

(2004) 07 CAL CK 0038
In the Calcutta High Court
Case No : Writ Petition No. 15353 (W) of 2001

Niranjan Mondal	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 09-07-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 376, 396, 397

Citation : (2004) 4 CHN 175

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Niranjan Ganguly and Ujjwal Kr. Das, P.K. Guha, for the Appellant; Uttam Kr. Majumdar, for the Union of India, for the Respondent

Final Decision : Allowed

Judgement

Soumitra Pal, J.—The petitioner made an application for the grant of Freedom Fighter Pension (for short "Pension") on 12.7.81 under the Swatantrata Sainik Samman Pension Scheme, 1980 (for short "scheme"). Along with the said application the petitioner enclosed the recommendations of two recognized freedom fighters. The Superintendent of Police, D.I.B., Midnapore on 22.8.89 forwarded a report regarding the role of the petitioner during freedom movement. Thereafter, the case of the petitioner was recommended, for grant of pension after being forwarded by the S.A.C./D.L.A.C. on the basis of suffering from 1939 to 1946 supported by a report issued by S.P., D.I.B., Midnapore. Since the verification and entitlement to pension report was not received by the Central Government, the petitioner moved the High Court. The High Court by an order dated 4.1.96 directed the State to send a duplicate copy of the recommendation to the Central Government and "the Central Government was directed to dispose of the matter within three months of the receipt of such duplicate copy of the recommendation upon notice to the petitioner." However by an order dated 6.8.96 the application for pension was rejected but it was mentioned that the Government of India was, however, prepared to reconsider the case, if the

petitioner produced evidence from official records in support of the claimed suffering and a certificate from the State Government indicating that the record produced is genuine, relates to the petitioner and the suffering was in connection with freedom struggle. Being aggrieved by the said order dated 6.8.96 the petitioner again moved a writ petition which was disposed of directing the State to consider the representation of the petitioner in accordance with law if the petitioner produced all the relevant documents in support of his claim and if the State was satisfied, then the matter shall be referred to the Central Government to decide it in accordance with law within eight weeks from the date of receipt of the recommendation from the State Government by passing a reasoned order.

2. As directed by the High Court, an order dated 31.5.99 was passed which was sent to the Government of India for taking a final decision in the matter.

3. However, the respondent No. 5 by a letter dated 14.3.2000 informed the petitioner that as the copy of the Court record submitted in support of the suffering of the petitioner could not be verified, the case could be considered further after receiving the verification report from S.D.O., Tamluk. Thereafter, the respondent No. 2 by a letter dated 10.5.2000 requested the respondent No. 5 for reconsidering the case of the petitioner and for sending a revised final recommendation to the Ministry so that a final decision in compliance with the Court order could be taken. It appears that the respondent No. 2 by an order dated 12.6.2001 rejected the application of the grant of pension. Being aggrieved the writ petitioner has moved this writ application,

4. The writ application was moved with notice to the parties i.e. the Union of India and the State. While admitting the petition on 20.12.01 and the following order was passed :

"Affidavit of service filed be kept with record.

Heard learned counsel for the petitioner. Let the learned counsel for the Union of India take instruction in this matter and file affidavit-in-opposition by 28.1.2002 stating why despite recommendation made by the State Government, the Central Government is not granting the pension of the writ petitioner. Reply thereto, if any, be filed within two weeks thereafter. Liberty to mention."

5. At the outset Mr. P.K. Guha, learned Advocate for the State respondent submitted that in view of a letter by the State authorities earlier recommendations appear to have been withdrawn and the petitioner is not entitled to get pension as the verification reports of State agencies do not corroborate the claim of the underground sufferings of the petitioner. Mr. Dey was directed to produce the said letter which was produced. It appears that the respondent No. 5 had addressed a letter dated 24.5.01 / 28.5.01 (for short "said letter") to the respondent No. 2. The relevant portion is as under: .

"No. 540- HPS

HIP(42106).....

Subject : Case of Sri Niranjan Mondal son of Late Basudev Mondal of Vill. Kalagachi(Bera) P.S. Panskura P.O. Mohadole Dist. Midnapore.

Ref : W. P. No. 23798(W) of 1998.

.....that the petitioner is not entitled to get pension from the Central revenues as the verification reports of State Agencies do not corroborate the claim of underground sufferings of the applicant.

I am further to state that the report of S.P., D.I.B., Midnapore dated 29.4.99 regarding Case No. 05 dated 11.8.46 u/s 396 /397/376 IPC of Panskura Police Station is a Criminal one not in tune of freedom struggle of India (copy enclosed for ready reference)....."

6. Mr. Niranjan Ganguly learned Advocate appearing along with Mr. Ujjal Kumar Das for the petitioner challenged particularly paragraph 4 of the order of rejection of the application of the petitioner. Reiterating the statements made in the writ petition it was submitted that the petitioner is not aware of the said letter and has during the hearing come to learn of such a letter. Submission was made that while passing the order of rejection the respondent No. 2 did not apply his mind and did not take into consideration the register of G.R. Cases and the Magistrate's order at pages 80 and 81 of the writ petition relating to the detention of the petitioner. Had the period of detention been taken into consideration the petitioner would have certainly qualified for the grant of pension. It was submitted that the Register of G.R. Cases and the order of Magistrate referred to detention of the petitioner under Sections 56(4) and 38(6) of the D.I.R., whereas the said letter by the State Government which appears to be the basis of the rejection of the application refers to the report of the S.P., D.I.B., Midnapore in a criminal case u/s 396/397/376 IPC. The respondent No. 2, without applying his mind relied on the said letter and came to an incorrect conclusion. Though recommendation was made as early as on 10.10.90 and an order was passed on 31.5.99 recording a finding based on records that the petitioner was arrested for a total period of more than six months under Sections 56(4) and 38(6) of the D.I.R. yet the same was not considered for grant of pension. Referring to the affidavit-in-opposition (for short "the affidavit") affirmed by the respondent No. 2, it was submitted that it shows a clear bias against the petitioner. Though the petitioner along with the application furnished necessary documents in support of his role during the Pre-Independence Movements yet in paragraph under "Preliminary Objection" of the affidavit, it has been stated that "that as per the admission of the petitioner he did not participate in any freedom movement in pre-independence period." Referring to the Scheme submission was made that even detention under the orders of the competent authority should be considered as an imprisonment and the view taken by the respondent No. 2. while passing the order impugned that the cases were withdrawn, the persons were discharged and, therefore, after acquittal there was no suffering of the petitioner, is contrary to the provisions of the Scheme. It was submitted that the respondent No. 1 was the ultimate authority

to grant pension as held by the judgment in Chaitnya Charan Das Vs. State of West Bengal and others, and relying on the judgment of Kalipada Das v. Union of India, reported in 2004 WBLR (Cal) 256 it was submitted that as the petitioner has undergone detention for more than six months directions should be issued to grant pension. Referring to the judgment of the Supreme Court in Gurdial Singh Vs. Union of India and Others, it was submitted in the instant case too the authorities have adopted a technical approach in rejecting the claim of the petitioner for the grant of pension without looking into the records relating to the sufferings of the petitioner during freedom struggle which are genuine, by ignoring the law and the scheme.

7. Mr. Uttam Kumar Majumdar learned Advocate for the respondent Nos. 1 and 2 opposing the writ application submitted that Clause 10 of the scheme postulates that there should be a recommendation and since the recommendation appears to have been withdrawn the pension cannot be granted. However, if directions are issued the respondent No. 1 shall consider the application on the basis of the record.

8. After hearing the submissions of the learned Advocates for the parties, I find that the petitioner made an application way back in July, 1981. On 10.10.90 the case was recommended after due approval by the Advisory Committee. Since the same was not received by the office of the respondent No. 1 and as the matter was getting delayed the petitioner on 4.1.96 moved a writ petition which was disposed of by directing the State to send a duplicate copy of the recommendation within a month to the Central Government who in its turn was directed to dispose of the matter within three months of receipt of the duplicate copy of the recommendation upon notice to the petitioner. However, by an order dated 6.8.96 the claim of the petitioner was rejected. The relevant portion of the said order dated 6.8.96 is as follows:

"4. In view of the position explained above, it is not possible to grant pension to you. The Govt. of India is however still prepared to reconsider your case, if you can produce evidence from official records in support of your claimed suffering and a certificate from the State Govt. indicating that the record produced is genuine, relates to you and the suffering was in connection with the freedom struggle."

9. Pursuant to the order dated 6.8.96 the petitioner on 17.12.96 produced further evidence i.e. jail records and Court records in respect of his sufferings. Since it was not considered the petitioner again moved a writ application being W.P. 23798(W) of 1998 which was disposed of on 12.1.99 with the following directions :

"This writ application is disposed of with a direction to the concerned respondents being State to consider the representation of the petitioner in accordance with law if the petitioner producer all the relevant documents in support of his claim. After the State is satisfied, then the matter shall be referred

to the Central Government and the Central Government shall decide the matter in accordance with law within eight weeks from the date of receipt of the recommendation from the State Government by passing a reasoned order."

10. In compliance with the said order dated 12.1.99 the respondent No. 5 issued a radiogram message on 17.3.99 to the respondent No. 7 to verify official records relating to the petitioner "in any case in which is suffered underground during the period from October, 1942 to January, 1946 for his participation in the freedom struggle of India."

11. Pursuant to the order dated 12.1.99 passed by the High Court, an order dated 31.5.99 was passed by the respondent No.4. The relevant portion is set out hereunder:

"From records it is seen that Sri Niranjan Mondal was arrested on 11.8.46 and released on November, 1946. He was again arrested on 21.2.47 and detained and acquitted on 22.5.47 under Sections 56(4) and 38(6) DIR Tamluk Jail. He was a member of the Communist Party and at that time believed in the armed struggle to liberate the country. Therefore, it appears that he was arrested for violent revolutionary acts which included looting and gun snatching.

The State Govt. recommended the case to the Govt. of India on the basis of report from S.P. D.I.B.. Midnapore.

As per directions of the Hon"ble High Court the reports including the copy of the recommendation made earlier sent to Govt. of India for taking final decision in the matter.

Sd/- R.N. Mukherjee. Deputy Secretary"

12. From the above order two aspects are clear.-- the recommendations were still there and the period of detention was for more than six months.

13. However, by a letter dated 14.3.2000 the petitioner was intimated that the "suffering cannot be verified as the records of S.D.O., Tamluk had been deposited in the Hon"ble High Court at Calcutta" and the case shall be considered after receiving the verification report. Thereafter, it appears that since there were contradictory reports the respondent No. 2 by letter dated 10.5.2000 requested the respondent No. 5 to reconsider and send a revised final recommendation so that a final decision in compliance of the Court order could be taken. What happened in between is not clear but it appears on the basis of the said letter the application of the petitioner has been rejected. However, it appears from the affidavit-in-opposition filed by the respondent No. 2, the case of the petitioner was decided after receipt of the State Government report dated 24/28.5.2001 and the reasons for rejection have been mentioned therein. From a perusal of the order dated 12.6.2001 it appears "that while rejecting the application, the respondent No. 2 relied on the said letter. In fact the sentence in paragraph 4 of the order under challenge "that the Case No. 5 dated 11.8.1946 u/s 396/397/376 IPC of Panskura Police Station, it is a Criminal one and not in tune

of freedom struggle of India" is virtually a verbatim reproduction of a sentence of the ultimate paragraph of the said letter. It is patent that the respondent No. 2 passed the order under challenge mechanically and without applying his mind. The respondent No. 2 did not consider the first recommendation dated 10.10.90 and the order dated 31.5.99 which was based "on records." Moreover, it appears the respondent No. 2 did not bother to look into the "Register of G.R. Cases" and the "Magistrate's order" relating to P.S. Case No. 5 dated 21.2.1947 under Sections 56(4) and 38(6) of the D.I.R. Had it been considered then a different finding could have been arrived at. The affidavit filed by the respondent No. 2 is silent on this issue. So far the said affidavit by the respondent No. 2 less said is better. Under the heading "Preliminary Objection" the respondent came to a conclusion that "as per his own admission he did not participate in any freedom movement in pre-independence period". It demonstrates that the said respondent No. 2 had a closed mind as while considering the application did not at all consider the records relating to the involvement of the petitioner in the pre-independence freedom movement.

Moreover, in the said affidavit under the heading "CLARIFICATION" it has been stated as follows :

"That prior to discussion of merits of the case, it is necessary to submit that the question whether the recommendation of State Government was binding on the Central Govt. was gone into by a Division Bench of this Hon"ble High Court and vide judgment dated 6.12.1994 (Annexure R1/1) held that it was not binding on the Central Government."

14. True recommendations are not binding on the Central Government but the respondent No. 2 while considering the application ought to have looked into the records produced before him since the Central Government is the final authority to grant pension. Moreover, in the said affidavit it has been stated as under--"it is further submitted that under the SSSP Scheme, all undertrial period is not to be treated as suffering but only such undertrial period as leads to conviction is treated as sufferings. In the case of the petitioner his both claims are of undertrial"--Such a submission is not tenable as the "EXPLANATIONS" to Clause 4 of the scheme read thus :

1. Detention under the orders of the competent authority will be considered as imprisonment.
2. Period of normal remission upto one month will be treated as part of actual imprisonment.
3. In the case of a trial ending in conviction, undertrial period will be counted towards actual imprisonment suffered.
4. Broken period of imprisonment; will be totalled up for computing the qualifying period."

15. Thus, the Explanation 1 clearly lays down that even detention under the

orders of the competent authority will be considered as imprisonment. Under Explanation 4 the broken period of imprisonment will be totalled up for computing the qualifying period. From a reading of the Explanations it is clear that "detention" simpliciter is certainly a criterion for grant of pension.

16. Now, the question which falls for consideration whether a Central Government can still consider the application even if the recommendation is withdrawn. What is the effect, if the State Government withdraws the recommendation without considering the records, or does it on the basis of irrelevant materials. Is one going to suffer for laches of the State Government? The answer is no. The scheme nowhere clearly provides for a recommendation by the State Government. State is merely a verifying authority. In the instant case the petitioner who is 90 years of age at present furnished relevant records. It was forwarded by the Advisory Committee. Recommendation by the State was made. When the instant writ application was moved it appears from the order dated 20.12.2001 passed by the Court that it was given to believe that the recommendation of the State Government was still there. However, during final hearing I find the same has been withdrawn without informing the writ petitioner. The respondent No. 4 had passed the order on the basis of the wrong assumption without considering the vital document appearing at pages 80 and 81 of the writ petition. In such a situation it shall be improper to send the matter back to the State Government.

17. Since the application of the petitioner for grant of pension was forwarded by the Advisory Committee, recommendation was made on 10.10.90 followed by the order dated 31.5.99 and as it appears clearly from Register of G.R. Cases and the Magistrate's order relating to P.S. Case No. 5 dated 21.2.47 under Sections 56(4) and 36(4) of D.I.R. that the petitioner underwent detention from 11.8.1946 to November, 1946 and further from 21.2.47 to 22.5.47 -- which totals more than six months -- a condition for entitlement of pension under the scheme, I hold that the petitioner is entitled to pension under the scheme. Thus, the order dated 12.6.2000 being Annexure P-21 to the writ petition passed by the respondent No. 2. is set aside and quashed. In the light of the findings as above I direct the respondent No. 2 to consider the application by the petitioner for grant of pension under the scheme. Such consideration shall be made within a period of four weeks from the date of communication of this order.

18. Thus, the writ application is allowed to the extent as above. No order as to costs.

19. Urgent xerox certified copy of this judgment and order be given to the parties, if applied for, on priority basis.