

Chaitnya Charan Das Vs. State of West Bengal and Others

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Court : Kolkata

Decided On : May-16-1995

Reported in : AIR1995Cal336

Judge : Satya Brata Sinha, J.

Acts : [Constitution of India](#) - Articles 14, 16, 32, 73, 143(1), 217, 226 and 226(1) and (2);; [Evidence Act, 1872](#) - Section 115;; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 82 and 83;; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 86;; Preventive Detention Act;; Defence of India Rules;; Rajasthan Urban Improvement Act, 1959 - Section 52(2);; [Indian Penal Code \(IPC\), 1860](#);; [Societies Registration Act, 1860](#);; Tamil Nadu Freedom Fighters' Pension Rules, 1968

Appeal No. : C.O. 1523 (W) of 1993

Appellant : Chaitnya Charan Das

Respondent : State of West Bengal and Others

Advocate for Pet/Ap. : Mr. Ghosal

Judgement :

ORDER

1. The petitioners in these applications are said to be the freedom fighters and/or their dependents. They have filed these writ applications praying, inter alia, for a direction upon the respondents to pay freedom fighters' pension under

'Swatantrata Sainik Samman Pension Scheme' (hereinafter referred to as 'Scheme') with effect from 1-8-1980.

2. The basis fact of the matter is not indispute.

3. A scheme was initially made by the Central Government with effect from 15th August, 1972 providing for grant of pension to living freedom fighters, and their families, if they are no more alive and to the families of martyrs. The minimum amount of pension payable to the eligible candidate was Rs. 200/- per month and in the case of families the sum would vary from Rs. 100/- to Rs. 200/-per month. However not more than one member of a family was to be granted pension.

4. The word 'family' includes mother, father, widower, widow, if he/she has not since remarried, unmarried daughters and sons in exceptional cases, where they were unable to establish themselves in life on account of imprisonment/martyrdom of the said freedom fighters.

5. It is not necessary to consider the scope of the said scheme in details.

6. In the year 1980 a revised scheme was introduced whereby and whereunder the benefit thereof was extended to all freedom fighters as a token of Samman to them. In the eligibility clause it is stated:

WHO IS ELIGIBLE

For the purpose of grant of Samman pension under the scheme, a freedom fighter is:

(a) who had suffered a minimum imprisonment of six months in the mainland jails before Independence. However, ex-INA personnel will be eligible for pension if the imprisonment/detention suffered by them was outside India.

(b) the minimum period of actual imprisonment for eligibility of pension has been reduced to three months, in case of women and SC/ST freedom fighters from 1-8-80.

EXPLANATION

A person who remained underground for more than six months provided he was -

1. a proclaimed offender; or
2. one on whom an award for arrest/head was announced; or
3. one for whose detention order was issued but not served.

Clause 9 of the said scheme reads thus :--

HOW TO PROVE THE CLAIMS (EVIDENCE REQUIRED).

The applicant should furnish the documents indicated below whichever applicable.

(a) Imprisonment/ Detention etc:

Certificate from the concerned jail authorities, District Magistrates, the State Government. In case of non-availability of such certificates co-pensioner certificates from a sitting M. P. or M. L. A. or from an ex-M.P. or ex-M.L.A. specifying the jail period (Annexure 'I' in the application form)

(b) Remained Underground:

(i) Documentary evidence by way of Court's/Government order proclaiming the applicant as an offender, announcing an award on his head or for his arrest or ordering his detention.

(ii) Certificates from veteran freedom fighters who had themselves undergone imprisonment for five years or more if the official record are not forthcoming due to their non-availability.

(Underlining is mine for emphasis)

(c) Internment or Externment:

(i) Order of internment or externment or any other corroboratory documentary evidence.

(ii) Certificates from prominent freedom fighters who had themselves undergone imprisonment for five years or more if the official records are not available (Annexure 'II' in the application).

Note:

The certifier veteran freedom fighters in respect of underground suffering, internment/externment and the applicant should belong to the same administrative unit before the reorganisation of States and their area of operation must be the same.

(Underlining is mine for emphasis)

(d) Loss of Property, Job, etc.:

Order of confiscation and sale of property. Orders of dismissal or removal from service.

7. On or about 12th April, 1983 the further guidelines had been issued which are to the following terms:--

'The underground suffering recognised for the purpose of pension from the inception of the Scheme provides that the person should have gone underground only after he was wanted by the Police for his activities relating to national struggle for freedom viz., the freedom fighter should either be a proclaimed offender or on whom an award for arrest was announced or on whom detention orders were issued but were not served. In this context the fact that the freedom fighter was wanted by the Police for his activities relating to freedom struggle continues to be the essence of eligibility for pension on the basis of the underground sufferings. Voluntary abscondence, therefore, does not make a person eligible for Samman pension.

The pre-condition of eligibility up to 31-7-1980 has been that the fact of abscondence should be established from the official documents available with the State Government in the form of a judgment, arrest warrant or any other executive order, declaring a person an absconder. The liberalised pension scheme however,

provides with effect from 1-8-1980 that in the absence of official records because on their non-availability, a certificate from a prominent freedom fighter, who himself had been in jail connection with the National Freedom Struggle for not less than five years would be acceptable to substantiate the claim of abscondence, internment or externment. This relaxation thus provides an alternative mode of evidence and before relying upon the same it would be necessary for the Govt. to satisfy itself that the applicant was a genuine freedom fighter and the official records of that period are not available. Further, the genuineness of the certificate itself has to be verified by making a reference to the jail sufferings of 5 years, claimed by the certifier and that there is no complaint about in-discriminate certification against him.

It may be mentioned that a large number of persons have staked their claims for pension under the liberalised Pension Scheme on underground sufferings. Since these certificates are based on personal knowledge, it has been decided that the certifier who issues the certificates in favour of the freedom fighters should ordinarily belong to the same administrative unit (viz. District) before the reorganisation of the State to which the applicant belonged, i.e. his area of operation during the Freedom Struggle should have been the same as that of the residence of the applicant.

All cases of underground suffering/internment/externment which are not based on official records should invariably be placed before the State Advisory Committee and the recommendation of the State Government along with the extract of the proceedings of State Advisory Committee should be forwarded to this Ministry for further consideration.'

(Underlining is mine for emphasis).

8. The said guidelines were further clarified on or about 21-8-1984, in the following manner:

'The following guidelines may kindly be kept in view while verifying the claims of freedom fighters for this purpose:--

(i) The claim of a person that he had undergone imprisonment for 2 years or more in connection with the national freedom struggle may be examined with reference to the claim made by him in his application for samman pension and the documents furnished by him in proof thereof. In case he had not submitted but now submits any documentary evidence which clearly proves his claims of jail sufferings for 2 years within the provisions of the Scheme, his competence to issue certificates for underground internment/externment sufferings may be accepted.

(ii) The exposition that the applicant and certifier should belong to the same district would mean that they were resident of the same district at the time of freedom struggle -- 'district' being the district as at that time and not the district where they may be presently residing. In case a certifier had staged Satyagraha and courted arrest or was arrested in different district in connection with the national freedom movement, the certificate of abscondence issued by him in favour of the claimant residing in those districts as they existed at that time may be accepted for Samman Pension. It may be noted that there was a change in the basic requirement that such certificates are required to be issued on the basis of the personal knowledge of the certifying freedom fighters and will be accepted as valid collateral evidence of suffering only if the official records pertaining to that period are not available.

(iii) The above relaxation i.e. reduction of certifiers' jail suffering from 5 years to 2 years will be applicable to claims already received before 31-8-1982. No fresh applications will be entertained. The cases which have been rejected on the ground of failure of the applicants to produce certificates from a prominent freedom fighter with 5 years jail suffering may be re-considered on production of fresh acceptable evidence from a freedom fighter with actual jail sufferings of two years or more and revised verification report with comments of the State Govt. may be sent to the Ministry of Home Affairs.'

9. It is not in dispute that in terms of the aforementioned Scheme, the State Government is the recommending authority and sanction of pension would be subject to a final decision of the Central Government in the matter.

10. In most of the cases, recommendation in favour of the petitioners have been made on the basis of personal knowledge certificate granted by a recognised freedom fighter as it was the specific case of the petitioners that relevant records were not available in the offices of the State Government. It is also in dispute that for the purpose of disposal of the applications filed by the applicants and/or to decide the merits thereof an Advisory Committee was set up by the State of West Bengal at the instance of the Government of India comprising of Justice S.C. Sen, a former Judge of this Court as Chairman who was succeeded by Sri Ganesh Ghosh (since deceased). The functions of the said Committee have been mentioned in a circular letter dated 12th May, 1983 and 21st August, 1984 stating 'In absence of final records because of the non-availability of the same a certificate from permanent freedom fighter who himself has been in jail in connection with the national freedom struggle for not less than 5 years (relaxed to two years) would be acceptable to substantiate the explanation of internment or externment'.

11. In most of the cases either the said Committee has not made its recommendation or despite recommendations, the Central Government has refused to accept the same or had not taken any decision thereupon.

12. In some of the cases, the Central Government despite grant of sanction for payment of pension has revoked the same.

13. The learned Counsel appearing on behalf of the petitioners very strenuously submitted that a combined reading of the aforementioned scheme would show that the Central Government had been issuing more and more liberalised policies towards the grant of freedom fighters' pension. According to the learned Counsel a bare perusal of the said scheme as reflected in the guidelines issued in the years 1982 and 1984 would clearly demonstrate that certificate granted by a freedom fighter on the basis of his personal knowledge has been made an alternative mode of proof for the purpose of establishing claim for grant of pension to the writ petitioners. The learned counsel submitted that in terms of guidelines dated 28-9-1984, a duty having been cast by the State Government as well as Central Government to consider such certificates in their proper perspective, it must be held that acceptance thereof on their part was obligatory in nature. The learned

Counsel submitted that once a certificate has been issued, other documents should not be insisted upon. The learned Counsel appearing in various writ applications have further pointed out that District Magistrate, Midnapore categorically stated that the records are not available with the Government and thus it did not lie in the mouth of the said District Magistrate not to contend that said records are available. The learned Counsel further submitted that in various decisions this Court has directed the Central Government to pay the pension in favour of the petitioners thereof and in one of the cases, the decision of the learned single Judge has been upheld by a Division Bench of this Court. It was submitted that the very fact that the said Advisory Committee has meticulously complied with the guidelines issued by the Central Government as contained in its letter dated 12-4-1982 and recommended the case of the petitioners, a further consideration by way of de nove enquiry does not arise.

14. Mr. Rej appearing on behalf of the Central Government in some of the application raised preliminary objections relating to territorial jurisdiction and locus standi of the petitioner to file these applications. The learned Counsel submitted that keeping in view of the fact that pension is not being granted by the Central Government under any statute, no legal right has accrued in favour of the petitioner and thus this Court should not exercise its jurisdiction under Article 226 of the [Constitution of India](#).

15. With regard to the territorial jurisdiction of this Court learned Counsel submitted that the scheme has been framed by the Central Government in Delhi, the final grant has to be made by the Central Government at Delhi and the orders revoking the grant of pension have also been passed at Delhi. The learned Counsel submitted that, thus, no part of cause of action arose within the meaning of Clause 2 of Article 226 of the [Constitution of India](#) within the jurisdiction of this Court.

16. Strong reliance in this connection has been placed on Union of India v: M/s. Oswal Woollen Mills Ltd., reported in : [1985]154ITR135(SC) , State of Rajasthan v. M/s. Swaika Properties, reported in : [1985]3SCR598 , Rajaria Exports Ltd. v. Union of India, reported in : AIR1985 Cal70 , Aligarh Muslim University v. Vinay

Engineering Enterprises (P) Ltd., reported in : (1994)4SCC710 and Oiland Natural Gas Commission v. Utpal Kumar Basu, reported in : (1994)4SCC711 .

17. The learned Counsel submitted that although in terms of Article 226 of the [Constitution of India](#), the jurisdiction of this Court is wide, as the petitioners do not have a statutory right to claim 'Saraman', no writ petition is maintainable. According to the learned Counsel the discretion to grant such 'Samman' lies with the Central Government and thus no writ petition under Article 226 of the [Constitution of India](#) is maintainable.

18. Mr. B.P. Ghoshal, the learned Senior Counsel appearing on behalf of the Central Government took me through the entire, scheme and submitted that bare perusal thereof would demonstrate that reliance on personal knowledge certificate is only to be treated as the secondary evidence i.e., in absence of the relevant official records. The learned Counsel submitted that so far as the proclaimed offenders are concerned, the same has to be given the same meaning as occurring in Sections 82 and 83 of the Code of Criminal Procedure 1973 or Section 86 of the Code of Criminal Procedure of 1898. The learned Counsel submitted that so far as the proclaimed offender is concerned the records would be available in Court, the concerned Police Station as also in the office of the D.I.B.

19. The learned Counsel submitted that a distinction has to be drawn between the proclaimed offender and detenus under Preventive Detention Act or Defence of India Rules and/or against whom detention order has been issued under other statute. Mr. Ghoshal contends that so far as the detenus of persons against whom orders of detention had been issued, relevant records would be available in the office of the concerned District Magistrate. Mr. Ghoshal contended that underground suffering must be held to be only for the purpose of freedom fighting i.e. either for avoiding the orders of detention and for the purpose of avoiding the orders of attachment or warrant of arrests. The learned Counsel urges so far as the political sufferers are concerned, village crime note books are also available.

20. It was submitted that a perusal of the circular letter dated 12-4-1982 would, show that non-availability of records must be in relation to particular period and not

in relation to particular person and thus the person applying for 'Samman' must satisfy the State Government that no record is available in his case. It is stated that it is for each applicant to furnish the proof of the cases in which he has suffered detention.

21. It was contended that keeping in view the fact that ultimate satisfaction in the matter of grant of pension being lying with the Government, it must reach its satisfaction upon taking into consideration the reports of all agencies as its disposal inasmuch as one agency may not have the record whereas other agencies may possess the same. The Central Government according to the learned Counsel being the final authority is not bound by the recommendation of the State Advisory Committee.

22. The learned Counsel submitted that even on merits the certificate of the District Magistrate, Midnapore, to the effect that records are not available, was only confined to the fact that the records not available in the police station and, in fact the District Magistrate, Midnapore, clarified his position later on. In this connection my attention was drawn to the report dated 8-11-1993. The learned Counsel submits that in many cases the Central Government has not found any tangible evidence to substantiate the claims of the petitioners who are large in numbers, It is stated that even the State Government could not produce the basis for its recommendations. It has been submitted that as the satisfaction of the Central Government has to be objective, it cannot sanction grant of pension either on conjectures or surmises and/or in absence of any proof. It is stated that the Central Government cannot squander its money inasmuch as the entire amount has to be spent for a public purpose and in public interest.

23. Before considering the merits of the matter the preliminary objections raised by Mr. Rej may be considered. All the petitioners, admittedly are inhabitants of the State. Their claims are based on the fact that either they or the persons whose dependents they are, were freedom fighters. The petitioner's assertions are that their sufferings took place as freedom fighters within the territorial jurisdiction of the State of West Bengal. The applications for grant of pension are to be sent to the Chief Secretary of the State Government/Union Territory Administration

concerned and only a copy thereof is required to be sent to the Deputy Secretary of the Government of India Freedom Fighters Division Ministry of Home Affairs in Delhi as an advance copy. Pension forms were obtained from Central and/or State Government of Union Territory concerned or Freedom Fighter Division Ministry of Home Affairs, first floor, Lok Nayak Bhawan, New Delhi free of cost. All State Governments or Union Territories Administrations were instructed to make available the prescribed application forms in sufficient number at all levels including Block/ Tehsil levels. It was the State Government who was to receive the applications from the applicants and scrutinize the same. Admittedly it is the State Government who was to constitute the State Advisory Committee for that purpose of making the final recommendations. The applicants were to receive the pension in terms of the said scheme at their respective places of residence. Even in cases where orders of the Central Government revoking its earlier order granting of pension have been passed, the same had been communicated to the applicants at their residential address which is within the territorial jurisdiction of State. The effect of such order has been felt at their residences which are situated within the territorial jurisdiction of this Court.

24. There cannot, thus, be any doubt whatsoever that the entire cause of action and/or a part thereof has arisen within the territorial jurisdiction of this Court.

25. Clause (2) of Article 226 of the [Constitution of India](#) as amended by Constitution 15th Amendment Act of wide amplitude. It, in no uncertain terms states that the writ of the Court may run beyond the territories in' relation to which each High Court exercisesits jurisdiction. A petitioner under Article 226 of the Constitution can be presented before any High Court in the following cases.:

(i) The High Court within whose territorial, jurisdiction a person or authority against whom relief is sought resides or is situate.

(ii) The High Court within whose jurisdiction the cause of action in respect of relief is sought under Article 226 of the [Constitution of India](#) wholly or in part.

26. Thus those High Courts will have jurisdiction to entertain the writ application in respect of all orders whereby the petitioner may have been affected.

27. In Union of India v. M/s. Oswal Woollen Mills Ltd., reported in : [1985]154ITR135(SC) , it was held:--

. 'Having regard to the fact that, the registered office of the company is at Ludhiana and the Principal respondents against whom the primary relief is sought are at New Delhi one would have expected the writ petition to be filed either in the High Court of Punjab and Haryana or in the Delhi High Court. The writ petitioners, however, have chosen the Calcutta High Court as the forum perhaps because one of the interlocutory reliefs which is sought is in respect of a consignment of beef tallow which has arrived at the Calcutta Port. An inevitable result of the filing of writ petitions elsewhere than at the place where the concerned offices and the relevant records are located is to delay prompt return and contest. We do not desire to probe further into the question whether the writ petition was filed by design or accident in the Calcutta High Court when the office of the company is in the State of Punjab and all the principal respondents are in Delhi. But we do feel disturbed that such writ petitions are often deliberately filed in distant High Courts, as part of a man-qouvre in a legal battle, so as to render it difficult for the officials at Delhi to move applications to vacate stay where it becomes necessary to file such applications. More about this later.'

28. The fact of the matter in the aforementioned case was absolutely different and thus the said decision has no application in the instant case at all.

29. In State of Rajasthan v. M/s. Swaika Properties, reported in : [1985]3SCR598 , the Supreme Court was considering a matter under Rajasthan Urban Improvement Act, 1959. In that case the property was situated at Rajasthan. All actions were taken at Rajasthan and it was held that only service of notice under sub-section (2) of Section 52 of the Rajasthan Urban Improvement Act, 1959 was not sufficient to invest the Calcutta High Court with the jurisdiction to entertain the petition under Article 226 of the [Constitution of India](#). The Supreme Court on the facts of the case held that the cause of action either wholly or in part did not arise within the territorial limits of Calcutta High Court.

30. In Kajaria Exports Ltd, v. Union of India reported in : AIR1985 Cal70 , it was held that a cause of action is material for the purpose of maintainability of a writ

application and the mere fact that the petitioner's registered office is situated within the territorial limits was held not to be sufficient to maintain a writ application.

31. The learned Judge noted :--

'The ratio of the said Division Bench Judgment on the question of jurisdiction has no manner of application in the instant case inasmuch as 'Cause of Action' means every fact which if traversed, would be necessary for the Plaintiff/Petitioner to prove in order to support his right to the judgment of the Court. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. In the instant case, the licence was issued by an authority whose office is situated at Delhi and the goods have arrived at Bombay Port and that the goods had to be cleared by the Customs authorities at Bombay. It appears from the petition that no. notice and/or correspondence was made by the Customs authorities with the petitioner company at Calcutta.'

32. In that case the office of the respondents was situated outside the jurisdiction of this Court, the import licence was issued by the Controller of Imports and Exports at New Delhi, the goods were imported through the Bombay Port and at the relevant time were lying at the Bombay Port and the Customs authority at Bombay refused to clear the goods on the ground that the same were not covered by the Import Licence. It is only on the aforementioned factual background it was held that this Court had no territorial jurisdiction to entertain the writ application.

33. In *Aligarh Muslim University v. Vinay Engineering Enterprises (P) Ltd.* reported in : (1994)4SCC710 the contract in, question was executed at Aligarh, the construction work was to be carried out at Aligarh. Even the contract provided that in the event of dispute the Aligarh Court alone will have jurisdiction. The arbitrator was from Aligarh and was to function there. It was held that merely because the petitioner was a Calcutta based firm, this Court could not assume jurisdiction of the matter as no part of cause of action had arisen within its jurisdiction.

34. In *Oil and Natural Gas Commission v. Utpal Kumar Basu*, reported in : (1994)4SCC711 , the Supreme Court while considering the import of Clauses (1) and (2) of Article 226 of the [Constitution of India](#) held :--

'On a plain reading of the aforesaid two clauses of Article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by the Part III of the Constitution or for any other purpose if the casue of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority of the residence of the person against whom the direction, order or writ is issued is not within the said territories.

It is well settled that the expression 'cause of action' means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In *Chand Kour v. Partab Singh* reported in ILR (1889) 16 Cal 98, 102: 15 IA 156, Lord Watson said: '..... the casue of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.'

35. In the aforementioned case ONGC had decided to set up a Kerosene Recorvery Processing Unit at Hazira in Gujarat. EIL was appointed by ONGC as its consultant, in which capacity it issued the advertisement from New Delhi. The tenders or bids were forwarded to EIL at New Delhi. EIL was expected to scrutinize the tenders and make its recommendations to the Tender Committee constituted by ONGC. The final decision was to be taken by the Steering Committee at the Delhi.

36. The jurisdiction of this Court was invoked only because the writ petitioner had read the advertisement in Times of India in circulation in West Bengal and it forwarded its tender from its registered office in Calcutta and followed it up by a revised offer. In the aforementioned factual situation the Supreme Court held that no part of cause of action had arisen within the jurisdiction of Calcutta High Court for the simple reason that if these facts were to give a cause of action every tenderer would sue ONGC in the local Court from where he forwarded the tender.

37. The aforementioned decision cited by the learned Counsel, therefore, have no application at all to the fact of the present cases. In fact, the said decisions, run counter to the submissions of the learned Counsel.

38. In Bloom Dekar Ltd, v. Subhas Himatlal Desai, reported in : (1994)6SCC322 ; the Apex Court again reiterated as to what constitutes a cause of action.

39. So far as the submission of the learned Counsel to the effect that the petitioners have no legal right and thus, this application couldnot be entertained, is concerned, the same is without any merit.

40. Admittedly the Central Government has framed a scheme in exercise of its jurisdiction under Article 73 of the [Constitution of India](#). Such schemes, the Central Govt. can frame in exercise of its executive power in absence of any legislation covering the field.

41. In my opinion a legal right does not mean the right flowing from a statute. A citizen, in my considered view, is entitled to maintain a writ application questioning the inaction on the part of the State to implement its policy decision. It may also question the validity and/or legality of an action on the part of the State which according to the petitioner is unfair, unreasonable, arbitrary or discriminatory.

42. Even a deviation or a departure from a policy decision attracts Article 14 of the [Constitution of India](#).

43. In State of Mysore v. Srinivasmurthy, reported in : (1976)11LLJ311SC the Supreme Court repelled the contention that Articles 14 and 16 of the Constitution cannot be invoked to enforce a mere concession.

44. In Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal, reported in : AIR 1962 SC1044 , the Supreme Court

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'The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of

the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified.'

45. Similarly in *State of Orissa v. Ram Chandra Dev*, reported in : AIR 1964 SC685 it is held:--

'Under Article 226 of the Constitution, the jurisdiction of the High Court is undoubtedly very wide. Appropriate writs can be issued by the High Court under the said Article even for purposes other than the enforcement of the fundamental rights and in sense, a party who invokes the special jurisdiction of the High Court under Art. 226 is not confined to cases of illegal invasion of his fundamental rights alone.'

46. There exists a catena of decisions where the Supreme Court as also other Courts have categorically laid down that any unfair or unreasonable State action can be questioned by filing a writ application in terms of Article 226 of the [Constitution of India](#). It is not necessary to burden this judgment with other decisions on this point. Suffice it to point out that the Supreme Court itself in *Mukund Lal Bhandari v. Union of India* reported in : 1990 CriLJ2148 entertained a writ application under Art. 32 of the [Constitution of India](#) with regard to the said scheme.

47. If the Supreme Court could exercise its jurisdiction in the matter under Article 32 of the [Constitution of India](#), there cannot be any doubt whatsoever that the petitioner's writ application under Art. 226 of the Constitution would also be maintainable.

48. It further appears that the Supreme Court has also entertained applications for non-grant of Freedom Fighters' pension in *Surja v. Union of India* reported in : (1991)4SCC366 and *Duli Chand v. Union of India* reported in : 1992 CriLJ858 .

49. In this view of the matter, in my opinion, it would be futile to urge that the writ applications must be thrown out at the threshold.

50. The submission of the learned Counsel appearing on behalf of the respondents to the effect that the Central Government has an unfettered discretion

in the matter of grant of pension and thus, these writ applications should not be entertained cannot again be accepted.

51. Discretion as is well known must be exercised by the State in a reasonable manner;

52. In *Ramji Dayawala and Sons (P), Ltd. v. Invest Import* reported in : [1981]1SCR899 , the Supreme Court while considering the exercise of discretion by a court observed:--

'Discretion, said Lord Mansfield in *R. v. Wikes*, (1770) 98 ER 327, when applied to a court of justice, means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague and fanciful, but legal and regular' (see *Craies on Statute Law*, 6th Edn. p. 273).'

53. In *M/s. Shri Sitaram Sugar Co. Ltd. v. Union of India* reported in : [1990]1SCR909 , the Supreme Court observed:--

'A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness.

The true position, therefore is that any act of the repository of power, whether legislative or administrative or quasi-judicial, is open to challenge if it is in conflict with the -Constitution or the governing Act or the general principles of the law of the land or it is so arbitrary or unreasonables that no fair minded authority could ever have made it.'

54. In *Rohtas Industrial Ltd. v. S.D. Agarwal* reported in : [1969]3SCR108 , the Supreme Court observed;--

'In public regulation of this sort there is no such thing as absolute and untrammelled 'discretion' that is that action can be taken on any ground or for any reason that can be suggested to mind of the administrator; no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power

exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute. Fraud and corruption in the Commission may not be mentioned in such statutes but they are always implied as exceptions. 'Discretion' necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption.'

55. In *State of U. P. v. Maharaja Dharamander Prasad Singh* reported in : [1989]1SCR176 it has been held:--

'It is true that in exercise of powers of revoking or cancelling the permission is akin to and partakes of a quasi-judicial complexion and that in exercising of the former power the authority must, bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party and decide the matter consistent with the principles of natural justice. The authority cannot permit its decision to be influenced by the dictation of others as this would amount to abdication and surrender of its discretion. It would then not be the authority's discretion that is exercised, but someone else's. If an authority 'hands over its discretion to another body it acts ultra vires'. Such an interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the authority'.

56. In *Wade and Forsyth's Administrative Law* (1994 Edn) at page 393, the learned authors state:--

'For the same reasons there should in principle be no such thing as unreviewable administrative discretion, which should be just as much a contradiction in terms as unfettered discretion.'

57. Lord Denning in his book 'What next in Law' has decided to look into the future and set down something in the hope that they may be done by those who came after him. The learned Judge desired:--

'Let us build up a body of law to see that these powers are not misused or abused, combined with upright judges to enforce the law. It is a task which I command to all.'

58. It is, however, true that where discretion has been exercised bona fide, fairly, reasonably and upon taking into consideration the relevant facts the High Court would not interfere.

59. Each case, has, therefore, to be considered on its own merits but in my considered view it would be futile to urge that writpetition will not be maintainable only because the Central Government has a discretion in the matter.

60. Moreover, a Writ Court is also a Court of equity, the jurisdiction of the High Court under Art. 226 can be exercised not only in a case where a legal right of a person is infringed but also for other purposes. The parameters of jurisdiction of the High Court to exercise its power of judicial review is well known.

61. In *Rajat Nath Roy v. State of Bihar* reported in 1993 (2) PLJR 348 I observed:--

'In the famous decision of *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* reported in 1947 (2) All ER 680, Lord Green, M.R. held:--

'I do not wish to repeat what I have said, but it might be useful to summarise once again the principle, which seems to me to be that the court is entitled to investigate the action of the local authority with a view to seeing whether it has taken into account matters which it ought not to take into account, or, conversely, has refused to take into account or neglected to take into account matters which it ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that the local authority, nevertheless, have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not that of an appellate authority to override a decision of the local authority, but is that of a judicial authority which is concerned and concerned only to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confided in it.' It was further noticed:--

'In *Council of Civil Service Unions v. Minister, for the Civil Service* (1984 (3) All Eng Law Report 935) Diplock L.J. held that the power of judicial review is limited to the grounds of illegality, irrationality and procedural impropriety. The

aforementioned observation was followed by the Supreme Court in *Ranjit Thakur v. Union of India* reported in 1987 PLJR 79 (SC) and in *Sri Lekha Vidyarthi v. State of U.P.* in : AIR 1991 SC537 .

Wednesbury's 'unreasonableness' comes within the purview of the term 'irrationality' as indicated by Lord Diplock.

Halsbury's Laws of England Fourth Edition Vol. 1(1) paragraph 60 states the law thus;--

'The grounds upon which administrative action is subject to control by judicial review have conveniently classified as threshold. The first ground is 'illegality', the decision-maker must understand correctly the law that regulates his decision making power and must give effect to it. The second is 'irrationality' namely Wednesbury unreasonableness. The third is 'procedural impropriety'. What procedure will satisfy the public law requirement of procedural propriety depends upon the subject matter of the decision, the executive functions of the decision maker (if the decision is not that of an administrative tribunal) and the decision circumstances in which the decision came to be made.' In *R. v. Panel on Takeovers and Mergers, Ex parte Guinness Pic* reported in 1989 (1) All ER 509 and 512, it was observed:

'In the context of a body whose constitution, functions and powers are sui generis, the court should review the panel's acts and omissions more in the round than otherwise be the case and, whilst basing its decision on familiar concepts, should eschew any formal categorisation.' It was further observed:--

'The court should consider whether something has gone wrong in nature and degree which requires the intervention of the courts.' In *Sri Anandi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mohotsav Smarak Trust v. V.R. Rudani* reported in : (1989)11LLJ324SC , it was held that under Art. 226 of the Constitution, the High Court can issue writs to 'any person or authority for the enforcement of any of the fundamental rights and for any other purpose.

62. In Halsbury's Laws of England Vol. 1(1) 4th Ed. it is stated that the purpose of issuance of a writ in the nature of mandamus is to remedy defects of justice; and accordingly it will issue to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right. It is a discretionary remedy and may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effective.

63. Recently in *Tata Cellular v. Union of India* reported in : AIR 1996 SC11 , the Supreme Court upon considering its earlier decisions on the point as also various several treaties on Administrative Law held that broadly illegality, irrationality and procedural impropriety would be grounds which would attract the power of judicial review of an administrative action. However, it was pointed out that the same is not exhaustive.

64. In *Union of India v. Hindustan Development Corporation* reported in : AIR 1994 SC988 the Apex Court stated the law in similar terms.

65. Before considering individual cases on merits the object and purport of the scheme may be noted. The said scheme was initially made in the year 1972. A further liberal scheme came into force in the year 1980. The aforementioned Scheme of 1980 which came into force with effect from 8-9-1980 was clarified on 12th April, 1983 and again on 21st October, 1984.

66. It is admitted that the District Magistrate, Midnapore, from which district, most of the writ petitioners belong gave certificates to the effect that records were not available in the local police station.

67. From a letter dated 9-4-1992 issued by the Government of West Bengal and addressed to the Deputy Secretary Ministry of Home Affairs, Central Government, as contained in Annexure 'C' to the supplementary affidavit appended to the case of Manmoth Nath Roy, it is stated:

'But the report of the Mahisadal PS as forwarded by the District Magistrate, Midnapur reveals that no warrant register from the period from 1930 to 1946 was

available in the PS and in the existing PS record and V.C.N.B. there was found nothing against the freedom fighter during the period from 1930 to 1946. Thus, this report is not helpful to establish the claim of the applicant's sufferings.'

68. This matter was considered by several Hon'ble Judges of this Court wherein upon production of records a finding of fact was recorded that the relevant records are not available in the Police Station.

69. However, in those cases, no detailed argument with regard to the scope of the Scheme had been advanced.

70. There is, thus, no decision wherein the scheme has been examined in details.

71. In an affidavit-in-opposition filed by the Central Govt. in the matter of Sri Hari Pada Doloi v. Union of India in C.O. No. 13940(W) of 1991 it was stated:--

Since non-availability of record certificate was not submitted, District Magistrate, Midnapore, was requested by the Assistant Secretary, Home (Poll P.S.S.) Department under No. 14021 HPS dated 28-9-89/11-10-89 to verify the claimed suffering with reference to official records.

The District Magistrate, Madnapore, in reply sent a report of the S.P.D. I B Midnapore vide his Memo No. 755/G/FF dated 8-3-1991.

Since the copy of the original report of the S.P.D.I.B. Midnapore was not found with the D.M.'s Memo No. 758-G/FF dated 8-3-1991, the District Magistrate, Midnapore, was again requested for a copy to the Assistant Secretary, Home (Poll P.S.P.) vide memo No.3400 HPS dated 5-9-91/12-9-91. The District Magistrate Madnapore sent the report of the S.P.D.I.B. Madnapore vide his Memo No. 1444 G/FF dated 4-11-1991. From the report of the S.P.D.I.B. Midnapore it was apparent that the claimed suffering or about his political activities during pre-independence period did not transpire on official record.'

72. A Division Bench of this court comprising of Hon'ble the Chief Justice and Justice M.G. Mukherjee in FMAT No. 2823 of 1993 (Union of India v. Haripada Samanta) in its judgment and order dated 14-9-1994 observed:--

'From page 156 of the paper-book filed by the Union of India it appears that the main ground on which the pension was refused is as follows:--

'(a) According to the report of the officer-in-charge Mahisadal P.S. there was nothing found against you in the existing warrant register and V.C.N.B. record'. To us, it appears that merely because warrant register or V.C.N.B. record was not available, or nothing was found therein, the writ petitioners respondents could not be denied or refused payment of freedom fighters' pension. This was only one of the requirements to be seen by the State Govt. while finding out entitlement of pension of political sufferers. In the liberalised Rule, this requirement was not a must. If the other requirement(s) as mentioned in paragraph/ Clause 9 of the said Scheme 1980 has been fulfilled, the political sufferer would be entitled to get the pension. Sanction for payment had been obtained in respect of all the writ petitioners respondents and there was no occasion for the Central Government to deny the payment of the same.'

73. However, another Division Bench of this court comprising of the Hon'ble Justice M.G. Mukherjee and Hon'ble Justice Mitra in an appeal arising out of matter No. 1941 of 1993 (Union of India v. Sri Thakurendra Nath Roy) by a judgment dated 6th December, 1994 observed:--

'Mr. Ghosal appearing for the appellant --Union of India contended before us that according to the scheme for providing pension to the freedom fighters and their families, the State Government is definitely a recommendatory authority and on the basis of that recommendation, the Central Govt. is to take a final decision in accordance with law. A Division Bench of our High Court has already clarified the position that despite the recommendation of the State Government, the Government of India was free to come to an independent decision of its own and there is no hard and fast rule that just because the State Govt. has recommended the case, the Govt. of India is bound to accept the same as final. It is also settled principle of law that when a particular authority has been vested with the jurisdiction to take a decision on the basis of another recommendatory authority, the decision making authority must apply its own mind and come to a judgment of its own, keeping in view the recommendation of the recommendatory authority.

The decision making authority should not substitute its own judgment for the recommendation of the recommendatory authority itself.'

74. The learned Counsel for the petitioners on the basis of the aforementioned scheme and guidelines issued by the Central Government and the judgments and order passed by this Court in a large number of cases submitted that the Central Government is bound to act on the basis of the personal knowledge certificates granted by the competent certifier i.e., who had undergone imprisonment for a period of 2 years, the petitioners cannot be denied the said benefit. It was, also submitted that the respondents cannot mete out any discrimination against the petitioners by refusing to grant them freedom fighters' pension under the said scheme although on the basis of the certificates granted by the self-same certifiers freedom fighters' pension had been given to other persons. It was further submitted that when District Magistrate had issued such a certificate he could not have resiled from the said position and the learned Counsel pointed out that all applications as also personal knowledge certificate are in prescribed form and thus wherefrom said application are found to be in order, and the State Government had recommended the cases of the petitioners on the basis thereof. In view of the recommendations of the State Advisory Counsel the Central Government is bound to act thereupon. It was contended that the action of the Central Government is mala fide as would be evident from the fact that they have neither filed any affidavit-in-opposition disclosing the reasons as to why they had been sleeping over the matter for a long time and/or recalling the order passed by them earlier. It was submitted that this Court should draw adverse inference against respondent.

75. It was further submitted that in cases where the orders have been passed suspending and/or recalling the order granting pension, the same must be held to be void, being violative of the principles of natural justice and opposed to the doctrine of fair play in action and reasonableness. It was further submitted that the doctrine of promissory estoppel, is also applicable. The learned Counsel in support of his aforementioned contention relied upon *State of Punjab v. M/s. Modern Cultivators* reported in : [1964]8SCR273 , *The State of West Bengal v. Shri Chirantan Sarkar* reported in 1992 (2) CLJ 247, *State of Bihar v. Sri P.P. Sharma* reported in : 1991 CriLJ1438 and *State of Orissa v. Dr. Binapani Dei* reported in :

(1967)IILLJ266SC .

76. With regard to the scope of the freedom fighters' scheme it was submitted that the pension is not a bounty and the Central Government is bound to pass an appropriate order in terms thereto.

77. Reliance in this connection has been placed on Panu Charan Mohapatra v. State of Orissa reported in : AIR1987 Ori283 , Tej Singh Nidharak v. Union of India reported in , P.P. Chockalingla Nadar v. The Govt. of India reported in : AIR1991 Mad83 , S. Ponnuswamy v. The Govt. of Tamil Nadu reported in : AIR1991 Mad88 , S.P. V. Ramaswamy v. State of Tamil Nadu reported in : AIR1992 Mad320 , Sukh Lal v. Union of India reported in and Ramlal Dutta v. Under Secretary to the Govt. of India reported in 1990 (2) Cal LT HC 7.

78. Mr. Samanta appearing on behalf of some of the writ petitioners referred to me two books entitled Sarbadhinayak as also a manuscript of a book allegedly written by SriSushil Dhara and submitted on the basis thereof that from a perusal of the said book and the manuscript it would appear that the freedom fighters suffered immensely due to freedom struggle. The learned Counsel further submitted that it now stands admitted that a National Council was formed in Tomluk which is a sub-division in the district of Midanapore which continued for about 2 years.

79. According to the learned counsel keeping in view of the fact that no affidavit-in-opposition has been filed, there is absolutely no reason as to why the statements made in the writ application should not be accepted as correct. Reliance in this connection has been placed upon C.S. Rowjee v. The State of A.P., reported in : [1964]6SCR330 .

80. The learned Counsel has also relied upon a decision of the Supreme Court in R. Narayan v. Union of India, reported in : AIR 1990 SC746 , and submitted on the basis thereof that the Supreme Court had interpreted the provision of the freedom fighters' founder scheme liberally. My attention has further been drawn to the decision on Mukunda Lal Bhandari v. Union of India, reported in : 1990 CriLJ2148 .

81. The learned Counsel appearing on behalf of the Central Government, on the other hand, submitted that the recommendations of the State Government is not final and the Central Government is entitled to arrive at its own decision.

82. It was, therefore, submitted that consideration of the applications for grant of freedom fighters' pension on the basis of the personal knowledge certificate of a known freedom fighter namely who has undergone imprisonment for a period of two years must be held to be in the nature of a secondary evidence and the same can be acted upon only when the primary evidence is not available. According to the learned Counsels such secondary evidence must be legally admissible. Further submission of the learned Counsel is that from the guidelines issued by the Central Government it would be evident that the certificate must be given to a person who was suffered as co-prisoner and/or who belongs to the same District. It was pointed out that a certifier when he was himself lodged in jail could have possibly given a certificate with regard to the person to have remained underground on the basis that warrant of arrest and/or an order of attachment had been issued against such person. It was urged that the details relating to political prisoner and/or detenus and/or under-trial prisoners may be available from (1) records of the Police Station, (2) records of Jails, (3) Village Crime Note Book, and (4) Officers of the Intelligence Branch of the State Police particularly in the office of a Deputy Inspector, General, Intelligence Branch.

83. It has been stated that the different agencies of the State Government and particularly the Deputy Inspector General of Police, I.B. including District Magistrate, Midnapore categorically informed that relevant records are available in their respective offices and further informed that Village Crime Note Book and Jail records are not available.

84. It was contended that records which were not available at a particular time may subsequently be made available and thus it cannot be said that the Central Government cannot act upon such records which are being made available to it by the State Government subsequently.

85. It was also submitted that nobody can claim pension only on the ground that he was concerned with Quit India Movement, inasmuch as cases during the said

movement were initiated either under the provisions of the I.P.C. or other penal statutes and/or Defence of India Rules which had a specific case number.

86. It was, however, pointed out that an enquiry was caused to be made in relation to various political sufferers and an enquiry report was submitted wherein it was categorically found that in many cases, nothing could be found out in relation to the said persons that they were freedom fighters or suffered in any manner during Quit India Movement.

87. For the purpose of consideration of these cases, it is not necessary to take into consideration, the 1972 Scheme aforementioned as the said scheme was substantially liberalised in terms of 1980 Scheme.

88. The person who are eligible for 'Samman Pension' are:

(a) a person who have suffered a minimum imprisonment of 6 months and 3 months in the cases of women and S.C., S.T. freedom fighters,

(b) a person who remained underground for more than 6 months provided he was a proclaimed offender and/or against whom an award, or arrest/head was announced,

(c) one for whose detention order was issued but not served.

(d) a person who was interned in its home and externed in out of the District provided the period of internment or externment was 6 months or more.

89. Thus, a person who has merely filed an application only on the ground that he was involved in Quit India Movement or had gone underground at the relevant time would not be entitled to such Samman Pension, unless his case falls within one or the other grounds mentioned in the scheme.

90. The main question which arises for consideration is the mode of proof.

91. Clause 9 of the said scheme provides for filing of the actual proof in case of imprisonment or detention obtaining a certificate from the concerned Jail Authorities, District Magistrate or the State Government.

92. However, in case of non-availability of such certificate, a certificate by a co-pensioner specifying the jail period which has to be in accordance with Annexure I in the application form.

93. So far as those persons who claimed that they had remained underground are required to file documentary evidences by way of Government/Court's order proclaiming him as an offender announcing an award on his head or for his arrest or an order of his detention.

94. If the official records are not forthcoming due to their non-availability, a certificate from the freedom fighters may be taken into consideration.

95. Such certificate must be-

- (a) Veteran Freedom Fighter,
- (b) belong to the administrative Unit before reorganisation of the States,
- (c) their area of operation must be same.

96. The said scheme was not framed under any statute.

97. It was framed under the executive power of the Central government as contained in Art. 73 of the [Constitution of India](#). The Central Government, therefore, had the necessary jurisdiction to make amendments in the said scheme and/or to issue guidelines from time to time.

98. On perusal of the guidelines dated 12th April, 1983 it appears:--

- 1) voluntary abscondance does not make a person eligible for Samman Pension.
- 2) the liberalised pension schemes provides that with effect from 1-8-1980 in the absence of official records because of their nonavailability, a certificate from a prominent freedom fighter would be acceptable.

99. Such a certificate has been stated to be an alternative mode of proof but the Government is required to satisfy itself that the certifier was from a genuine freedom fighter and the official records of that period are not available.

Genuineness of such certificates is also required to be verified.

100. It is further necessary for the Central Government to consider that there is no complaint about indiscriminate certification against him.

101. It further provides that in case of underground sufferings internment/externment which are not based on official records the matter should invariably be placed before the State Advisory Committee and the recommendation on the State Government along with the extract of the proceeding of the State Advisory Committee should be forwarded to the Ministry for further consideration.

102. A bare perusal of the said scheme and/or the guidelines issued by the Central Government, in my opinion, do not leave any manner of doubt whatsoever that the Central Government is the ultimate authority in the matter of grant of pension and it is entitled to satisfy itself about the genuineness of claim of the concerned applications.

103. In other words; the Central Government is not bound to act mechanically only on the basis of recommendations of the State and/or the Advisory Committee.

104. It is true as has been submitted by the learned Counsel for the petitioners that the Advisory Committee comprises of a person of eminence including a former Judge of this Court. It is also true that normal credence should be given to the report of such committee but as noticed hereinbefore the Central Government cannot be accepted to act blindly and in a given situation is entitled to consider the matter independent of such recommendations of course due weight has to be given to such recommendations.

105. It will, however, not be correct to urge that only because the State Advisory Committee was headed by a former Judge of this Court, the same is sacrosanct and the Central Government is precluded from taking a different view in the matter. The Central Government in its own right had the jurisdiction to consider the materials itself, having regard to the recommendation of the State Government. The Central Government is required to act in public interest and for public good. It would, therefore, in my opinion, not correct to contend that while the Central

Government considers the matter upon scrutiny of the materials placed before it, it sits in judgment over the recommendations of the State Advisory Committee. The State Advisory Committee and the State Government are only recommendatory authorities and thus their recommendations are not binding upon the Central Government. The Central Government, in my opinion cannot be stultified from exercising its functions.

106. In re: The Special Courts Bill, 1978, reported in : [1979]2SCR476 , the Supreme Court while considering the reference made to it by the President of India in terms of Art. 143(1) of the [Constitution of India](#) relating to constitutionality of the Special Courts Bill, 1978 observed:--

'The second infirmity from which the procedural part of the Bill suffers is that by Cl. 7, Special Courts are to be presided over either by a sitting Judge of a High Court or by a person who has held office as Judge of a High Court to be nominated by the Central Government in consultation with the Chief Justice of India. The provision for the appointment of a sitting High Court Judge as a Judge of the Special Court is open to no exception. In so far as the alternative source is concerned, we entertain the highest respect for retired Judges of High Courts and we are anxious that nothing said by us in our judgment should be construed as casting any a

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