
(2007) 06 OHC CK 0041
In the Orissa High Court

Ram Chandra Muduli

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-06-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 87

Citation : AIR 2007 Ori 177 : (2007) 1 OLR 1012 Supp

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The grievance of the petitioner in this writ petition is with regard to denial of the benefits of Swatantrata Sainik Samman Pension (for short SSSP) to him by the Ministry of Home Affairs, Government of India. Prayer is made to quash the order dated 3rd March, 2005 rejecting the claim made by the petitioner under the SSSP Scheme.

2. According to the petitioner during the Darbar Administration of Khandapada Ex-State he took active part in freedom struggle and the administration being enraged harassed him in many ways by implicating him in false cases, issuing warrants against him and getting him arrested. It is alleged that for his taking active part in Prajamandal Movement he was subjected to underground stay at Manikagoda from 25-3-1945 to 15-11-1945. Considering the aforesaid facts the State of Orissa has been pleased to grant freedom fighter pension to him since 9-3-1988. According to him as he satisfies the eligibility to receive pension under SSSP Scheme also from the Government of India, he filed an application on 7-3-1987 for extending the said benefit under the Scheme. Unfortunately however the concerned authorities did not dispose of the application filed by the petitioner and adopted dilly dally tactics. Having no other remedy he approached this Court in W.P. (C) No. 3884/ 2003 with a prayer to issue a writ calling upon the concerned authorities to sanction SSSP by Government of India from 7-3-1987.

3. This Court disposed of writ petition directing the concerned authorities to reconsider his application in consonance with the provisions of the Scheme, Notification issued by the Union of India and materials available. The concerned authorities were also directed to take a decision within a period of six months from the date of communication of the order. Thereafter the matter was considered once again by the opposite parties 1 and 2, but again they found him not eligible for grant of SSSP by Government of India for the following reasons:

(i) In the application filed in the year 1982 before the State Government for SSSP the petitioner claimed that he undergone suffering from 10-8-1939 to 10-4-1940. The materials produced by him reveal that on 20-7-1939 he was required to appear in person in the Court of Magistrate First Class, Khandpara on 25-7-1939. Further the said document was attested by Agricultural Extension Officer, Khandapara on 25-3-1982, Neither the name of the, Officer who has attested the copy submitted to be true copy of the original house intimated nor geniuses of the said document was certified by the State Government.

(ii) So far as secondary evidence is concerned, bereft of Non-availability of Records of Certificate (NARC) from all sources of the Statement is produced, secondary evidence cannot be considered. It is stated that the petitioner did not produce the concerned certificate. It is further stated that personal knowledge certificate (PKC) dated. 15-2-1982 said to have been granted by Raghunath Singh Samanta, a freedom fighter of the State of Orissa was also not in prescribed form. The certificate also did not indicate that the petitioner absconded due to any of the three eligible reasons for claiming underground suffering and as such the Ministry expressed its inability to accept the claim of the petitioner under SSSP Scheme by the impugned order, Annexure 4. According to the petitioner the authorities are not properly appreciated the facts. It is stated that the petitioner is only required to satisfy that he has undergone the minimum suffering from six months by way of imprisonment/interment/externment/abscondence against any executive action of the Government. The petitioner submitted an attested true copy of the summon issued u/s 87 of the Cr.P.C. in support of such stand. It is further submitted that the petitioner has also enclosed a personal knowledge certificate from a freedom fighter Thus there is absolutely no rhyme or reason to reject the petition filed by the petitioner for extending the benefit of pension under the SSS Scheme.

4. The opposite parties after receiving Rule have filed a detailed counter affidavit. It is submitted by him that on an enquiry being made by opposite party No. 1 through the Intelligence Bureau it appeared that no records were existing and/or available with the concerned authorities to establish that the proclamation order on the basis of which State Government had recommended the case of the petitioner. Further it was found that Sri Raghunath Singh Samant, who was said to have issued the personal knowledge certificate in favour of the petitioner, on enquiry. Denied to the same before the Enquiring Officer.

5. It was further stated by Mr. Samant that his signature on the personal

knowledge certificate has been forged. It is emphatically submitted that as the petitioner failed to satisfy the criteria stipulated under the Scheme his application was rightly rejected by letter dated. 31-3-2005 and the conclusion arrived at by opposite party No. does not suffer from any infirmity.

6. I have heard learned Counsel for the parties at length and perused the materials annexed to the writ petition as well as the Scheme. As per the provisions of the Scheme a person who had suffered minimum imprisonment of six months (three months in case of SC/ST) on account of participation in freedom struggle is required to furnish the following evidence:

(i) Imprisonment/detention certificate from the concerned jail authority, District Magistrate or the State Government indicating the period of sentence awarded, date of admission, date of release, facts of the case and reason for release,

(ii) In case records of relevant period are not available, non-availability of records certificate (NARC) from the concerned State Government/Union Territory Administration along with two co-prisoner certificate from freedom fighters who have proven jail suffering of minimum one year and who were with the applicant in the jail. In case the certifier happens to be a sitting or Ex.M.P./ M.L.A. only in certificate in place of the two is required.

7. Onus lies upon a person claiming benefits under the Scheme to prove that he satisfies the eligibility criteria as stipulated above. In the case at hand admittedly the primary evidence of jail suffering is not available and the records are not traceable. So far as secondary evidence is concerned, the petitioner relies upon a "personal knowledge certificate" issued by one Raghunath Singh Samanta, a prominent freedom fighter, but then the said person has denied the fact of issuance of any certificate by him in favour of the petitioner. On the other hand, in course of enquiry as would be evident from the affidavit several certificates containing the forged signatures of aforesaid Raghunath Singh Samanta were produced. The fulfilment of the eligibility criteria as stipulated under the SSSP Scheme having not been satisfied a person cannot be granted the benefits under the said Scheme.

8. The discussion made in the preceding paragraph would unerringly reveal that the petitioner failed to produce cogent evidence, either primary or secondary, to substantiate the fact that he satisfied the eligibility criteria stipulated in the Scheme, inasmuch the attested true copy filed by him in support of primary evidence was not accepted in the absence of the name of the Officer who attested the same, the signature being ineligible. Further, the originals of the said documents could not be traced out. Similarly the person granting "personal knowledge certificate" also disowned the fact that he had granted any such certificate in favour of the petitioner and took the stand that several certificates containing his forged signatures had been produced by different persons. Thus, the basic eligibility criteria are not satisfied in the case at hand.

9. The opposite parties have considered all the materials and the decision arrived

at by them is just, proper and in consonance with law and the provisions of the Scheme. This Court finds no reason to interfere with the same and dismisses the Writ Petition.