

(2005) 09 AHC CK 0097

In the Allahabad High Court

Case No : Civil Misc Writ Petition No. 39127 of 2001

Ram Singhasan Thakur

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 23-09-2005

Acts Referred:

Defence of India Act, 1971 — Section 39
Reformatory Schools Act, 1897 — Section 87

Citation : AIR 2005 All 373 : (2006) 1 UPLBEC 1100

Hon'ble Judges : Sanjay Misra, J; Amitava Lala, J

Bench : Division Bench

Advocate : R.K. Shukla, A.B.L. Guar and Pulak Ganguly, for the Appellant; A.K. Singh, U.N. Sharma, Addl. S.C. and K.C. Sinha, S.S.C. (for Nos. 1 and 2) and Standing Counsel (for No. 3), for the Respondent

Final Decision : Allowed

Judgement

Amitava Lala, J.—The petitioner is a resident of district Ballia, Uttar Pradesh. He was a recognized freedom fighter. He was getting pension made for the freedom fighters since 1974. He was also getting other facilities from then. One private individual made a complaint against the petitioner and his family members. On 27th September, 1999 the petitioner received a letter under registered post from the respondent No. 2, by which the petitioner's grant of pension was cancelled provisionally and order for recovery of pension amount was made. Further reminder was given to the petitioner on 23rd December, 1999. Thereafter, the petitioner moved an application before the concerned respondent disclosing the facts and figures with a reason for not giving reply to the first letter within time and requesting him not to cancel the pension. Further letters were also given giving other particulars. However, by a letter dated 26th September, 2001 the Government of India stopped pension and finally ordered for recovery of the pension already granted to the petitioner. According to the petitioner, such action is illegal, arbitrary and unjust and the order should be quashed/set aside, with a further prayer for giving pension month by month along with arrears, not to

realise the pension already disbursed and/or to reconsider the case.

2. Initially the petitioner obtained an interim order not to realise the disbursed amount on 23rd April, 2002 from a Division Bench of this Court, which is still in force.

3. Respondents contended that the petitioner applied for grant of pension on account of underground sufferings from 26th July, 1943 to 15th September, 1943 and undertrial jail sufferings from 16th September, 1943 to 22nd April, 1944 for participating in freedom movement of 1942. The District Magistrate, Ballia issued a certificate dated 30th April, 1973 showing that the petitioner was challenged on 19th July, 1943 u/s 39 of the Defence of India Rules and it was reported by D.I.S., Ballia. The certificate also shows that he was released on 22nd April, 1944 as per the Register-8 of Police Station Ballia. His case was disbelieved by the authority on various grounds. Firstly, he was about 15 years 6 months of age in 1943 at the time of claimed undertrial sufferings and as per Reformatory Schools Act an adolescent would not have been jailed, with adults. Secondly, "Fard Zurm" (charge-sheet) in Urdu and its Hindi translation received through the District Magistrate, Ballia indicates a name of Singhasan Thakur but not of Ram Singhasan Thakur. Thirdly, he was taken in the custody on 9th August, 1942, the date of starting Quit India Movement, and the reason is unknown as to why the petitioner went underground on 9th August, 1942 itself, therefore, he was not proclaimed offender and no announcement of award on his head/arrest was necessitated onto abscond. The petitioner did not submit a copy of the Court order resulting his acquittal or copy of the jail certificate showing the date of his entry into jail and release therefrom to show the actual period of his imprisonment/sufferings. Fourthly, the petitioner did not submit any documentary evidence based on official records that he was declared proclaimed offender or necessary award was announced, therefore, his abscondence was voluntary. Fifthly, the District Magistrate, Ballia did not furnish any report from the office records giving details of jail sufferings of the petitioner as it was not traceable. On such basis the pension was sanctioned and it was made clear that it will be cancelled or modified without notice if it is found that the same was sanctioned on mistaken grounds or on false information. Sixthly, the complaint was made that the petitioner was minor at the time of freedom fight. Lastly, as per explanation-3 of the Swatantrata Sainik Samman Pension Scheme, 1980 undertrial period should be counted when there is an order of conviction but not order of acquittal. Respondents further contended that the petitioner's house, which was alleged to be raided, was of his father and he could not have been held responsible for his father's deed even if he was residing in that house. A boy of 14 years 6 months of age normally could not have any property in his name. The claimed action to confiscate his property was taken under Sections 87/88 but as the house was not his property, there was no question of confiscation of the same. District Magistrate, Ballia has reported that a search was conducted at the residence of one Sri Samrath Thakur and on seizure of pro-congress literature he was arrested.

4. The petitioner filed rejoinder affidavit and contended that only on the basis of the enquiry made by the District Magistrate, Ballia and on issuance of certificate the pension was granted. The complainant made complaint with ulterior and mala fide intention to maligning the social image of the petitioner. The Government Order dated 15th August, 1990 was made to give benefit to the family members and dependents of the freedom fighters and martyrs giving respect to the person, who had served the nation in achieving independence. Such Government Order was never made to review the pensions earlier paid. As per scheme of 15th August, 1972 interpretation of explanation-3 of the same is wrongful. The respondents have illegally deducted the period of imprisonment from 16th September, 1943 to 22nd April, 1944. He was imprisoned for more than six months. It is practically impossible to furnish a record and such point was thoroughly considered by a Supreme Court judgment reported in R. Narayanan Vs. Union of India and another, No mention of age limit is there for determining the candidature of the candidate to be freedom fighter. The petitioner's elder brother and father had participated in freedom strictly in 1943-44 as evident from the translated copy of the charge-sheet annexed with the counter affidavit. Non-mentioning of complete name of the petitioner in the charge-sheet does not disentitle the petitioner for being declared as freedom fighter. The petitioner did not furnish the papers of some other person because one Sri Bhola Thakur, whose name also mentioned in the annexed charge-sheet, is real brother of the petitioner and also renowned freedom fighter. Cancellation of freedom fighters' pension is illegal. No retrospective operation can be made on the basis of new scheme on the basis of complaint of one Brahmadev Thakur, the petitioner's pattidar, which is otherwise false, malicious and deliberate to maligning the social image of the petitioner. This has been now considered by the respondents after payment of pension for a period of more than 25 years. Petitioner's father, petitioner and his brother were tried by the criminal Courts u/s 39 of the Defence of India Rules and all of them have been declared freedom fighter in 1974.

5. Grant of freedom fighters' pension has three stages. At first, either an application will have to be made or names will be forwarded on the basis of the scrutiny/verification etc. by any local authority. At the second stage, State will verify and ultimately forward the same to the Central Government for taking final decision. At the final stage, the Central Government being pension sanctioning authority will verify the records as forwarded to them and grant the pension. No doubt grant includes refusal at every stage. But it is well known by now that the Supreme Court and other High Courts time and again expressed their views about determination of eligibility following the equity but not on the basis of strict formula of criminal/civil cases and Evidence Act. Under such circumstances, an order of stoppage of pension after grant of more than 25 years to a person and directing him to pay back the paid up dues is to be passed on an extreme case on an established case of fraud. Apparently we do not find any case of established fraud. According to us, if one is less than the age of majority at the

time of incident but treated equally with the majors by the necessary police action, he will obviously be treated at par. Historical background of freedom movement never said that minors cannot participate in the freedom movement nor they had been participated. It is not a case of vating right. We cannot force the situation prevailed at that point of time. There are many instances that not only minor punishment but also capital punishments were made for taking participation in the freedom movement by the minors. We are astonished that in spite of several judgments and orders passed by the Supreme Court and different High Courts the executives are always taking fictitious plea either to stall or to ignore or to refuse the necessary entitlement of freedom fighters and/or their family members in spite of existence of liberal scheme. Parliament should extend necessary discussion to control the executives to give effect of their won scheme. Such scheme is as good as policy of the Government. The executives are always becoming wiser in taking plea of policy decision to resist the interference from the Court of law but becoming miser in applying such policy decision for the betterment of the people at large. Sitting in Calcutta High Court one of us (Amitava Lala, J.) in the case of Makhan Bala Middy and etc. etc. as reported in Makhan Bala Middy and Vs. Union of India (UOI) and Others, was pleased to give several guidelines, which are quoted hereunder:

"(a) The evidential value under the scheme either of the first mode or of the alternative mode has to be taken on the probabilities but not on the basis of fixed rule of evidence normally applicable in Civil and Criminal matters;

(b) It is not only duties of the respective parties to make applications and prove their claims but the authorities are also bound to find out eligible candidates out of their own for having pension by forming appropriate machinery for the same so that at least one real freedom fighter or their family may not feel aggrieved for not having pensionary benefit;

(c) The nomenclature of the scheme being "Swatantra Sainik Samman Pension Scheme, 1980", speaks about the "Samman" on the part of the authority, therefore, it is national obligation to show appropriate respect to them, and rigidity of evidential proof is running contrary to the moto of the nation;

(d) To expedite the process a time bound programme is needed to be made and it is suggested thereunder that either of the authorities will take more than one month period to make scrutiny and verification in respect of the grant of pension;

(i) The State authority will be bound to complete its process within one month from the date of application, if made or suo motu in the appropriate circumstances;

(ii) Similarly appropriate authorities of the Union of India complete their part performance within a period of one month from the date of recommendation of the case by the State authority;

(iii) The payment of actual pensionary benefit to the incumbent or the family

members whosoever is entitled should not be delayed beyond the period of further one month from taking decision by the appropriate authorities of the Union of India;

(e) Immediately after the communications of the order, the State authorities will make random search of probable candidates district wise and prepare list of such candidates on the basis of first or second mode or any other mode of proof of factum of eligibility and finalise the decision as expeditiously as possible within the given time period as specified above from the date of listing;

(f) This principle will also be applicable in which applications already pending before the State authorities and not been considered or the cases which are recommended but pending before the Union of India and the date of communication of judgment and order passed hereunder will be cut off date for the purpose of doing the needful as aforesaid;

(g) The cases which are already considered and sanction has already been made cannot be withdrawn without the established cases of fraud or sharp practice, if any".

6. In spite of the same when the same action was repeated in disposing the contempt application matter was forwarded to the President of India for the purpose of necessary action. Ratio of both Makhan Bala Middya and Vs. Union of India (UOI) and Others, as reported in Mukund Lal Bhandari and others Vs. Union of India and others, and Gurdial Singh Vs. Union of India and Others, were elaborately discussed and followed therein.

7. If we go factually, it will be seen that the tests were made at all stages to come to a definite conclusion. Two things are to be clearly seen. One is how far the complaint is genuine and the other is why such complaint is made after 25 years of getting pension. If one thinks rationally, it will be seen that there is no immediate cause of making complaint. The letter might be outcome of political or family grudge otherwise it would have been existed long back. Moreso in one hand complaint is that the petitioner was very young and passing the days at his home at the relevant point of time, therefore, he cannot be freedom fighter and on the other hand complaint is made that the family members were betrayer and supporting the Britishers, therefore, he cannot be freedom fighter. Both the complaints are totally militating with each other. Such type of reckless allegations cannot form any foundation of rejection of freedom fighters" claim of pension. There is no test of reasonableness. It is far to say that such type of complaints can form a basis of established fraud at all. In the. case of Mukund Lal Bhandari and others Vs. Union of India and others, even the question of limitation, defect in making application and insufficiency of the documentary proof were thoroughly discussed and held as follows:

"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 part 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 illbehoves 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 dependents 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. Coming now to the last contention advanced on behalf of the Government, viz., that the benefit of the Scheme should be extended only from the date the claimant produced the required proof of his eligibility to the pension, we are of the view that this contention can be accepted only partially. There have been cases, as in the present case, where some of the claimants had made their applications but either without the necessary documentary proof or with insufficient proof. It is unreasonable to expect that the freedom fighters and their dependents would be readily in possession of the required documents. In the very nature of things, such documents have to be secured either from the jail records, or from persons who have been named in the Scheme to certify the eligibility. Thus the claimants have to rely upon third parties. The records are also quite old. They are bound to take their own time to be available. It is, therefore, unrealistic to expect that the claimants would be in a position to produce documents within a fixed time limit. What is necessary in matters of such claims is to ascertain the factum of the eligibility. The point of time when it is ascertained, is unimportant. The prescription of a rigid time-limit for the proof of the entitlement in the very nature of things is demeaning to the object of the Scheme. We are, therefore, of the view that neither the date of the application nor the date on which the required proof is furnished should make any difference to the entitlement of the benefit under the Scheme. Hence, once the application is made, even if it is unaccompanied by the requisite eligibility data, the date on which it is made should be accepted as the date of the preferment of the claim whatever the date on which the proof of eligibility is furnished."

8. Following the ratio of such judgment again the Supreme Court held in *Gurdial Singh Vs. Union of India and Others*, as follows:

"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."

In further it was held in its paragraph Nos. 7 and 8 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 is 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.

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 to 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, unnecessary, been dragged to litigation for no fault of his."

9. Therefore, constant view of the legislature and judiciary is that how the pension is to be paid not to be unpaid. The outlook of the executives is just reverse.

10. Even in *R. Narayanan Vs. Union of India and another*, the Supreme Court held similarly in respect of getting records by observing that 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 injury sustained by him during the freedom struggle. Hence, the objection relating to non-production of official records of the relevant period by the appellant therein to prove the sustainment of injury by him deserves outright rejection as well as outright condemnation. In the instant case, all materials were available to the governmental authorities and sanction of pension must have been made to the petitioner on the basis of such materials. Therefore, only on the basis of a belated complaint, which from the face of it is self-contradictory, outcome of grudge, such section cannot be stopped nor the petitioner can be asked to recover the same. A Division Bench of this Court in *Ayodhya Prasad Vs. Union of India (UOI) and Another*, also held in the similar line. In this case the learned Counsel appearing for the Governmental authorities conceded to the extent that they are not interested to ask recovery of the paid up amount but their submission is restricted only in respect of non-payment for the future in view of the facts and circumstances of the case.

11. Therefore, taking into account totality of the matter we are of the view that the order of cancellation being dated 26th September, 2001 (Annexure No. 5 to the writ petition) cannot be sustained and accordingly the same is quashed. As a result whereof, the petitioner will be entitled for the pensionary benefit, as he was having, with arrears from where it was stopped. Such arrears will be paid within a period of six months from the date of communication of this order apart from regular benefits to be given from the next month of communication of this order and month by month regularly.

12. Accordingly, the writ petition is allowed. Interim order, which has been passed in this writ petition on 23rd April, 2002, stands confirmed.

13. However, no order is passed as to costs.