

(1984) 01 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 224 of 1983

Tej Singh Nidharak

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 09-01-1984

Acts Referred:

Mandi State Public Safety Ordinance, 2004 — Section 4
Penal Code, 1860 (IPC) — Section 149, 225, 302, 307, 395

Citation : AIR 1985 HP 69 : (1984) 13 ILR HP 593

Hon'ble Judges : P.D. Desai, C.J.; V.P. Gupta, J

Bench : Division Bench

Advocate : Kedarishwar, for the Appellant; P.A. Sharma Central Govt. Standing Counsel and P.N. Nag, General, for the Respondent

Final Decision : Allowed

Judgement

P.D. Desai, C.J.—The petitioner is and has always been residing in the area which initially formed part of the Princely State of Mandi. He was an active participant in the Praja Mandal Movement carried on in the Mandi State since long time prior to its merger with the Union of India on May 1, 1948. It appears that on account of his involvement in the Praja Mandal Movement, he had earned the displeasure of the State administration.

2. On or about July 21, 1947 (5.5.2004 Bk.), the then Home Minister of Mandi made a proposal for the detention of some persons and one amongst them was the petitioner. In the proposal, a copy whereof is produced at Annexure PB, the petitioner was described as a "confirmed seditionist" who indulged in delivering speeches creating disaffection in the public mind and advocating blood bath and unlawful activities for attaining independence. The Home Minister observed that it was, at one stage, considered to prosecute the petitioner for his unlawful activities since executive action might not be considered proper. However, in view of the various difficulties in obtaining conviction at a criminal trial, the proposal was dropped. The Home Minister proposed that the petitioner be detained u/s 4

of the Mandi State Public Safety Ordinance (1 of 2004 Bk.) for a period of six months. The proposal appears to have been submitted for sanction to the Ruler of Mandi State on July 22, 1947 (6.5.2004 Bk.), who made an order, a copy whereof has been produced at Annexure PC, to the effect that the matter was discussed at length and that the authorities might take such action as they considered best in the interest of the State and the people.

3. It appears that pursuant to the decision taken as aforesaid, the petitioner was detained from Sept. 3, 1947 (13.6.2004 Bk.) till Feb. 4, 1948 (13.11.2004 Bk.), that is to say, for a total period of five months and one day. At Annexure PD, the petitioner has produced an extract of the Register of Undertrial Prisoners in the Mandi Jail. The extract has been verified with the original record, which was produced for our inspection by the second respondent, and it has been found to be substantially correct. The extract shows that the petitioner's detention in the Mandi Jail commenced on Sept. 3, 1947, that his detention was u/s 4(1) of the Mandi State Public Safety Ordinance and that he was released on Feb. 4, 1948 pursuant to an order of even date made by the Ruler of Mandi State.

4. It might be incidentally mentioned that there is an entry against col. 10 of the extract which shows that on and with effect from Sept. 15, 1947 (25.6.2004 Bk.), the petitioner was treated as an undertrial prisoner for offences punishable under Sections 302/307, 395, 225, 413 and 149 I.P.C. Be it stated that though the extract mentions Section 413 of I.P.C. as one of the offences which the petitioner was alleged to have committed, the original record does not mention the said section.

5. The foregoing facts would show that initially, from Sept. 3, 1947 till Sept. 15, 1947. the petitioner was detained under the provisions of Section 4(1) of the Mandi State Public Safety Ordinance, and that subsequently he was treated as an undertrial prisoner. Besides, the entire period of confinement of the petitioner in jail was after India attained independence, that is, after Aug. 15, 1947. This last circumstance, coupled with the proposal for his detention (Annexure PB), clearly indicates that the initial detention of the petitioner was in the course of the movement for the merger of the State of Mandi with the Union of India after the country attained independence. The petitioner has averred in para 8 of the petition that so far as his confinement as an undertrial prisoner is concerned, the same was on account of fabricated cases launched against him and his colleagues in the Praja Mandal.

6. The Union Government promulgated the Freedom Fighters' Pension Scheme, 1972 (hereinafter referred to as the Scheme) which came into effect on and from Aug. 15, 1972. A copy of the Scheme has been produced along with the affidavit dated today made by Shri K. N. Singh. Under Secretary, Government of India. Ministry of Home Affairs. Freedom Fighters Division, New Delhi. Broadly speaking, the Scheme provides for the grant of pension in all deserving cases of freedom fighters subject to certain conditions. The scheme prescribes the categories of persons who would be eligible to receive pension thereunder. We

are concerned herein with categories (a) and (g) which are described as under :

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"(a) Persons who have suffered imprisonment in the main land jails for a period of not less than six months before Independence, and also their families, where the freedom fighters are no longer alive. This includes ex-INA personnel also. Detention under the orders of the competent authority will be considered imprisonment for the purpose of pension.

(b) to (f) x x x x x x x x x x x x x

(g) Freedom fighters who suffered imprisonment in movements for merger of the erstwhile Princely States within the Indian Union after the 15th Aug. 1947 till the date of accession of the State with the Indian Union."

It is clear from a perusal of Clause (a) that it relates to persons who have suffered imprisonment in the mainland jails for a period of not less than six months before Independence. This clause is obviously not attracted in the case of the petitioner because, in the first place, he had not suffered imprisonment in the mainland jail but in a jail in the erstwhile native State and, in the next place, he was not confined in jail before Independence. Clause (g). however, is apparently attracted in the case of the petitioner. He was a freedom fighter who suffered imprisonment in the movement for the merger of the erstwhile State of Mandi in the Union of India and such imprisonment was suffered by him after Aug. 15. 1947 but before the date of the accession of the State of Mandi to the Union of India which took place on May 1, 1948. Be it stated at this stage that the fact that the petitioner is a freedom fighter within the meaning of the Scheme in question is not in dispute.

7. The petitioner made an application on June 4, 1975 claiming pension under the scheme. The application was rejected in the first instance on the ground that it was received beyond the prescribed period. It appears, however, that this objection was later on waived and that the application was considered on merits. Even on merits, however, the petitioner could not succeed because he was informed under the communication dt. June 4. 1977 (Annexure PG-1) that his case was not covered under the Scheme "because the period of your imprisonment is less than 6 months and pension is not granted to such Freedom Fighter". The petitioner thereafter made several abortive attempts for sanction of pension in his favour under the Scheme. Hence the present petition.

8. The only ground on which the petitioner's claim for pension is resisted on behalf of the first respondent is that since he did not suffer imprisonment for a period of six months, he was not eligible to the pension. It is apparent that the ground put forward against the petitioner is untenable. We have analysed above the provisions of Clauses (a) and (g) of the Scheme. The requirement of the period of imprisonment being six months is to be found only in Clause (a); it does not find place in Clause (g). Therefore, if the petitioner is otherwise covered by Clause (g), his claim for pension could not have been rejected on the ground

that the imprisonment did not last for a period of six months. There is obviously some misconception on the part of the authorities on this aspect of the case and it is that misconception which has led to the rejection of the petitioner's valid claim. It would not be out of place to mention that the minimum period of imprisonment has advisedly not been prescribed in Clause (g). The movement for the merger of native States after India attained Independence did not in all cases last for six months or more. It is for that reason, apparently, that the scheme did not prescribe any minimum period of imprisonment while dealing with cases covered by Clause (g). Be that as it may. clause (g) on its apparent tenor does not prescribe any minimum period of imprisonment and to read such a requirement into that clause is to bring in an extraneous factor which is wholly irrelevant.

9. For the foregoing reasons, we are of the opinion that the petitioner's claim for pension has been rejected on a totally extraneous ground and that the petitioner is entitled to pension since he qualifies for the same under Clause (g) of the scheme. Accordingly, a writ will issue to the first respondent directing it to determine the pension payable to the petitioner in accordance with the scheme and in the light of the observations made herein on and with effect from the date from which he becomes eligible thereto which cannot be later than the date of his application, namely, June 5, 1976. The arrears of pension payable to petitioner will be determined and paid to him within a period of three months from today and the pension becoming due from month to month on and after Feb. 1. 1984 shall be paid to him as and when it accrues due. Rule made absolute accordingly. The first respondent will pay the costs of this petition to petitioner which are taxed at Rs. 250/-.