
(2007) 08 KAR CK 0048
In the Karnataka High Court
Case No : Writ Petition No. 25982 of 2005

Sri Krishnan Nair

APPELLANT

Vs

Government of India

RESPONDENT

Date of Decision : 20-08-2007

Acts Referred:

Constitution of India, 1950 — Article 51A (b)

Citation : (2007) ILR (Kar) 4613 : (2008) 3 KarLJ 363 : (2007) 4 KCCR 315 SN

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : Ajith Shetty, for the Appellant; H. Jayakara Shetty, CGSC, for the Respondent

Judgement

Ashok B. Hinchigeri, J.—The petitioner's grievance in this case is that the Swatantrata Sainik Samman Pension (S.S.S.P. for short) is not granted to him.

2. The brief facts of the case are that the petitioner is a trained Aircraft Engineer. He joined Indian National Army ("INA" for short) under the inspiring leadership of Netaji Subhashchandra Bose in Malaysia, in 1943. On the completion of his military training, he was sent to Burma-India border to fight the British. He was captured by the British and imprisoned in Nilganj in Zassore District of the present Bangladesh. He was detained there for a period of eight months.

3. The petitioner and his comrades were represented and successfully defended by the Advocates, Sriyuths Pandit Jawaharalal Nehru and Bulabai Desai, in the historic Red Fort trial in 1945. On this trial culminating in his release, he returned to his hometown, Udupi. He sought S.S.S.P. His application, after due verification, was forwarded by the Karnataka Government to the Central Government with positive recommendations. The vital documents produced by the petitioner are:

i. INA passbook;

ii Movement order, dated 25th November, 1945.

4. When two decades of the petitioner's patient waiting did not lead him anywhere, he knocked the portals of this Court by filing writ petition No. 47591 of 2001. The said petition was disposed off by this Court by its order, dated 22nd July, 2003 by directing the respondent-Central Government to dispose off the petitioner's application for the grant of S.S.S.P. within a period of three months. The petitioner submitted further representations to the INA Committee.

5. The respondent at last passed the order, dated 25th January, 2004 (Annexure-F) turning down the petitioner's request for the grant of S.S.S.P. The impugned order states that the petitioner's claim of imprisonment seems to be doubtful, as no civilian was imprisoned by the allied forces. The second reason advanced by the respondent is that the co-prisoner's certificate issued by Mr. Puthiyadavan Krishnan Nair of Cannanore District, is not acceptable as Puthiyadavan Krishnan Nair had not claimed that he was imprisoned for a period of one year.

6. On the rejection of the petitioner's application for the grant of S.S.S.P, All India INA Committee clarified the factual position to the respondent Central Government as to how INA personnel were detained in Jigargacha, Nilganj and Chittagong. The INA Committee's letter (Annexure-G) was also accompanied by the copies of the movement and internment orders in support of the civilian category of INA personnel only to show how the civilians were detained during the British onslaught.

7. Sri Ajith Shetty, the learned counsel for the petitioner vehemently argues that there is no justification whatsoever for turning down the petitioner's request for the grant of S.S.S.P. The petitioner has sacrificed his prime days for the cause of the nation. It is being undermined by the lethargic and nitpicking attitude of bureaucracy. The Co-prisoner certificate issued by Sri Puthiyadavan Krishnan Nair is not accepted, because he has not claimed imprisonment for one year. The said Puthiyadavan Krishnan Nair himself is receiving S.S.S.P. under the Central Government Scheme. It goes to show that the said Sri Nair was detained for a period which satisfies the eligibility criteria for the pension scheme and therefore the certificate issued by him to the petitioner holds good.

8. Sri Ajith Shetty further submits that the co-prisoner certificate is secondary evidence, as described in the Swatantrata Sainik Samman Pension Scheme, 1980.

9. Per Contra, Sri Jayakar Shetty, the learned counsel for the respondent submits that the petitioner's case is considered in accordance with the Swatantrata Sainik Samman Pension Scheme, 1980 formerly known as Freedom Fighter's Pension Scheme, 1972. He submits that in the absence of the documentary evidence, it is not possible to grant Freedom Fighter's Pension. He further submits that respondent is not averse to re-consider the petitioner's case, if he produces additional documentary evidence.

10. Keeping in view the rival submissions made at the bar, the sustainability of the impugned order has to be examined. I have browsed through the scheme. Clause 4 of the scheme governing the eligibility criteria states as follows:

For the purpose of grant of more pension under the scheme the Freedom Fighter is

(a) a person who had suffered minimum imprisonment of six months in the Main Land Jails before independence. However, X-INA Personnel will be eligible for pension if the imprisonment, detention suffered by them was outside India.

11. That the petitioner meets this eligibility criteria can not be disputed with any rate of success. I.N.A. letter (Annexure G) which itself is based on the Movement Order, clearly states that the petitioner suffered detention from May 1945 to November 1945.

12. It is profitable to refer to the Judgment of this Court in the case of B.K. Nagaraj v. union of India (1) 2004 CCR 31 reported in wherein it is held that the grant of Freedom Fighter's Pension is an honour to those who have given the best part of their life to the country. Hence the approach should be to liberally interpret the scheme so that the real Freedom Fighter is not dishonoured by the technical approach and that he must feel really honoured. This position was reiterated following Judgment of the Apex Court in the case of Mukund Lal Bhandari and others Vs. Union of India and others, .

13. It is also profitable to refer to the Division Bench judgement of the High Court of Judicature, Madras in the case of R. Thangavelu Vs. The Government of India and Another, . The relevant portion of the Judgment is extracted hereinbelow:

43. ... once either the State Government or the Central Government grants pension to a particular freedom fighter, he must automatically get the other pension either under the State or under the Central Government scheme without any further enquiry, on the claimants satisfying the guidelines, and the Government cannot reject the claim summarily that he is not a freedom fighter at all.

14. In support of his participation, the petitioner has produced the clinching documentary evidence-INA Pass Book and the Movement Order, dated 25.11.1945 passed by the British Military Authority for shifting the petitioner from one jail to another jail. Besides Sri Puttiyadawan Krishnan Nair has issued the Co-Prisoner's Certificate. However, the respondent refused to accept it on the ground that the said certificate does not reflect one year of jail-suffering. In my considered view, such hyper technical approach is not warranted while considering the Freedom Fighter's application for the grant of pension. Further it is not in dispute that the said Sri Puttiyadawan Krishnan Nair himself is given the S.S.S.P. Under these circumstances, there was no reason for the respondent to disbelieve Co-prisoner's Certificate, issued by Sri Puthiyadavan Krishnan Nair!

15. What stuns me most is the casual approach of the respondent. When the Freedom Fighter gives the vivid description of his struggle, the respondent has the audacity to state that the averments concern the petitioner and that the

respondent does not want to make any comment on them. The relevant portion of the respondent's statement of objections is extracted herein below:

That with regard to the statements made by the petitioner in paragraph 1 of his petition that he is a aircraft engineer and while undergoing training at Malaysia during year 1943 he joined Indian National Army on the call of Netaji Subhash Chandra Bose and further that after completion of training he was sent to Burma-India border to fight British and thereafter he was taken as prisoner by British forces in Burma and thereafter he was detained for a period of 8 months, as all these averments concern the petitioner, the respondent does not want to make any comments on it.

16. It is expected and required of the respondent to examine the averments contained in the writ petition and thereafter make responsible assertions of either affirming or denying them. But the respondent-Central Government cannot take the stand that the averments concern the petitioner and that the respondent would not make any comments on them. Besides such an approach is in sharp contrast to Article 51A(b) of the Constitution of India which states that it shall be the duty of every citizen of India to cherish and follow the noble ideals which inspired our national struggle for freedom.

17. The impugned order is liable to be quashed, as it is passed without considering the relevant material on record. It is not in dispute that the INA Committee consists of the Surviving Freedom Fighters, who were part of the Indian National Army. It has also recommended to the respondent-Central Government for the grant of S.S.S.P. Further it is also not in dispute that the State Government has put up the favourable recommendations and forwarded the petitioner's application to the Central Government only after the due verification of the petitioner's case by the concerned officials of the State Government, more particularly the concerned Deputy Commissioner.

18. After passing of the impugned order, the INA-Committee has come down very heavily on the Central Government. Its letter at Annexure-G starts with the preface that paragraph 1 of the impugned order is "absolutely wrong, incorrect, false and biased. Besides the language of the letter is Pro-British, Anti Indian and great insult to the Revolutionary Army (INA) of Provisional Government of Free India". The INA's letter further speaks of the detaining of the INA Force in several places. It also states that the Military Personnel of INA was never segregated from the Civilian Personnel of INA for any purpose. To substantiate what happened in the warfield INA Committee has also enclosed copies of Movement Orders and Internment Orders in respect of Civilian Category of INA Personnel. It further states that the petitioner suffered detention from May 1945 to November 1945 as per his Movement Order. It has therefore, rightly recommended his case for grant of pension. It is unfortunate that even after the receipt of the IN As letter (Annexure-G), the respondent did not come forward to grant the Freedom Fighter's Pension. Worst of all the respondent's statement of objections is silent on INAs letter (Annexure-G).

19. Under these circumstances and for the aforesaid reasons, I allow this petition and quash the impugned order. In the normal circumstances, I would have only remanded the matter for reconsidering the petitioner's case for the grant of S.S.S.P., but considering the following aspects of the matter:

- (a) the petitioner producing the INA Pass Book.
- (b) his producing Movement Order dated 25.11.1945.
- (c) State Government recommending his case for the grant of Central Government Pension after due enquiry.
- (d) the disinterested body of heroic fighters, namely, INA Committee recommending the petitioner's case for the grant of Pension.
- (e) the Co-Prisoner Sri Puthiyadavan Krishnan Nair issuing a Co-Prisoner's Certificate.
- (f) Sri Puthiyadavan Krishna Nair himself being given the Central Government's Freedom Fighters' Pension.
- (g) Judgments of this Court in the case of B.K. Nagaraj v. Union of India and Ors. reported in (1) 2004 CCR 31 and of the High Court of Judicature, Madras in the case of R. Thangavelu Vs. The Government of India and Another, .
- (h) this being the second round of litigation (Writ Petition No. 47591 of 2001 disposed off on 22nd July, 2003) with the following order:

8. There is no dispute the petitioner was a member of the Indian National Army. If he had been apart of the I.N.A. and in fact fought for the freedom of the Country and he has even been taken a prisoner during such time, the scheme being one for honouring persons who have fought for freedom of the Country and while understanding the provisions of the scheme, it should be given as wide a meaning as possible to fit in all such persons who have really fought for the freedom of this Country and the attempt should not be to eliminate persons on technicalities.

- (i) the petitioner being in the evening of his life (90 years of age).

20. I deem it fit and just to direct the respondent to honour the petitioner with S.S.S.P. retrospectively with effect from the date of receipt of the petitioner's application. The pensionary arrears-amount shall be released to the petitioner within an outer limit of two months from the issuance of the certified copy of today's order.

No order as to costs.