
(2007) 04 CAL CK 0043
In the Calcutta High Court
Case No : F.M.A. 761 of 2006

Smt. Sumitra Patra

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 27-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 111 CWN 515 : (2008) 1 ILR (Cal) 42

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Arunabha Basu, J

Bench : Division Bench

Advocate : Prasanta Mukherjee and Basudeb Bag, for the Appellant;Rudrajyoti Bhattacharyya, Keshab Bhattacharyya Hare Krishna Halder, for the Respondent

Final Decision : Allowed

Judgement

Arunabha Basu, J.—This appeal is directed against the judgment and order passed by learned Single Judge in connection with W.P. No. 7934 (W) of 2000 whereby and whereunder the learned Single Judge vide judgment and order dated 26.4.2005 while disposing the writ petition, issued certain, directions.

2. The Appellant/writ Petitioner in the application filed under Article 226 of the Constitution contended that the husband of the Appellant (since deceased) submitted an application for freedom fighters pension and the same was forwarded to the Central Government after due recommendation by the Government of West Bengal.

The decision of the Central Government was communicated by Under Secretary to the Government of India vide communication dated 26.4.1991 whereby the husband of the Appellant was intimated about the decision to grant of Samman pension with effect from 13.8.1981. By the said communication, husband of the Appellant was directed to furnish certain documents and the same were duly furnished by the said husband of the Appellant.

Thereafter, vide another letter dated 8.11.1991 the husband of the Appellant was

requested to furnish attested copies of the documents and the same was also complied with. Even thereafter, the husband of the Appellant was not granted Samman pension in terms of the communication dated 26.4.1991. A writ petition being CO. 1523 (W) of 1993 was filed before this Hon''ble Court by the husband of the Appellant (since deceased) and vide order dated 16.5.1995 direction was issued to the Central Government by the learned Single Judge for taking effective steps for payment of the pension as per letter of sanction issued by the Government of India.

After receiving the direction, Under Secretary to the Government of India vide letter dated 19.1.1996 communicated to the Pay & Accounts Officer (Pension & Misc.), Ministry of Home Affairs about the sanction of the provisional pension in favour of the husband, of the Appellant with effect from 13.8.1981. In the said communication", which is marked as annexure P3 of the writ petition, it was also mentioned that the Appellant being the spouse, will be entitled to family pension in the event the freedom fighter predeceased the spouse.

Pay & Accounts Officer (Pension & Misc.), Ministry of Home Affairs, further issued a communication dated 13.3.1996 intimating that the pension amount payable to the husband of the Appellant was released in favour of the concerned bank, namely Punjab National Bank, P.O. Srirampur, District - Midnapore for payment/ disbursement of the pension to the husband of the Appellant.

3. The said husband of the Appellant met with an unfortunate death due to street accident and in terms of the earlier communication dated 19.1.1996, Appellant being the spouse was entitled to enjoy family pension amounting to Rs. 1500/- per month.

The Appellant was granted family pension amounting to Rs. 1500/- for few months but thereafter suddenly the concerned Bank refused to pay family pension including arrears of pension which was not disbursed to her deceased husband.

The Appellant submitted representation but no action was taken either for releasing the monthly family pension to the said Appellant or for payment of arrears amount of pension payable to the husband as well as to the said Appellant.

4. The Appellant, therefore, filed writ petition before this Hon''ble Court and while disposing the said writ petition being No. 20112 (W) of 1997, the learned Single Judge directed as hereunder:

The writ Petitioner is entitled to get pension if he has to file application in proper form the writ Petitioner is given liberty to file the representation in prescribed form to the concerned authority who shall dispose of the same by six weeks from the date of receipt of the said representation and the Central Government shall grant pension to the Petitioner in accordance with law.

The order was duly communicated to the Central Government but as no action

was taken, the Appellant was compelled to file an application under the contempt of Courts Act which was registered as CPAN No. 20/ 2000.

The Central Government vide communication dated 9.2.2000 (annexure P 10) addressed to the Pay & Accounts Officer (Pension & Misc.), Ministry of Home Affairs communicated the decision about grant of family pension amounting to Rs. 1500/- per month in favour of the Appellant with effect from 15.8.1997 but in the said communication nothing was mentioned about grant of arrear pension which the Appellant was entitled to receive on and from the date of death of her husband.

The Petitioner again submitted representation before the authority concerned but ultimately vide communication dated 9.3.2000 issued by Under Secretary to the Government of India, Appellant was called upon to show cause as to why action shall not be taken against the said Appellant. It was also communicated that pending final decision, the payment of pension would remain suspended with immediate effect.

5. The Appellant challenged the said order of suspension of family pension as communicated vide letter dated 9.3.2000 and also prayed for an order to grant pension in compliance with the letter of sanction dated 19.1.1996.

Learned Single Judge while disposing the writ petition issued the following direction,

I am of the opinion that no order can be passed in this application, However, if the Petitioner wishes to show-cause according to the impugned communication she is permitted to do so within a period of six weeks from date. The Respondent authority after receiving such representation should dispose of the same within eight weeks, thereafter, by passing a reasoned order. The writ application is thus disposed of.

During the course of hearing of the appeal, Appellant filed supplementary affidavit incorporating the subsequent developments which took place during the pendency of the appeal. Under Secretary to the Government of India vide communication dated 1.3.2007 addressed to the Pay & Accounts Officer (Pension and Misc.), Ministry Home Affairs intimated the decision to cancel the pension with effect from the date it was initially sanctioned with further direction to recover the pension amount already drawn till date.

6. Learned advocate for the Appellant submitted that the Respondent authority committed gross violation of the order dated 16.5.1995 passed by the learned Single Judge in CO. 1523 (W) of 1993.

Learned advocate for the Appellant submitted before this Court that Respondent authority inspite of complying with the earlier direction passed by the learned Single Judge while disposing CO. No. 1523 (W) of 1993 and long after releasing Samman pension to the husband of the Appellant and also family pension in favour of the Appellant, adopted a procedure cancelling the earlier sanction, in

violation of the earlier order passed by the learned Single Judge.

According to learned advocate for the Appellant the entire action on the part of the Respondent authority is not only arbitrary and illegal but also in utter violation of Court's order.

It was also contended by the learned advocate for the Appellant that the subsequent developments as mentioned in supplementary affidavit would show malafide attitude on the part of the Respondent authority particularly the Under Secretary to the Government of India, Ministry of Home Affairs (Respondent No. 2), as because the said Under Secretary to the Government of India issued the communication dated 1.3.2007 when the entire matter was pending for consideration by this Court.

7. It was the contention of the learned advocate for the Respondent that the authority was perfectly justified to review and/or reconsider the order granting freedom fighters' pension to the deceased husband of the Appellant. It was also contended that while disposing the writ petition being CO. No. 1523 (W) / 1993 the learned Single Judge also permitted the Central Government to reconsider the order of sanction in respect of the cases where the same was issued by mistake.

It was submitted by the learned advocate for the Respondent that freedom fighters pension was granted in favour of the husband of the Appellant relying on the Personal Knowledge Certificate (PKC) issued by one R.N. Giri and the same was of doubtful nature.

It is submitted by the learned advocate for the Respondent that learned Single Judge by his order under appeal questioned the veracity of the Personal Knowledge certificate issued by Shri R. N. Giri and held,

But I find in the instant case the entire claim of the Petitioner's husband is based on the personal knowledge certificate given by R.N. Giri who is clearly guilty of issuing indiscriminate personal knowledge certificate.

It is the contention of the learned advocate for the Respondent that in compliance with the direction passed by learned Single Judge in his judgment and order under appeal, the competent authority was perfectly justified to review the entire decision. No illegality has been committed by the Under Secretary to the Government of India in issuing the communication dated 1.3.2007 as the same was issued following the direction passed by the judgment and order dated 26.4.2005 by the learned Single Judge. However, we must point out here that the said judgment and order dated 26.4.2005 is the subject matter of present appeal and pending for consideration before this Court.

8. We are required to examine the rival contentions keeping in view of the entire position as highlighted by the learned advocate appearing for the respective parties.

It is clear that series of litigations were fought by the parties and several directions and orders were passed by this Court on several occasions earlier.

In CO. No. 1523 (W) of 1993, Hon'ble Justice Satya Brata Sinha (As His Lordship then was) decided the writ petition filed by Chaitnya Charan Das Vs. State of West Bengal and others, . The husband of the Appellant was one of the contesting parties in the said writ.

Learned Single Judge while deciding the writ petition being CO. No. 1523 (W) of 1993 issued certain directions including the direction at para 137, which is set out below:

137. So far as the cases falling within category No. (3) are concerned, there cannot be any doubt that the Central Government must be directed to pay the sanctioned amount to the concerned person. Some of the cases of this nature are - (1) Bata Krishna Maity (2) Haripad Patra (3) Jatindra Mondal (4) Ghanashyam Das (5) Amar Chakraborty and (6) Panchanan Das.

9. The learned Single Judge specifically held that the Central Government must be directed to pay the sanctioned amount to the concerned persons. In the aforesaid order, the name of the husband of the Appellant Haripad Patra was specifically mentioned along with other persons at paragraph 137.

In the elaborate and detailed judgment of the learned Single Judge reported in AIR 1959 Cal 336 (supra), the learned Single Judge took into consideration different categories of claims of Samman Pension as reflected in para 135, which is set out below:

135. The cases which are under consideration can be sub-divided into six categories:

(1) The applications of the Petitioners for grant of Samman Pension have not been considered by the State Advisory Committee and/or by the State Government at all.

(2) The State Advisory Committee and/or State Government although had made recommendations for grant of Samman Pension but no order for payment has been passed thereupon.

(3) The Central Government accepting the recommendation made by the State Government directed sanction of payment but no payment has yet been released in favour of the applicants.

(4) The State Advisory Committee and/or State Government recommended grant of Samman Pension to the Petitioner but the Central Government has rejected the said claim by passing some order.

(5) The Central Government had been paying the pension to the Petitioner but for some reason or other, such payment has been suspended.

(6) The application of the Petitioner for grant of Samman Pension has been

rejected by the State Government by passing a speaking order.

10. The case of the husband of the Petitioner was considered under category 3 i.e. those cases where the Central Government after accepting the recommendation by the State Government directed sanction of payment but no payment has yet been released in favour of the applicant.

The case of the husband of the Appellant about grant of Samman pension was finally decided by the learned Single Judge in terms of the direction as contained in para 137.

Learned Single Judge also passed the following directions as contained in para 140 and 141 of the aforesaid judgment and the same are reproduced hereunder:

140. The attitude on the part of the Central Government cannot be appreciated. As indicated hereinbefore, it is for the Central Govt., to satisfy itself about the bona fide and genuineness of the claim. Once the Central Government is satisfied with regard to the genuineness and bona fide of the claim of the Petitioners there cannot be any reason whatsoever to withhold actual payment. The Central Government, therefore, are directed to pass an appropriate order directing the concerned authorities to make payment after verifying the case at an early date and not later than two months from the date of receipt of the copy of this order. Such Samman Pension must be paid to the eligible Petitioners with interest at the rate of 9% per annum from the date of filing of their application.

141. By way of abundant caution however I may say that in the event the Central Government finds that in case of any particular applicant the matter was still pending for verification or the order of sanction was issued by mistake; it would be open to the Central Government to deal with the same matter in accordance with law, but even in such case speaking order must be passed, within the aforementioned period, after giving an opportunity of hearing to the Petitioner and the same shall be communicated to the concerned applicants.

In terms of the direction mentioned at para 140 of the aforesaid judgment, Central Government was directed to pass appropriate order after verification at an early date and not later than two months from the date of receipt of the copy of this order.

Pursuant to the direction mentioned at para 141 of the said judgment, Central Government was given the option to deal with the matter in accordance with law in cases where the sanction order was issued by mistake. But such action was required to be taken positively within a period of two months by passing a speaking order and only after giving an opportunity of hearing to the Petitioner.

The judgment and order passed by learned Single Judge in Chaitnya Charan Das Vs. State of West Bengal and others, reached finality as no appeal was preferred by the Respondent authority before any Superior Court.

11. Respondent No. 2 issued the communication dated 19.1.1996 addressed to

the Pay and Accounts Officer (Pension and Misc.), Ministry of Home Affairs, which is set out below:

Immediate

No. 52/CC/236/84-FF(P). EZ-II To Sub: Grant of Pension from Central revenues to freedom Fighters and their families.

Sir,

In compliance with High Court's direction I am directed to convey the sanction of the President to the provisional pension Rs. 300/- (Rupees three hundred only) p.m. w.e.f. 13.8.81 to 31.5.85 Rs. 500/- (Rupees five hundred only) p.m. w.e.f. 1.6.85 to 13.11.88, Rs. 750/- (Rupees seven hundred fifty only) p.m. w.e.f. 14.11.88 to 11.8.92 Rs. 1000/- (Rupees one thousand only) p.m. w.e.f. 12.8.92 to 1.10.94 and Rs. 1500/- (Rupees one thousand five hundred only) p.m. w.e.f. 2.10.94 onward to Shri Haripad Patra S/o. late Bipin Chandra Parta, Vill. Kamarbard, P.O. Kelomal, P.S. Tamluk, Dist. Midnapore (West Bengal).

2. The pension will be for the life time of the recipient and would be addition to pension if any sanctioned by the State Government.

3. Smt. Sumitra Patra is his Spouse. In the event of the freedom fighter predeceasing her / him, the letter will be entitled to a family pension of Rs. 1500/- (Rs. One thousand five hundred only) p.m. which may be paid to him / her from the death of the pensioner during her life time or till remarriage.

4. The expenditure involved for grant of freedom fighter pension during the current year 1995-96 would be debitable to Major Head 2235-O-Social Security and welfare & 2 other social security and welfare programme, C. 2(1) - Swatantra Sainik Samman Pension Scheme - Grant No. 44, Ministry of Home Affairs.

5. The following documents will be sent to you direct by the applicant in triplicate:

(i) Photographs (Joint); (ii) Specimen Signature; (iii) Impression of thumb and four finger of left hand; (iv) Descriptive Roll i.e. identification marks; (v) Affidavit on non-judicial stamps paper about his status as a freedom fighter indicating date of birth and educational qualification etc. (vi) Name of the Nationalised Public Sector Bank Account Number (With full signature and date); (vii) Name and age of wife of Shri Haripada Patra.

6. It is requested that immediate arrangements may kindly be made for the payment of pension and pension payment order issued to him.

7. This issue under the powers, delegated to this Ministry.

Yours faithfully,

12. The letter dated 19.1.1996 was issued conveying the sanction of the provisional pension to the husband of the Appellant in compliance with High

Court's direction.

It is absolutely clear from the aforesaid communication that the Respondent authority did not prefer any appeal before any superior Court and complied with the said order by issuing the written communication dated 19.1.1996.

We are of the view that Respondent authority was very much aware about the directions passed in Chaitnya Charan Das's Case (supra) so far as the same are applicable to the deceased husband of Appellant and therefore, afterwards issued the letter dated 19.1.1996 conveying the sanction of the provisional pension to the deceased husband of the Appellant after specifically recording "In compliance with High Court's direction". In other words by issuing the said letter dated 19.1.1996, the Respondent authority impliedly accepted that so far as the grant of Samman Pension in favour of Haripada Patra, deceased husband of the Appellant was concerned, no mistake was committed. It shall be presumed that the said letter dated 19.1.1996 was issued only after proper verification as contained in the directions at para 140 and 141 in Chaitnya Das's Case (supra). The decision of the concerned Respondent regarding sanction of Samman Pension, in pur view, reached finality on 19.1.1996 and it was not open to the Respondent authority to review or reconsider the grant of pension in favour of the husband of the Appellant at a subsequent date after issuing the letter dated 19.1.1996.

13. It is not disputed that there may be cases where pension were granted by mistake and therefore, liberty was given to the Respondent to reconsider those decisions within a specific period of two months.

It cannot be disputed also that within the period as mentioned in the judgment passed in CO. 1523 (W) of 1993 the Respondent authority did not pass any speaking order by following the procedure as contained in para 141 of the said judgment and on the other hand, complied with the order by issuing the letter date 19.1.1996. In this view of the matter, the contention raised by learned Advocate for the Respondent, that in terms of the order passed in Chaitnya Charan Das's case (supra), the Respondents were authorised to reconsider the earlier decision since the same was taken by mistake, cannot be accepted and must be disallowed. In our view, a party to a proceeding is bound by the order in its entirety. Direction passed by a Court must be complied with only in the manner directed and not otherwise. A party to a proceeding cannot take advantage only of a part of the order, which is to his advantage, ignoring the remaining part of the order, which goes against him. If a direction is issued to do a particular thing in a particular manner then the same must be done in that manner alone or not at all.

14. The question now arises whether Respondent authority can take advantage of the subsequent order in connection with various litigations instituted between the parties.

The subsequent litigation being writ petition No. 20112 (W) of 1997 was

instituted by the Appellant as she was not paid family pension after the death of her husband and certain directions were passed by the learned Single Judge. So far as the case of grant of Samman pension to the husband of the Appellant is concerned, the same reached its finality not only before the impugned order passed by the learned Single Judge but the said order was also complied with by the Respondent authority long before and as such the Respondent authority was precluded and / or estopped from reviewing or reconsidering the grant of pension in favour of the husband of the Appellant.

Pursuant to the order as mentioned in the communication dated 19.1.1996, the Appellant in her capacity as spouse, as specifically mentioned at para 3 of the said communication, is entitled to family pension of Rs. 1500/- from the date of death of her husband during her life time or till re-marriage.

The grant of family pension in favour of the Appellant would become operative consequent to the death of her husband in terms of the order as mentioned in the letter dated 19.1.1996. The case of the Appellant for grant of family pension is a natural and necessary consequence to the grant of Samman pension in favour of her husband.

15. The Appellant was compelled to enter into another round of litigation as because the Respondent authority after receiving the order passed by the learned Single Judge in Writ Petition No. 20112 (W) of 1997 issued communication dated 9.3.2000 whereby the Respondent authority sought to reopen the case of grant of Samman pension in favour of her husband.

The learned Single Judge in the judgment and order under appeal did not consider the effect of the earlier judgment of this Court in the case of Chaitnya Charan Das (supra) and failed to consider that it was not open to the Respondent authority to review the decision regarding grant of Samman pension in favour of the husband of the Appellant long after compliance of the said order by issuing communication dated 19.1.1996.

In our view, party to the proceeding is bound by the order unless the same is challenged either by way of review or by appeal. So far as the present case is concerned, the directions passed on 16.5.1995 in CO. No. 1523 (W) / 1993 were binding on the Respondent authority and therefore, the Respondent authority concerned was entitled to take decision only with the period permitted by the said order.

16. In this case the decision to cancel the Samman pension granted in favour of the husband of the Appellant was taken long after the expiry of the said period. The communication dated 1.3.2007 issued by the Under Secretary during the pendency of this appeal indicates that the Respondent in effect cancelled the freedom fighters pension of the husband of the Appellant and thereafter cancelled the family pension of the Appellant and further directed recovery of pension drawn till date forthwith.

The relevant portion of the aforesaid communication is reproduced below:

14. The case of late Haripada Patra, therefore, does not meet the eligibility conditions and evidentiary requirements of the Swatantrata Sainik Samman Pension Scheme, 1980. The question of dependent family pension to his surviving spouse, accordingly, does not even arise.

15. In view of the above, the President is pleased to cancel the pension sanctioned to her with effect from the date it was initially sanctioned and order full recovery of pension drawn till date forthwith.

In the said communication dated 1.3.2007 Respondent No. 2 specifically highlighted that the Personal Knowledge Certificate issued by R. N. Giri in connection with the case of the husband of the Appellant has not been accepted by the Hon"ble High Court vide order dated 26.4.2005.

17. The entire matter is required to be considered to decide the question whether in connection with a collateral proceeding it was open either to the Court or to any other authority to enter into a decision given earlier by a Court of competent jurisdiction.

In our view, the binding force of the judgment and order in Chaitnya Charan Das case (supra) will prevent any authority to question the same in any subsequent proceeding. To accept the contention of the Respondent will, in our view, lead to anarchy and chaos. The sanctity of the judicial order, which has reached finality and has also been complied with cannot be questioned in a subsequent proceeding by a party who is bound by the earlier order.

The learned Single Judge failed to consider the scope and effect of the earlier order passed by the learned Single Judge even though the same was specifically pleaded in the writ petition.

18. The learned Single Judge in our view ought to have taken into consideration about the binding force and precedence of the earlier order and should have decided the matter accordingly. No doubt taking advantage of the order under appeal the Respondent Under Secretary issued the communication dated 1.3.2007 during the pendency of the appeal before this Bench. Such a course of action as adopted by the Under Secretary cannot be approved and we record our strong displeasure in this regard.

The order passed by Hon"ble Justice Satya Brata Sinha (As His Lordship then was) since reached its finality and also complied with by the Respondent authority, it was never open to the said Respondent authority to question the same in a subsequent collateral proceeding. The Appellant filed several litigations only to establish her claim about grant of family pension which is a natural consequence flowing from the grant of Samman pension sanctioned earlier in favour of her husband. The Appellant has claimed her right as spouse of the deceased pensioner and her status as spouse was never disputed by the Respondent authority.

19. In our view, the Respondent authority in the guise of questioning the eligibility of the Appellant to receive family pension in fact sought to decide an issue which has already been decided and settled by the earlier decision of this Court. It is unfortunate that even after complying with the earlier order the Respondent authority sought to defeat and upset the same by adopting procedure which can never be approved by this Court. The husband of the Appellant was granted Samman pension from 13.8.1981. The Appellant is entitled to family pension consequent to the death of her husband which took place on 7.4.1996. In spite of such entitlement the Appellant has been dragged into number of litigations and the Respondent authority adopted various measures to defeat her claim by compelling her to enter into several rounds of litigations.

20. We strongly disapprove the aforesaid approach and conduct of the Respondent authorities, particularly of the Respondent No. 2 for issuing the letter dated 1.3.2007 cancelling the family pension payable to the Appellant and further directing recovery. Such attitude on the part of a responsible and senior Central Government officer is not expected. It is one of the most unfortunate case where an widow of a freedom fighter has been deprived of the benefits pursuant to the specific order passed on 16.5.1995 by this Court and has been forced to knock the doors of justice even after 12 years from the date of the said order. We are of the firm view that the course of action adopted by the Respondent authority, if allowed to be accepted, will open a Pandora's box, whereby a party will be given the license to set at naught the binding force of lawfully pronounced judicial order. We, therefore, hold that all the orders passed by the Respondent authority after communication of the order conveying sanction of pension by the letter dated 19.1.1996 are not only per se illegal and void but the same are also violative of the order and directions passed in Chaitnya Charan Das Case (supra).

For the reasons mentioned hereinbefore, we are unable to agree with the impugned decisions of the learned Single Judge and therefore, do not approve the judgment and order under appeal passed by the said learned Single Judge. Accordingly, we set aside the same.

21. In the aforesaid circumstances, the show cause notice dated 9th March, 2000 issued to the Appellant cannot be sustained and the same is also quashed. As mentioned hereinbefore, the decisions of the Under-Secretary to the Government of India mentioned in the written communication dated 1st March, 2007 cannot be approved and the same are, therefore, also set aside and quashed.

Appellant is entitled to receive family pension on and from the date of death of her husband. The Respondent authority is directed to immediately release the family pension including all arrears in favour of the Appellant but in no case later than three weeks from the date of communication of the order. Respondent shall also release the entire amount of samman pension payable to the deceased husband of Appellant for the period from 13.8.1981 till his death. Such amount

shall be calculated by the Respondent authority within two weeks from the date of communication of the order and entire amount payable to the deceased husband of Appellant shall be released within two weeks thereafter in favour of the Appellant.

22. In the result, this appeal succeeds and the same is allowed with costs assessed at 300 G.Ms., which would be paid by Sri Manmohan, Under-secretary to the Government of India, Ministry of Home Affairs, and the author of the letter dated 1st March, 2007 being Annexure "X" to the Supplementary affidavit.

Urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

PRANAB KUMAR CHATTOPADHYAY, J.

23. I agree.