

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/01/2004

Coram

The Hon'ble Mr. Justice P.K.MISRA

W.P.No.19377 of 2002

A.Gopal Mudaliyar .. Petitioner

-Vs-

1.Government of India
rep. by its Under Secretary,
Ministry of Home Affairs
(Freedom Fighters Division),
New Delhi - 110 003.

2.Government of Tamil Nadu
rep. by its Additional Secretary,
Public (P.P.I.) Department,
Fort St. George, Chennai - 9. .. Respondents

Petition filed under Article 226 of the Constitution of India praying
to issue a writ of certiorarified mandamus for the reasons stated therein. For

!For Petitioner .. Mr.S.Umapathy

^For Respondents .. No appearance

:ORDER

Heard Mr.S.Umapathy, learned counsel appearing for the petitioner.
There is no appearance on behalf of the first respondent.

2. The petitioner in this writ petition has prayed for issuing a writ
of certiorarified mandamus for quashing the order dated 04.03.2001 passed by
the first respondent and for a direction to the first respondent to grant
freedom fighters pension as provided under Swadantrata Sainik Samman Pension
Scheme. The fight by the petitioner for getting meagre pension appears to be
more arduous than the freedom fight itself. The petitioner who is now aged
about 81 years claims that he had participated in the freedom movement and had
been imprisoned for about four years in 1943. Coming to know of the scheme of
the Central Government relating to freedom fighters, he has filed an
application in October, 1987 and pursuing the same from time to time by making
several representations. Subsequently, a letter was written on 10.12.199 6
reiterating the prayer of the petitioner relating to payment of freedom

fighters pension. At that stage, the first respondent by letter dated 14.05.1997, directed the petitioner to send application by registered post in the prescribed proforma. Accordingly, the petitioner filed fresh application, copy of which was sent to the State Government. The State Government, on the basis of the application, directed the District Collector to convene the meeting of the District Level Screening Committee. Such meeting of the Screening Committee was convened on 27.10.1997 and such Committee after duly considering the various facts and circumstances, recommended the name of the petitioner for grant of freedom fighters pension. However, at that stage, on the basis of the communication of the first respondent, the petitioner filed fresh application in the prescribed proforma on 11.12.1998 along with certificate from co-prisoner. The State Government duly verified the veracity of the Personal Knowledge Certificate and recommended to the Union Government for grant of freedom fighters pension by letter dated 08.02.1999.

3. Since the Central Government maintained a sphynx like silence, the petitioner was forced to file W.P.No.14701 of 1999 which was disposed of on 24.11.2000 giving a direction to the Central Government to consider the letter and pass orders. Accordingly, the Central Government rose from its slumber and issued the impugned communication to the petitioner pointing out "several deficiencies in the application and the particulars furnished by the petitioner." Thereafter, the present writ petition has been filed claiming the relief already indicated above. In spite of service of notice, no counter has been filed on behalf of the Central Government.

4. The manner in which the Central Government appears to have dealt with the application can be best described as cavalier, callous and capricious. Keeping in view the practical difficulty in obtaining first hand records relating to imprisonment of a particular person in connection with freedom struggle, the Supreme Court of India and this Court in several decisions have indicated that the matters require to be examined in a liberal manner. In *Mukund Lal Bhandari Vs. Union of India* (AIR 1993 SC 2127), it was observed as follows:

"The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the Freedom Struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the scheme available irrespective of the date on which the application is

made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters or their dependents. The preference in employment, allotment of accommodation and in admission to schools and colleges of their kith and kin etc., are also the other benefits which have been made available to them for quite sometime now."

5. Such decision of the Supreme Court was subsequently followed in *Gurdial Singh Vs. Union of India* (2001 AIR SCW 3843), where the Supreme Court has observed as follows:

"The scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. It has to be kept in mind that millions of masses of this country had participated in the freedom struggle without any expectation of grant of any scheme at the relevant time. It has also to be kept in mind that in the partition of the country most of citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the record from the foreign country is very cumbersome and expensive. Keeping in mind the object of the scheme, the concerned authorities are required that in appreciating the scheme for the benefit of freedom fighters a rationale and not a technical approach is required to be adopted. It has also to be kept in mind that the claimants of the scheme are supposed to be such persons who had given the best part of their life for the country."

It was further observed as follows:

"The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the scheme. It should not be forgotten that the persons intended to be covered by scheme have suffered for the country about half a century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme. The case of the claimants under this scheme is required to be determined on the basis of the probabilities and not on the touch-stone of the test of 'beyond reasonable doubt'. Once on the basis of the evidence it is probalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence.

We have noticed with disgust that the respondent Authorities have adopted a hypertechnical approach while dealing with the case of a freedom fighter and ignored the basic principles/objectives of the scheme intended to give the benefit to the sufferers in the freedom movement. The contradictions

and discrepancies, as noticed hereinabove, cannot be held to be material which could be made the basis of depriving the appellant of his right to get the pension. The case of the appellant has been disposed of by ignoring the mandate of law and the Scheme. The impugned order also appears to have been passed with a biased and close mind completely ignoring the verdict of this Court in Mukund Lal Bhandari's Case (1993 AIR SCW 2508: AIR 1993 SC 2127). We further feel that after granting the pension to the appellant, the respondents were not justified to reject the claim on the basis of material which already existed, justifying the grant of pension in his favour. The appellant has, unnecessarily, been dragged to litigation for no fault of his. The High Court has completely ignored its earlier judgments in CWP No.3790 of 1994 entitled Mohan Singh Vs. Union of India decided on 1-6-1995 and CWP 14442 of 1995 decided on 11-12-1995."

6. More recently in a decision of this Court, it was observed by the learned single Judge in Pandurangan T.R.V. Vs. Government of India (2002 (3) CTC 107) that such matters are required to be considered liberally with a view to ameliorate freedom fighters and not with a view to raise obstacles. Similar sentiments were expressed by another learned single Judge in Kandasamy Pillai M.A. Vs. Government of Tamil Nadu (2002 (3) CTC 487).

7. Keeping in view the sentiments expressed in the aforesaid Supreme Court decisions as well as in the decisions of the Madras High Court and keeping in view that such matters are to be considered liberally and not as an obstacle race, the facts and circumstances of the present case are to be examined. From the order passed by the Central Government, it is apparent that the petitioner has furnished the certificate from co-prisoner and from the report of the concerned police station, it is apparent that records are not available and yet it has been observed in the impugned order that the petitioner has not submitted any valid non-availability of record certificate from the State. The first respondent has obviously not applied his mind to the other materials on record viz., recommendation given by the District Level committee. He has also not considered the fact that the State Government has duly recommended for grant of freedom fighters pension. After going through the order passed by the Central Government, one can only conclude that it can take a very hyper technical view of the matter and entire effort seems to find out loopholes with a view to reject the application.

8. Keeping in view the various uncontroverted materials on record, I have no doubt in mind that in the present case, the first respondent has mechanically rejected the application by taking the hyper technical view of the matter and such order cannot be sustained. The petitioner is now aged about 81 years. It would not be appropriate at this stage to direct the first respondent to consider the matter again, in view of the advanced age of the petitioner. Following the course adopted by the Supreme Court as well as the High Court in the decisions cited, I feel it proper to give a direction to the first respondent to grant freedom fighters pension. Since the District Level Committee under the Chairmanship of Collector recommended the case of the petitioner on 23.12.1997, it is directed that such pension should be paid with effect from 01.01.1998. Following the decision of this Court in 2002 (3) CTC 107 (cited supra), I further direct that such amount payable from January,

1998 till December, 2003 should be paid with interest at the rate of 10%.
This direction should be carried out within a period of three months from the date of communication of the order.

9. The writ petition is accordingly allowed. No costs.

Index: Yes

Website: Yes

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To

1.The Under Secretary to Govt. of India, Ministry of Home Affairs (Freedom Fighters Division), New Delhi - 110 003.

2.The Additional Secretary to Govt. of Tamil Nadu, Public (P.P.I.) Department, Fort St. George, Chennai - 9.

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