for 18 days in Namakkal, Sub Jail; that the Tamilnadu Government passed G.O. for

issuance of pension to the Agitation of Merger of Tamil Areas in Northern built of Tiruttani and Tirupathy; that the petitioners applied before the respondents for sanction of pension along with the newspaper publication published in the year 1956 in Dhinamani; that the second respondent and Tahsildar by letters respectively dated 13-02-2001 and 28-03-2002 rejected the request of the petitioners, on the ground that they have not produced the Jail certificate; that the petitioners immediately approached the jail authorities and requested them to issue jail certificates, but the jail authorities are not able to produce the jail certificates, since the Jail records of the year 1956 were not available with them and hence, the petitioners have come forward to file this Writ Petition praying for the relief extracted supra.

3. During arguments, though the learned counsel appearing on behalf of the petitioners would stick to the facts pleaded, he would also rely on an earlier order passed by the Single Judge of this court reported in W.P.Nos.20799 of 1993 etc (Natarajan v. The Government of Tamilnadu)

wherein it is held as follows:-

In the light of the entire scheme of the Act and Rules, I am unable to accept the stand of the Government that only on production of imprisonment certificate from the concerned authority, they may be sanctioned pension, grant or scholarship.

In the risk of repetition, I once again come to Clause (V of Sub-Sec.(4) of Sec.4 of the Act. It enables the applicant either to place the documents of imprisonment or prove the sufferings by way of placing acceptable evidence. As observed earlier, in the absence of any details either in the Act or in the Rules the Government cannot expect the applicants to keep the imprisonment certificate for 30 to 40 years anticipating such legislation will be brought by the Government.

4. On the part of the learned Additional Government Pleader representing the respondents, he would stick to the impugned order and would strongly oppose the contentions of the petitioners, wherein the second respondent and the Tahsildar, have rejected the plea of the petitioners for want of details, required by them.

5. A careful perusal of the impugned order would reveal that the second respondent and the Tahsildar have rejected the petitioners' plea for the

grant of pension to the Agitation conducted for Merger of Tamil Areas in Northern belt of Tiruttani and Tirupathy, since they were not able to

produce the jail certificates for their confinement, further remarking that any other certificate excepting the jail authorities cannot be accepted,

based on this recommendation the Government have rejected the applications of the petitioners.

6. It may be relevant to point out that the case of the petitioners are dating back 46 years from now and it is the open case that when applied to the

jail authorities for grant of the certificate pertaining to their imprisonment, they were not able to supply granting the said certificate nor able to deny

that they were not the prisoners as alleged. But in most of the cases, such certificates are not available as it is in the case of the petitioners, since by

efflux of time, the records have been destroyed; that since the request of the petitioners have not been complied with, the petitioners have come

forward to file the above writ petition.

7. While such being the condition, relying on the following judgments reported in (1) Gurdial Singh Vs. Union of India and Others,

(2) I.V.K. MALAICHAMY (deceased) AND ANOTHER vs. THE GOVERNMENT OF INDIA & OTHERS (2001) WLR 549, this court has

to arrive at decision so far as the issue concerned with the grant of pension to the Agitation conducted for Merger of Tamil Areas in Northern belt

of Tiruttani and Tirupathy, in favour of the petitioners is concerned, the relevant portion from the judgment cited first supra is as follows:

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 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.

The relevant portion from the judgment cited second supra is as follows:-

Taking note of the spirit and substance of the certificate issued by the co-prisoner Sri P.Kakkan particularly when there is no averment in the

counter affidavit filed ;by respondents 1 and 2 disbelieving the certificate as a whole, I am obliged to quash both the proceedings, namely,

No.13/O/Mu/37917/89 dated 23.7.1990 by the third respondent and No.129/97/84/FF(S.2) dated 25.2.1984 by the first respondent with a

direction to give the benefits of the scheme to the petitioner, who are legal heirs of V.K.Malaichamy (deceased) freedom fighter, within three

months from the date of receipt of a copy of this order.

Falling in line with the observations made by the Apex Court in the judgments cited above, if a decision has to be arrived at by this court in the

case in hand, it could be seen that the respondents have not considered the representations of the petitioners in the manner that it has to be

considered and therefore, even though normally the courts do not in such matters pass orders as it is prayed for in the writ petition, but only direct

the authorities concerned to act upon the requirements of the petitioners in the circumstances of the case and the earlier orders passed by the

second respondent and the Tahsildar, go to show that they have not been appropriately dealt with in the manner expected by law, this court has to

allow the above writ petitions to its prayer and; hence the following order:-

8. In result,

(i) the orders passed by the second respondent and Tahsildar, respectively dated 13-02-2001 and 28-03-2002 are hereby quashed.

(ii) the respondents are hereby directed to sanction Pension to the petitioners for the agitation conducted for Merger of Tamil Areas in Northern

Belt of Tiruttani and Tirupathy, from the date of their application, within four weeks from the date on which a copy of this order is made ready.

(iii) consequently, W.P.M.P.No. 46296 of 2002 is closed;

(iv) However, in the circumstances of case, there shall be no order as to costs.