

(2003) 10 BOM CK 0046

In the Bombay High Court

Case No : Writ Petition No. 2249 of 2003

Raghunath Gajanan Waingankar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 15-10-2003

Acts Referred:

Citation : (2004) 1 ALLMR 9 : (2004) 4 BomCR 427 : (2004) 1 MhLj 513

Hon'ble Judges : R.J. Kochar, J; Nishita Mhatre, J

Bench : Division Bench

Advocate : V.V. Thorat, for the Appellant; P.M. Mokashi, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

R. J. Kochar, J.—Rule. By consent rule made returnable forthwith and finally disposed of as the petitioner who claims to be a freedom fighter aged 77 years.

2. The petitioner appears to have taken part in the liberation movement of Goa. From the averments in the petition, it appears that he had taken part in the movement in the year 1959 and on 15th August 1955 the petitioner along with others entered the geographical limits of Goa which was under the Portuguese rule. During the course of satyagraha the petitioner and others were assaulted by the then government and that the petitioner was also injured with a bullet in his left shoulder. The petitioner has also averred that one Dr. Watve then treated him and the petitioner was discharged after recovering from the injuries. The petitioner claims that the scar of the bullet wound is still found on his left shoulder. The petitioner further states that he used to give lectures in various meetings in Mumbai and in Kokan in support of the Goa liberation movement. The petitioner has given several names of the satyagraha his who had taken part in the liberation movement. He has also stated that he was felicitated by the felicitation committee for freedom fighters and that his case was recommended for freedom fighters" pension. It further appears that he had submitted several documents to substantiate his claim that he was one of the freedom fighters in

the liberation movement of Goa. According to the petitioner he had submitted an application for freedom fighters" pension on 22nd June 1998 in the prescribed form along with required documents. It appears that he had pursued the claim with the competent authority but was not successful. It further appears that he had already one round of litigation before this Court when he filed W.P. No. 1636 of 2003. The division bench of this Court directed the State Government to consider the detailed representation made by the petitioner on 22nd June 1998. It further appears that the petitioner had submitted a large number of documents in support of his case. It further appears that his application along with the documents were placed before the Mumbai Upanagar Zilla Gaurav Samiti Bandra. The said Samiti consists of five freedom fighters. From the minutes of the meeting held on 27th August 2002 in the office of the Collector, it is crystal clear that the Committee had unanimously decided and had recommended on the basis of the material on record to recommend freedom fighters" pension to be paid to the petitioner. The report dated 30th August 2002 is produced along with this petition. The petitioner was informed by a communication dated 5th July 2003 that the recommendations of the Samiti were forwarded to the Desk Officer, G.A.D. and that if the Government accepts the said recommendation, the petitioner would be informed accordingly. It further appears that by a subsequent communication dated 23rd July 2003 the said Desk Officer of the State Government informed the petitioner that the case of the petitioner was again considered and that since the criteria prescribed on 4th July 1995 were not satisfied by the petitioner, his claim for pension was not accepted. The petitioner is before us once again to challenge the said order of the Desk Officer refusing to grant freedom fighters" pension to him.

3. We have heard the learned Counsel for both the sides. We have carefully gone through the proceedings. We are rather shocked to read the impugned order passed by the Desk Officer of the State Government that the petitioner had not complied with the criteria prescribed for the freedom fighters" pension. According to us, the Desk Officer of the State Government had no power to sit in appeal over the unanimous decision of the Mumbai Upanagar Zilla Gaurav Samiti which had unanimously recommended the case of the petitioner after scrutinising the material before it, that the petitioner had participated in the freedom struggle of Goa. The Committee has accepted the case of the petitioner in toto and has further observed that the petitioner had substantiated his case from the circumstantial evidence that he had participated in the Goa liberation movement. The Committee has narrated in detail the material which was placed before it by the petitioner in support of his case. According to us it was, therefore, not open for the Desk Officer to sit in appeal or revision on the unanimous decision of the Committee. Even on the question of criteria, we are satisfied that the petitioner has satisfied the required conditions to get the pension under the scheme. According to us, there is preponderance of material in support of the petitioner. The committee has also considered the whole material and has unanimously recommended the case of the petitioner. In the circumstances, the impugned

order of the Desk Officer dated 23rd July 2003 is totally illegal, improper and without jurisdiction. The Desk Officer should have simply accepted the unanimous recommendation of the Committee and ought to have sanctioned pension to the petitioner.

4. The Desk Officer appears to have lost sight of the celebrated judgment of the Supreme Court in the case of Mukund Lal Bhandari and others Vs. Union of India and others, on this point wherein the Supreme Court in para 7 has observed as under :--

"7. As regards the contention that the petitioners had filed their applications after the date" prescribed in that behalf, we are afraid that the Government stand is not justifiable. It is common knowledge that those who participated in the freedom struggle either at the national level or in the erstwhile Nizam State, are scattered all over the country and most of them may even be inhabiting the remotest parts of the rural areas. What is more, almost all of them must have now grown pretty old, if they are alive. Where the freedom fighters are not alive and their widows and the unmarried daughters have to prefer claims, the position may still be worse with regard to their knowledge of the prescribed date. What is more, if the Scheme has been introduced with the genuine desire to assist and honour those who had given the best part of their life for the country, it ill-behaves the Government to raise pleas of limitation against such claims. In fact, the Government, if it is possible for them to do so, should find out the freedom fighters or their dependants and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of working out such schemes. The Scheme has rightly been renamed in 1985 as the Swatantra Sainik Samman Pension Scheme to accord with its object. We, therefore, cannot countenance the plea of the Government that the claimants would only be entitled to the benefit of the Scheme if they made applications before a particular date notwithstanding that in fact they had suffered the imprisonment and made the sacrifices and were thus otherwise qualified to receive the benefit. We are, therefore, of the view that whatever the date on which the claimants make the applications, the benefit should be made available to them. The date prescribed in any past or future notice inviting the claims, should be regarded more as a matter of administrative convenience than as a rigid time-limit."

Further the Supreme Court in the case of Gurdial Singh Vs. Union of India and Others, has reiterated that the cases of freedom fighters should be appreciated from the correct perspective and not from an angle of a sessions trial or a criminal case. The Supreme Court has deprecated the technical approach in these matters as the freedom fighters have given their best part of life without expecting anything from the country after freedom. They had staked their lives and the lives of their family in the freedom struggle. They did not anticipate that they were doing it for some paltry amount in the form of pension for them or for their children. The following observations of the Supreme Court in the paras 6

and 7 would be useful for our purpose.

"6. The Scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. Millions of masses of the country had participated in the freedom struggle without any expectation of grant of any Scheme at the relevant time. Moreover, in the partition of the country most of the citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the record from a foreign country is very cumbersome and expensive. Therefore, in appreciating the Scheme for the benefit of freedom fighters a rational and not a technical approach is required to be adopted. It is also to be kept in mind that the claimants under the Scheme are supposed to be such persons who had given the best part of their life for the country."

"7. 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. The case of the claimants under the 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."

5. In the aforesaid circumstances, the petition succeeds and the rule is made absolute in terms of prayer Clause (a). The respondents Nos. 1 and 2 shall sanction the freedom fighters' pension to the petitioner under the scheme and shall pay him the arrears from the date of the first application made by him for pension. The respondent shall send the amount to the petitioner at his residence within a period of four weeks from today and continue to pay regularly pension to the petitioner on or before 10th day of each month failing which the concerned officers would be hauled up for contempt of this order. A copy of this order is to be sent to the Chief Secretary for appropriate directions to the concerned Desk Officer for appropriate and prompt action in the matter. All concerned to act on a copy of this order duly authenticated by the Personal Secretary/Associate of this Court. The respondents to pay Rs. 5000/- as cost to the petitioner with the amount of the arrears and the first monthly pension.