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(2023) 02 CAL CK 0072

In the Calcutta High Court

Case No : W.P.A. No.18294 Of 2005

Sukdeb Maity and others — APPELLANT

Vs

Union Of India and others — RESPONDENT

Date of Decision : 20-02-2023

Acts Referred:

Citation : (2023) 02 CAL CK 0072

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Ramdulal Manna, Manju Manna (Dey), Sabyasachi Mondal, Sayan Mukherjee, Payel Khanna, Chandreyi Alam

Final Decision : Allowed

Judgement

Sabyasachi Bhattacharyya, J

1. The present writ petition was initially filed by one Ramlal Maity (since deceased), a freedom fighter, against a refusal by the Union of India to grant pension to the original petitioner under Swatantra Sainik Samman Scheme (hereafter referred to as, "the SSSP Scheme").

2. The said Ramlal Maity, on August 29, 1981 applied for the SSSP Scheme, accompanied by a Personal Knowledge Certificate (PKC) issued by the one Rabindra Nath Giri, an established freedom fighter who is one of the authorised certifiers of the State of West Bengal for the purpose of issuing such certificates.

3. On August 11, 1986, the said application was rejected by the Union on the ground that no supportive evidence and/or recommendation by the State Government were filed along with it.

4. Subsequently, the matter came back to the State of West Bengal, which rejected the claim of the petitioner vide communication dated July 6, 1990 on the ground that the claim of the petitioner was not established from the official records.

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5. On December 23, 1991 a further letter was issued by the State informing that it was not possible to consider Ramlal Maity's case for grant of pension as his suffering had not been established from the official records. Such stand was reiterated on June 26, 1992.

6. The said Ramlal Maity moved a writ petition in the said context bearing CO 12719 (W) of 1992 which was decided by a co-ordinate Bench of this Court, ex parte against the Union, on February 14, 2001, directing the State to reappraise the matter and to forward the same to the Union for grant of pension to the petitioner.

7. A recall application (CAN 3929 of 2001) filed by the Union was dismissed on February 27, 2002.

8. The State, in the meantime, had forwarded a recommendation on April 6, 2001 pursuant to the order dated February 14, 2001.

9. However, the State communicated its refusal vide letter dated June 21, 2001, enclosing a purported report dated April 17, 2001 of the Intelligence Bureau (IB) which apparently indicated that the name of the original petitioner did not find place in the IB Index Books for open and secret works of political activists, Green Lists and Bengal Revolutionary Books, which are allegedly considered for past political suffering. On September 26, 2001, the State again forwarded a similar report by the Superintendent of Police, Midnapore.

10. Subsequently, the Union refused to grant the said pension to the petitioner primarily on the grounds that the State had not forwarded any recommendation in favour of the petitioner and that since the concerned records were found but did not disclose the name of the petitioner to have suffered during the relevant period in the freedom struggle, the petitioner was not entitled to get the benefit of the said Scheme.

11. Several judgments are cited by learned counsel for the petitioners in support of his contention that several co-ordinate Benches of this Court, in different matters, have held from time to time that the relevant records of the Midnapore District, where Ramlal Maity belonged, were not available at all. As such, the PKC granted by R.N. Giri ought to have been accepted.

12. It is further argued that the conduct of the respondent-authorities indicates clearly, as borne out by the orders relied on by the petitioner, that the relevant records were not available at all.

13. It is also argued that in respect of the same village as the petitioner's, namely 'Ghorathakuria', it was observed by a co-ordinate Bench in connection with another freedom fighter that the records were not available at all.

14. During pendency of the writ petition, the original petitioner died and his widow and other legal heirs (sons and daughters) were impleaded as petitioners. Subsequently, the widow also expired, upon which her name was expunged from

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the cause title.

15. Learned counsel appearing for the Union opposes the prayer made in the writ petition and contends that in the absence of any Non-Availability of Records Certificate (NARC), the Union could not proceed on the premise that the original applicant had suffered sufficiently to be entitled to the benefits of the SSSP Scheme.

16. It is contended that a co-ordinate Bench of this Court, in a different judgment, had clearly cast doubt on the veracity of the certificates issued by Shri R.N. Giri. It is further submitted that the present petitioners, being the heirs and legal representatives of the original applicant, are not entitled to get the benefit of the Scheme, as per the stipulations of the Scheme itself.

17. That apart, the documents furnished by the applicant in support of his pension application were insufficient, it is argued.

18. The conduct of the State in the present matter is peculiar. Initially, the State, through counsel, stood by its rejection of the petitioner's contention. However, subsequently, upon being specifically directed by this Court to produce the relevant records for the concerned District, the State repeatedly remained absent whenever the matter was called on for hearing, ultimately compelling the court to decide the matter ex parte in the absence of the State.

19. Such abstinence of the State in the teeth of the specific direction to produce the records is deprecated. In fact, there is no reason why an adverse inference should not be drawn against the State for non-production of the best evidence which could have been produced by the State, that is, the relevant records to show that the original petitioner's name did not feature there. Such non-production itself, even in the absence of other factors, belies the contention of the State that the original applicant's name did not figure in the relevant records.

20. Several judgments have been relied on by the petitioner and the Union of India relied on two judgments, all of which will be considered during the course of the present adjudication.

21. The SSSP Scheme, as amended up to date, clearly indicates that there are two rungs of proof in support of an application under the said Scheme. First, the authorities shall look into primary evidence in the form of relevant documents of the petitioner being underground during the relevant period, if so produced.

22. In the event of non-availability of any primary evidence, however, the Scheme provides that secondary evidence can also be looked into, including a PKC issued by a freedom fighter of standing.

23. In fact, by virtue of the Circular dated April 12, 1983, as annexed at page 50 (Annexure P2) of the writ petition, the Deputy Secretary to the Government of India, Ministry of Home Affairs, had communicated to the Chief Secretaries of all the State Governments and Union Territory Administrations that the guidelines

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stipulated therein should be followed and there should be no delay in disposal of the cases. The State Government, it was suggested therein, should prepare an agreed list of freedom fighters authorised for issuance of such certificates on the basis of five years' actual jail suffering.

24. The said consolidated list giving necessary details might be complied after thorough verification of their own claims of jail sufferings.

25. It may be noted that Shri R.N. Giri was one of such authorised certifiers, whose certificates were accepted in several cases, as evidenced by some of the judgments cited by the petitioners.

26. Inasmuch as the chain of events go in the present matter, the initial round of litigation culminated in an order dated February 14, 2001 passed by Amitava Lala, J., in CO 12719(W) of 1992, wherein the rejection of the petitioner's claim for the SSSP Scheme was set aside. It was observed that the claim is supported by a certificate issued by a veteran freedom fighter and, therefore, there cannot be any valid ground of any rejection in the manner as proposed.

27. By the said order, the matter was forwarded to the Deputy Secretary, Government of West Bengal, Home (Pol-PSP) Department to reappraise the matter under the guidelines as given by the Court and forward the matter for the purpose of giving pension to the Government of India within two weeks from the date of communication of the order so that the actual pension can come in the hands of the freedom fighters within four weeks thereafter. The relief of pensionary benefit, it was directed, would be given from the date of making of such application.

28. The said order, it may noted, attained finality and, as such, cannot be re-opened at the present juncture.

29. Subsequently, the Deputy Secretary, Government of West Bengal, Home (Pol-PSP) Department forwarded a communication to the Under Secretary of the Government of India, Ministry of Home Affairs, stating that, in compliance with the order dated February 14, 2001 passed by this Court, the case of the petitioner was being forwarded to the said Ministry for grant of Samman Pension to Shri Ramlal Maity as per the Court's order for the purpose of giving pension to the petitioner.

30. However, subsequently the Deputy Secretary again directed the petitioner to appear before him on April 17, 2001 with certified copy of the High Court order and the writ petition and evidence based on official records in support of his claim of suffering.

31. The Government of India, vide communication dated April 4, 2002, informed the petitioner that he was not eligible for the said Scheme and that his case was rejected. Reliance was placed in the said communication on a report apparently prepared by the Superintendent of Police (SP), DIB, Midnapore, who had allegedly had the matter enquired through a police officer of Tamluk PS Zone and

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it had been found that no note in the name of Shri Ramlal Maity for the period from "October 4 to September, 1944" was recorded in their papers. It was insisted in the said communication that claims under the said Scheme are to be established on the basis of primary evidence, that is, the official records; in case such records are not available, PKC from eligible certifier is acceptable in respect of the underground claims.

32. In the instant case, it was admitted that the petitioner's claim was based on secondary evidence, that is, PKC from Shri R.N. Giri, a freedom fighter. However, it was alleged that the West Bengal Government had then informed that primary evidence, that is, official records were available as stated as per the record of DIG, IB, West Bengal and SP, DIB, Midnapore but the petitioner's name did not figure as a political sufferer during pre-independence days.

33. A contempt application bearing CPAN 1283 of 2002 was initially preferred, which was disposed of by observing that the petitioner could challenge the order of rejection in a writ petition.

34. In the present case, the question which is primarily to be considered is whether the original petitioner was entitled to the SSSP Scheme on the basis of secondary evidence produced by him.

35. The Union of India has sought to dispute the veracity of the PKC issued by Shri R.N. Giri.

36. Reliance is placed by the Union in this regard on a judgment passed by Soumitra Sen, J. in WP 3710(W) of 2003, wherein it was observed that the said R.N. Giri had been issuing certificates indiscriminately.

37. However, in an appeal preferred against the said order, being FMA 613 of 2008, it was observed by the concerned Division Bench that the finding of the learned Single Judge with regard to the veracity of the certificates of Shri R.N. Giri was vitiated, since the same was not a ground for rejection of the petitioner's claim by the authorities.

38. That apart, several other judgments of this Court have placed reliance on certificates issued by the same Shri R.N. Giri in respect of other freedom fighters. For example, in Gajendranath Manna Vs. State of West Bengal, reported at 2010(4) CHN (CAL) 4, in paragraph 3 thereof, a Division Bench of this Court placed reliance on the certificate issued by R.N. Giri of Midnapore. It was observed that part 2 of a Village Crime Note Book pertaining to Midnapore was missing and, as such, it could not be ascertained as to whether the name of the petitioner therein featured in the original records.

39. Again, in Lichu Bala Ghara Vs. Union of India, reported at 2017(5)CHN (CAL) 464, another Division Bench of this Court observed that no records in respect of the freedom fighters of the Midnapore District, to which the original petitioner in the instant case also belonged, were available.

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40. In Gokul Chandra Panja Vs. Union of India and others, reported at CAL LT 1999(1) HC 241, the Court placed reliance on the same records of the same District, that is, Midnapore and it was observed that with regard to the same village as that of the petitioner, namely, Ghorathakuria, the relevant records were missing. In the said case as well, the PKC issued by R.N. Giri was relied on.

41. The Union of India has sought to cast a cloud on the village mentioned in the aforesaid judgment on the ground of the same not being identical with that of the present petitioner.

42. However, the petitioner has brought on record a certificate issued by the Pradhan of the local Panchayat to the effect that 'Ghorathakur', which was mentioned in the said judgment, is the same as the village "Ghorathakuria" which the present petitioner's village.

43. That apart, nothing has been brought on record on behalf of the State and/or the Union to show that there is a separate village in Midnapore district by the name of Ghorathakur which is distinct and different from the petitioner's village Ghorathakuria. As such, there is no reason to ignore the finding of the learned Single Judge in Gokul Chandra Panja's case to the effect that the records of the same District and village are missing.

44. The proposition that the PKC of an established and empanelled freedom fighter can be relied on in the absence of primary evidence has been well-settled in various judgments of this Court, including the Division Bench Judgment of Bikash Chandra Khanra Vs. Union of India, reported at 2016(1) CHN (CAL) 480 and the judgments of Salil Kumar Pal Vs. Union of India and others [WP 11071(W) of 2011] and Dilip Kumer Pal Vs. Union of India and others [WP 5621(W) of 2019] which are both co-ordinate benches of this Court.

45. However, the Single Bench judgments in Subhas Chandra Khatua and others Vs. Union of India and others [WPA 13499 of 2021] and Tapan Kumer Manna and others Vs. Union of India and others [WPA 8139 of 2018] cited by the petitioner are not applicable to the present case, since in the said cases, the entitlement of the original freedom fighter had been admitted, unlike the present case. What was under challenge in the said case was the entitlement of the petitioners therein, who claimed to be the heirs of the freedom fighter.

46. However, in such context, the Courts held that the petitioners had provided sufficient proof of their heirship.

47. Inasmuch as the Division Bench judgment of the Delhi High Court in Union of India Vs. Kolli Indira Kumari is concerned, the same laid down the proposition that a divorced daughter of a freedom fighter is also entitled to pension under the said Scheme. As such, the said judgment does not have any direct bearing upon the adjudication of the present case.

48. The case of Kali Krishna Bera and others Vs. Union of India [WPA 598 of 2016], also relied on by the petitioners, shows that a PKC of a freedom fighter

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was relied on, although the same was undisputed in the said case. Moreover, the State had recommended the case of the freedom fighter therein.

49. In the present case, I do not find any reason to disbelieve the PKC issued by Shri Rabindra Nath Giri (R.N. Giri). In a substantial majority of the cited judgments, certificates issued in similar context by the self-same R.N. Giri of Midnapore was well accepted and orders passed on the basis thereof.

50. A stray adverse comment of the learned Single Judge in WP 3710(W) of 2003 (Indu Bhusan Jana's case) against the certificates issued by R.N. Giri cannot be sufficient reason to refute the same.

51. In fact, in paragraph 19 of the Division Bench judgment in FMA 613 of 2008, preferred against the order passed in WP 3710(W) of 2003, it was observed that the findings of the learned Single Judge as regards the certificates issued by R.N. Giri were unnecessary. In the words of the said Division Bench:

"The further essay into the conduct of Rabindra Nath Giri was unnecessary and uncalled for, as the order rejecting the claim did not cite such reason. If an authority did not deem it fit to allude to a matter in rejecting a claim, the Court would scarcely supplement the order of refusal with a new-found cause in proceedings assailing the order. A ground not quoted in an order of refusal or repudiation of a claim would not have been available to the authority seeking to sustain its order in the proceedings challenging it."

52. Taking into consideration the overwhelming majority of cases where his certificates were accepted, in the present case, the State as well as the Central Government were duty-bound to accept the PKC issued by Shri Rabindra Nath Giri, alias R.N. Giri, as authentic and reliable, in the absence of any material to rebut the veracity of the same. In fact, there is nothing on record to indicate that Shri R.N. Giri was removed from the panel of established freedom fighters who were authorised certifiers on that score and/or that the certificate issued in the present case by Shri R.N. Giri was tainted in any manner whatsoever.

53. As per the SSSP Scheme itself, as it stands amended till date, in the event there is no primary evidence from the records to prove the entitlement of a freedom fighter to come within the fold of the Scheme, he is very well entitled to produce secondary evidence in the form of a PKC, which has precisely been done in the present case.

54. The Union of India has taken an objection to the effect that the original records in the present case do not substantiate the claim of the petitioner. Such contention, however, is not tenable in the eye of law. First, as per the clear observations in Gokul Chandra Panja (supra), the records of the same District and village as the petitioner are not traceable. In fact, in Lichu Bala Ghara (supra) as well, a Division Bench of this Court held that the relevant records of Midnapore are not available.

55. That apart, the State Government, in the present case, despite the specific

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direction of this Court to produce the relevant records, failed to do so, thereby giving rise to an adverse inference to be drawn against the State as against the State's claim that the relevant records did not disclose the name of the original petitioner. Even if the State relied on any records to refute the petitioner's claim, those were utterly irrelevant in the context.

56. The cited judgments, particularly Gokul Chandra Panja (supra), discuss thread-bare the irrelevance of the documents relied on by the IB.

57. In fact, the IB report issued by the DIG, IB, West Bengal was discussed extensively in the said judgment. It was found that the index books of the IB and/ or the police records were not the relevant documents.

58. The SP, DIB, Midnapore, in the present case, clearly based his report on the enquiry by a police officer of Tamluk PS Zone who searched the records from "October 4 to September, 1944". However, the said records, which were relied on by the State authorities to defy the claim of the petitioner, were grossly inadequate. In none of the cases cited by the petitioner, where the District of Midnapore was involved, could the State produce any relevant document to rebut the claim of the petitioner. As such, in the absence of relevant documents, there was no option before the respondent-authorities but to rely on the PKC issued by R.N. Giri in favour of the original petitioner in terms of the SSS P Scheme itself.

59. There is a distinction in the law of evidence prevalent in India between "proved", "disproved" and "not proved". In the present case, the respondent-authorities have utterly failed to disprove the case of the petitioner, which has been proved by secondary evidence recognized by the Scheme, that is, the PKC issued by R.N. Giri.

60. The best argument of the respondents could be that the petitioner's claim was not proved from the relevant records. Even if the same was accepted, the said absence of proof cannot be elevated to the level of the petitioner's claims having been disproved specifically. It is all the more contextual since the relevant records, as discussed above, were never produced either to disprove or to lead to the conclusion that the petitioner had failed to prove his claim.

61. Insofar as the absence of NARC from the State in concerned, the discussions above clearly reveal that such further issuance of NARC was not required in the present case at all. Apart from the relevant records of the District Midnapore being untraceable, there is no other valid objection raised by the Union to refute the petitioner's claim.

62. Since it has been conclusively established, at least on a preponderance of probability, in view of the non-production of records by the State in the present case and in view of the observations of the co-ordinate Benches regarding non-availability of the relevant records of Midnapore for the relevant time span, such further production of NARC from the end of the State is utterly redundant.

63. The Union of India has cited the judgment reported at (2007) 12 SCC 527

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[Union of India Vs. M.S. Mohammed Rawther] where it was held that in case of SSSP Scheme, judicial restraint is required to be shown by the court and the matter is to be remanded to the Government for reconsideration in case there was an omission.

64. However, in the present case, there has been a string of negligence and error on the part of the respondent-authorities, whereby not only the original petitioner but his widow failed to see a conclusion of their claim of SSSP Scheme benefits during their entire life times.

65. Since the order dated February 14, 2001 passed by the learned Single Judge in CO 12719(W) of 1992 conclusively determined that the State was to reappraise in the light of the observations made therein and to forward the claim of the petitioner to the Union for grant of pension and that the pension was to be released in favour of the petitioner within a limited period, the same question could not be re-opened by the State and/or the Union subsequently on frivolous grounds. The issue, in fact, acquired the status of res-judicata by the said decision and, as such, the respondent-authorities palpably acted without jurisdiction in re-opening the said issue as well.

66. In the light of the above discussions, there is no reason why the pension scheme benefits were refused to the original petitioner. Hence, WPA No.18294 of 2005 is allowed, thereby directing the relevant department of the Union of India to immediately take steps for disbursal of the amount due to the original petitioner Shri Ramlal Maity (since deceased) during his lifetime and thereafter his widow, namely Smt. Vairabi Bala Maity (since deceased) during her life time. The respondent nos.2 and 3 shall ensure that the amount due to the said Shri Ramlal Maity under the SSSP Scheme during his lifetime and during the life time of his widow Smt. Vairabi Bala Maity are calculated latest within a month from the communication of this order to the said respondents and to ensure that the amount is disbursed in favour of the present petitioners, who are entitled as heirs of the deceased Ramlal Maity and Vairabi Bala Maity to the said amount, as expeditiously thereafter as possible, positively within two months thereafter.

67. Since an arguable question was raised by the Union in the present writ petition, it cannot be said that any direct negligence or laches can be attributed to the Union of India. Hence, no interest is being directed to be paid on the said amount of arrear pension. However, in view of the gross negligence of the State Respondents to process the application of the original applicant Shri Ramlal Maity and to produce the relevant records despite repeated directions of Court, the State of West Bengal shall pay costs of Rs.10,000/- to each of the writ petitioners, totaling Rs.70,000/-, payable within a month from the date of communication of this order to the State Respondents.

68. Urgent certified copies, if applied for, be issued to the applicants subject to compliance of due formalities.

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