

State of Kerala Vs. S.Raghavan

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Court : Kerala

Decided On : Dec-19-2012

Judge : Hon'Ble the Chief Justice Mrs. Manjula Chellur

Appellant : State of Kerala

Respondent : S.Raghavan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HON'BLE THE CHIEF JUSTICE MRS. MANJULA CHELLUR & THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE WEDNESDAY, THE 19TH DAY OF DECEMBER 2012 28TH AGRAHAYANA 193 WA.No. 1462 of 2008 () -----
AGAINST THE JUDGMENT IN WPC.21925/2005 DATED 26 07-2007 -----
APPELLANTS/REVIEW PETITIONERS/RESPONDENT 1 & 2:
----- 1. STATE OF KERALA REPRESENTED BY
THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.

2. DISTRICT COLLECTOR AS COMMISSIONER AND CHAIRMAN OF THE
ADVISORY COMMITTEE FOR FREEDOM FIGHTERS, OFFICE OF THE
COLLECTORATE, KOLLAM. BY SENIOR GOVERNMENT PLEADER
SRI.P.I.DAVIS RESPONDENTS/RESPONDENTS/PETITIONERS:
----- 1. S.RAGHAVAN, PYTHODI PUTHENPURAYIL,
NADUVATHUCHERRY, CHAVARA SOUTH, KARUNAGAPALLY KOLLAM

DISTRICT (DIED).

2. SMT. GOMATHY, PYTHODI PUTHENPURAYIL, NADUVATHUCHERRY, CHAVARA SOUTH, KARUNAGAPALLY KOLLAM DISTRICT. R1-2 BY ADVS.SRI.N.DHARMADAN (SR.) SMT.D.P.RENU SRI.S.SATHI KUMAR THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10.9.2012 THE COURT ON 19-12-2012 DELIVERED THE FOLLOWING: VK MANJULA CHELLUR, CJ & A.M.SHAFFIQUE, J.

***** W.A.No.1462 of 2008 ----- Dated this the 19th day of December 2012

JUDGMENT

SHAFFIQUE,J Respondents 1 and 2 in the writ petition are the appellants. The appeal is filed against the judgment of the learned Single Judge directing the respondents to sanction freedom fighters pension to the petitioners with arrears from 19/11/2004 after declaring that the petitioners are entitled for the same.

2. The judgment came to be passed in a writ petition filed by the 1st respondent herein challenging the rejection of Kerala Freedom Fighters Pension by virtue of Ext.P7 order. It was stated in Ext.P7 that though the petitioners had submitted a formal application on 16/2/1998 stating that he participated in the freedom movement from 1938 to 1947 and suffered detention in Kollam Kasaba lock up in connection with CC No.36/114, the co-prisoner's certificates and the non-availability records certificate in respect of C.C.No.36/114 were not W.A.No.1462/2008 2 accepted since the certifiers did not have the minimum imprisonment for one year as per Rules and in respect of one Gee Varghese Unnunni, the exact date of imprisonment has not been mentioned. In respect of another certifier Sri.P.K.Bhaskaran there is doubt regarding the genuineness of the document. Further the non-availability of records certificate only indicates that there are no records with respect to CC No.36/114 and it does not indicate that the case related to freedom movement.

3. It is further stated that as per the existing rules, a person who had suffered imprisonment for more than six months in connection with the freedom struggle

approved by Government of Kerala has to be granted pension, if found eligible provided the same is proved by acceptable documentary evidence and since the documents produced were not enough to prove the claim, in the absence of any convincing documents the claim cannot be allowed. Still further, it was indicated that the Government had issued circular No.57183/FFPB1/93/GAD dated 31/12/1993 wherein it was made clear that all the applications received after 31/3/1994 will be considered only on production of W.A.No.1462/2008 3 documentary evidence from official records such as copy of the arrest warrant, Court/Jail records etc. In the absence of any such document being produced the same came to be rejected.

4. The petitioners, while challenging Ext.P7, contended that there was absolute non-application of mind by the District Collector and the Advisory Committee. They relied upon the observations made by the Supreme Court and this Court in several judgments indicating that genuine claim of freedom fighters should not be rejected on technical grounds and the Government should take a lenient view in the matter. They further contended that the authority have not taken into account the specific direction in Ext.P1 judgment. It was also contended that the details of lock up detention suffered by the petitioner is clearly mentioned in the co-prisoner's certificate and when such certificates are produced by freedom fighters and have been accepted by the courts in various judgments, the authority ought to have considered the same positively.

5. Though the first appellant filed counter affidavit supporting Ext.P7, the learned Single Judge found that going by the documents produced in the writ petition, the petitioner W.A.No.1462/2008 4 seems to be bona fide freedom fighter. He had suffered a lot by participating in the national freedom struggle. The learned Judge also found that the reasons stated for rejecting the co-prisoner's certificate was not justified especially on the basis of Ext.P4 series certificates which would give the details of the struggle, which clearly indicate the involvement of co-prisoners in the various freedom struggles which cannot be rejected at the outset. Therefore, the learned Single Judge proceeded on the basis that when a liberal view is taken in regard to the proof of claim of imprisonment as per the law laid down by the Supreme Court in *Gurdial Singh v. Union of India and others* [2001 (8) SCC 8], the

appellant was not justified in rejecting the co-prisoner's certificate and the court having accepted those documents, allowed the writ petition and directed sanction of pension from 19/11/2004, the date of Ext.P1. Though a review was filed, the same came to be modified limiting interest from 11/03/2005.

6. Heard Sri.Davis, learned Government Pleader and learned counsel appearing for respondent. The petitioner died and his legal representative is impleaded as additional 2nd W.A.No.1462/2008 5 respondent in the appeal.

7. The main contention urged by the learned Government Pleader is that since the freedom fighter's pension is provided to the freedom fighters on the basis of the scheme of the government, unless the claimants satisfy the requirements under the scheme, it may not be possible for the Government to sanction the pension. It is contended that when materials are required to prove the actual imprisonment, the co-prisoner's certificates now produced will not indicate that they were aware of the nature of imprisonment as far as the petitioner is concerned. The learned Government Pleader further contended that Ext.P4 series do not indicate that the petitioner was involved in freedom movement and the co-prisoners had occasion to be in the same jail for the relevant period. It is contended that the claim of the petitioner was originally rejected and only by virtue of the judgment in Ext.P1 the matter was reconsidered; but Ext.P1 did not indicate that pension ought to be granted. There was only a direction to consider Ext.P6 representation taking into account Ext.P1 judgment referred to in the case. It was also found that the report of the Tahsildar did W.A.No.1462/2008 6 not contain any specific remark regarding the entitlement of pension.

8. In this case it is relevant to note that when a competent authority like the District Advisory Committee had gone into the reports submitted by the District Collector and had conducted a proper enquiry into the matter the question is whether it is open for this Court to sit in appeal on the said decision and render a different finding. When the authorities have considered the matter in detail, and if such decision is not found to be perverse or illegal the argument of the learned Government Pleader is that there is very little scope for judicial review. No doubt, as held by the Supreme court, genuine freedom fighters are definitely entitled for

freedom fighters pension; but it is also to be reckoned that those who are not entitled for pension should not be granted the said pension.

9. The learned counsel for respondents, however tried to substantiate the judgment of the learned Single Judge mainly on the ground that when the learned Single Judge had relied upon Ext.P4 series as valid documents, it is not open for the appellate court to interfere with the same. It is further contended that in W.A.No.1462/2008 7 Ext.P1 judgment, positive direction was issued to the authorities to consider the grant of pension on the basis of the Tahsildar's certificate which is also relevant and in that view of the matter, by issuing Ext.P7, the appellants did not consider the issue on the basis of Ext.P1 judgment. The learned counsel also contended that a hyper technical approach has been taken by the authorities by not considering the claim of the petitioner.

10. We do not think that the said arguments are sustainable taking into consideration the facts and circumstances involved in the case. As already stated, the first question is the scope of judicial review in the matter where the Government had considered a claim and rejected the same on valid and justifiable grounds. It may not be possible for this Court to substitute the findings of the enquiring authority and come to a different finding unless such finding is perverse or illegal. This court cannot make concessions on the requirement of proof while the Government is considering the claim. In *Union of India v. Lennyamma and others* [ILR 2012(3) Kerala 649] this Court had narrated the manner in which the materials are required to be considered. If under the scheme W.A.No.1462/2008 8 certain documents are required and if it is not available, courts cannot substitute such requirements by giving concessions to such persons. In that view of the matter, we are of the view that the learned Judge was not right in holding that Ext.P4 series proves the claim of the petitioner and therefore the petitioner is entitled for freedom fighters pension. The very same documents were considered and rejected for valid reasons. The reasoning of the authorities for rejecting such documents does not appear to be perverse for interference by this Court.

11. In this regard, we would also like to highlight the judgment of the Supreme Court in *State of Orissa v. Choudhuri Nayak (D) Thr. L.Rs. and Ors.* (AIR 201.SC

3588.wherein the Supreme Court held as under: "8. This Court in *Mukund Lal Bhandari v. Union of India* [1993 Supp. (3) SCC 2.: (AIR 199.SC 212.:

1993. AIR SCW 2508), *Gurdial Singh v. Union of India* [2001 (8) SCC 8.: (AIR 200.SC 388.:

2001. AIR SCW 3843.and *State of M. P. v. Devkinandan Maheshwari* [2003 (3) SCC 183.: (AIR 200.SC 113.:

2003. AIR SCW

680) considered the object of the Freedom Fighters Pension scheme and indicated what should be W.A.No.1462/2008 9 the approach of the authorities in dealing with the applications for pension under the scheme. We may summarize them as under : (i) The object of the scheme was to honour, and where necessary, to mitigate the sufferings of those who had struggled to achieve independence for the country. Many freedom fighters, even though they did not have sufficient income to maintain themselves, would even be reluctant to receive the Pension under the Scheme, as they would consider it as putting a price on their patriotism. The spirit of the Scheme being both to assist and honour the freedom fighters and acknowledge the valuable sacrifices made by them, the authorities should treat the applicants with respect and courtesy. The scheme should not be converted into some kind of routine scheme for payment of compensation. (ii) The persons intended to be covered by the Scheme are those who sacrificed and suffered for achieving the independence of the country, without expecting any reward for their sacrifice and sufferings. Therefore they can not be expected to maintain and produce perfect records or documents about their participation W.A.No.1462/2008 10 in the freedom struggle. (iii) Once the country has decided to honour freedom fighters by granting a pension, the approach of the authorities implementing the scheme should not be obstructionist or technical while examining the applications and documents produced, but be practical having regard to the fact that most of the applications are by old persons with no proper records. (iv) The criterion for pension under the scheme is not age, but participation in freedom struggle. The freedom fighters pension can, therefore, in exceptional cases, be granted even to those who were minors at the time of struggle, if evidence clearly showed that they

had participated in the freedom struggle and fulfilled the requirements of the scheme. The above principles were spelled out to ensure that no genuine freedom fighter was denied pension under the scheme." 12. In that view of the matter, we are of the view the judgment of the learned Single Judge is liable to be set aside. However it does not prevent the respondents from making necessary endeavors to produce further documents which are available to enable the Government to reconsider the matter for W.A.No.1462/2008 11 which it shall always be open for the 2nd respondent to submit a fresh application with the required documents. In the result, the Writ Appeal is allowed setting aside the judgment of the learned Single Judge reserving the right of the 2nd respondent to approach the competent authorities with additional documents, if any, to prove the claim in terms with the scheme. (sd/-) (MANJULA CHELLUR, CHIEF JUSTICE) (sd/-) (A.M.SHAFIQUE, JUDGE) jsr W.A.No.1462/2008 12 W.A.No.1462/2008 13

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