

(2005) 08 PAT CK 0091
In the Patna High Court
Case No : M.J.C. No. 1831 of 2003

Tripit Narayan Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-08-2005

Acts Referred:

Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 12

Citation : (2005) 3 BLJR 2050 : (2005) 4 PLJR 129

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Judgement

S.K. Katriar, J.—Heard Mr. Indu Bhushan Prasad for the petitioner, Dr. Ravi Ranjan for opposite parties Nos. 1 to 4, and Mr. Anuj Prakash, learned junior counsel to Standing Counsel No. 6 for opposite parties Nos. 5 to 7.

2. This application under Article 215 of the Constitution of India read with Section 12 of the Contempt of Courts Act has been filed by the petitioner of CWJC No. 7384 of 2002 (Tripti Narayan Singh v. The Union of India and Ors., whereby the petitioner was directed to appear before the Under Secretary to the Government of India, Ministry of Home Affairs, Lok Nayak Bhawan New Delhi, on 9.12.2002, with his representation/show-cause, whereafter the competent authority was directed to hear the petitioner and decide the matter by a speaking order. Operation of the impugned order, which was to the effect that the petitioner's freedom fighters pension had been terminated was stayed. It was further observed in the order that, if the petitioner did not appear on the date referred to above or did not file representation/show-cause then the authority shall be free to pass final order. The petitioner complains before this Court that the order of this Court has not been complied with, in as much as he was denied appearance before the Under Secretary, let alone the question of hearing in the matter and consideration of his representation.

3. The Union of India as well as the State of Bihar have filed their separate sets

of show cause.

4. I have perused the materials on record and considered the submissions of learned counsel for the parties. It transpires from a plain reading of the order that the petitioner was directed to appear before the Under Secretary on 9.12.2002 on which date he neither appeared nor had submitted his representation. The petitioner has made a self-serving statement in the present writ petition, completely unsupported by any contemporaneous material, that he had instead appeared before the Under Secretary on 4.12.2002. It is obvious that 4.12.2002 was not the date fixed by this Court and, therefore, he was not allowed to appear before the Under Secretary. The petitioner has annexed hereto marked Annexure-2 an undated application addressed to the Under Secretary. The petitioner claims that this is copy of the representation which was filed on 4.12.2002. It is stated in the show-cause of the Union of India that this application was never filed before the Under Secretary. Learned Assistant Solicitor General is right in his submission that this is apparently a forged and fabricated document created for the purpose of this case. It has the seal of the receiving office of the concerned Ministry without the diary number and initials of the receiving officer. This has to be seen in comparison to Annexure-3, which the petitioner claims to be photocopy of his next representation to the Under Secretary which bears the seal with the diary number and the date but without the initials of the receiving officer. The Union of India has stated in its show-cause that Annexure-3 has also never been received in the concerned office as claimed by the petitioner. It is thus manifest on the own showing of the petitioner that he never appeared before the Under Secretary on 9.12.2002, and has further made a brazen effort to take this Court down the garden path by forging documents to make out a case of contempt.

5. It further appears from the communication annexed to the show-cause of the Union of India that the Under Secretary dealt with the matter on the basis of the materials before him, unaided by the petitioner's representation or his personal appearance and rejected the petitioner's claim. This position is manifest from the communications dated 14.1.2003 (Annexure-R-I), and 21.3.2003 (Annexure-R-II). It further appears that after the matter was so decided against the petitioner, he submitted his representation dated 2.4.2003 which was disposed of having become infructuous, and was communicated to the petitioner by letter dated 19.6.2003 (Annexure-R-III).

6. There is yet another aspect of the matter. After the aforesaid orders were passed by the Under Secretary, the petitioner preferred CWJC No. 7880 of 2003 for same or similar relief which was dismissed by a learned Single Judge of this Court by order dated 8.8.2003. The present application was lodged in this Court on 16.9.2003, obviously after disposal of the writ petition without disclosing dismissal of the same. The petitioner was duty bound to disclose the result of the writ petition in the present application.

7. Issues relating to entitlement of freedom fighter pension are unfortunately

being raised in this country 50 years after we have gained independence. These are obviously at the instance of frauds masquerading as freedom fighters, a position which could not have been better illustrated than the present case. It is a fit case in which the first information report may be lodged against the petitioner for allegedly engaging himself in acts of fraud and deceit in obtaining orders for freedom fighters pension. It is further manifest from the cause shown by the State of Bihar and its functionaries that they never recommended the petitioner's case for the benefit in question notwithstanding which he was able to obtain the orders. All these prima facie constitute acts of fraud and the like on the part of the petitioner. The concerned authorities are hereby directed to lodge first information report against the petitioner.

8. It goes without saying that it would be open to them to recover the amount of pension already drawn by him and it will equally be open to them to recover the railway fares for use of the railway passes allotted to the petitioner as freedom fighter. Law is well settled that no person can retain a benefit derived out of fraud, misrepresentation, or the like. The following observations of Lord Denning in his judgment reported in 1956 (1) All ER 341 (Lazarus Estates Ltd. v. Beasley), is illuminating, and have been followed by Indian Courts times without number:

...If this argument is correct, the landlords would profit greatly from their fraud. The increase in rent would pay the fine many times over. I cannot accede to this argument for a moment. No Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved but once it is proved it vitiates judgments, contracts and all transactions whatsoever;....

9. Government of India should decline to entertain fresh applications, or those which are pending and have not so far been finalised, for grant of freedom fighters pension. It should equally endeavour to reopen and unravel such orders for freedom fighters pension, obtained by deceit and by undeserving persons.

10. Let copies of this order be handed over to Dr. Ravi Ranjan, Assistant Solicitor General to Government of India, and Mr. Syed Alamdar Hussain, Standing Counsel No. 6.