

Narsingh Prasad Roy Vs. Uoi and ors

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Court : Delhi

Decided On : Jan-31-2013

Judge : Suresh Kait

Appellant : Narsingh Prasad Roy

Respondent : Uoi and ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P (C) No. 4343/2010 %
Judgment reserved on:

31. t October, 2012 Judgment delivered on:

31. t January, 2013 NARSINGH PRASAD ROY Petitioner Through: Mr. I.C. Mishra and Ms. Swati Chakraborty, Advocates. Versus UOI AND ORS Respondents Through: Mr. R.V. Sinha, Senior Central Government Counsel with Mr. R.N. Singh Mr. P.K.Singh and Mr. A.S. Singh, Advocates for Respondents No. 1 and 2. Mr. Gopal Singh and Mr. Anand Sharma, Advocates for Respondent No.3/State of Bihar. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

1. Instant petition has been filed against the impugned letter dated 25.02.1994 whereby the application of the petitioner filed under SSS Pension Scheme, 1980 has been rejected.

2. The case of the petitioner is that he had participated in Quit India Movement, 1942 on the call of Gandhiji, Rajendra Babu, Janaki Babu and other senior leaders. For this purpose, the petitioner had quit his school and participated in the said movement in 1942.

3. Further the case of the petitioner is that he and his colleagues Hira Singh and Others had captured Railway Station, Post Office and Police Station and disconnected the communication of the British Government from Jusi di h.

4. For the aforesaid incident, a criminal case was registered against the petitioner and his colleagues vide GR Case No. 75/42 on 20.08.1942 under section 147/193 IPC read with Section 348 (B), 38 (5), DI Rules in the name and style Emperor v. Hira Prasad and ors.. The same was disposed of by Sh. L.L. Singh, Id. First Class Magistrate, Deoghar.

5. On being the said case registered, the petitioner had absconded due to apprehension of his arrest along with other co-accused as he was generating the movement. Therefore, the Court had issued NBWs on 20.09.1942, however, the petitioner had never been arrested.

6. Consequently, later on, coercive action had been taken by the concerned court under Section 82/83 Cr.P.C. against the petitioner. His moveable properties were attached on 21.10.1942 and he was declared proclaimed offender, while Sh. Hira Singh named above along with some of his friends were arrested and faced the trial.

7. Thereafter, after the Cabinet Mission Report, the Britishers had decided to transfer the powers to the Indians and the cases were dropped against the absconded accused including petitioner, under Section 258 Cr. P.C.

8. The Govt. of India introduced a Freedom Fighter Scheme in the year 1972. As per the said scheme, normal eligibility for grant of pension had been fixed as imprisoned for six months, being participated in this freedom movement which was further relaxed under SSS Pension Scheme 1980-81. As per the current scheme, freedom fighters those who had absconded due to registration of a criminal case

could also apply.

9. The petitioner had applied for a copy of information regarding court record of GR case no. 75 of 1942 on 10.04.1992. The Record Keeper, District Record Room, Dumka issued Non Available Record Certificate (NARC) mentioning therein According to list records are destroyed. Same had been verified vide communication dated 30.09.1992 wherein it is stated as under: In the front page recorded descriptions in Re: Emperor Vs. Hira Prasad Singh & Others the proceedings U/s. 147, 393 IPC and 348 (b), 38 (5) DI Rules proceeded against the accused persons and in this case the accused had discharged under section 258 Cr.P.C. and main records has been destroyed.

10. Counsel for the petitioner submitted that respondent no. 2 while rejecting the application sought clarification that, According to court record, you have been discharged, while you were the absconder, then how you have been discharged, when you have not been arrested.

11. Ld. Counsel further submitted that Mr. Surjit Singh, Under Secretary got confused about the verification report from the District Record Room, Deoghar on the Urdu word Riha. But he could not understood the spirit of Section 258 Cr.P.C. In the impugned letter dated 25.02.1994 of respondent no. 2 it is stated as under: I regret to state that your application under SSS Pension Scheme 1980 has been rejected because according to court record you have discharged while you were absconder then how you had discharged and when you had arrested.

12. He further submitted that as per the policy of the Government, the then Court had dropped the proceedings and discharged even the absconded accused and warrants of attachment had also been recalled. As per the mandatory provisions Under Section 258 Cr.P.C., the presence of accused was not required, therefore, the question raised by the Under Secretary mentioned above was only because of hyper technical approach.

13. Ld. Counsel has asserted that such type of approach was also adopted by the respondent in case of Satish Chandra Mishra v. Union of India & Ors. 164 (2009) DLT 172. however his court quashed the said rejection and decided the case in

favour of the aforesaid freedom fighter.

14. He submits that facts of the aforesaid case are similar to the present one. In Para 2 of the aforesaid Judgment, facts were enumerated as under: The petitioner is a senior citizen. He had participated in Quit India Movement i.e. also known by August Movement, 1942 and due to participation in that movement a criminal case was registered against the petitioner and his colleagues as G.R. No. 75/42 dated 20.08.42 titled as Emperor v. Hira Singh and Ors. and the petitioner was named accused in the above mentioned case, but the petitioner was not arrested at the place of occurrence and absconded. An NBW was issued against the petitioner, despite that the petitioner was not arrested. Proceedings under Sections 82-83 Cr.P.C. took place against the petitioner and declared P.O. Upto December, 1943 the petitioner was underground due to apprehension of arrest by the English Government and the petitioner was active and he had been working for the freedom of India along with his other colleagues. The petitioner applied for Swatantra Sainik Samman Pension Scheme 1980-81 in the office of respondent Nos. 2 and 3. State of Bihar/respondent No. 3 recommended the name of the petitioner for grant of S.S.S. Pension after due consideration and verification but still the respondent No. 2 had rejected the application of the petitioner. Aggrieved with the said actions of the respondents, present petition has been filed by the petitioner.

15. The said Satish Chandra Mishra has also given an affidavit in favour of the petitioner, which is annexed as Annexure P-5.

16. Counsel for the petitioner further submitted that case of the petitioner had already been recommended and verified by the State Government, i.e., respondent nos. 3 and respondent no. 4 being successive state of respondent no.

3. Veteran freedom fighters like Ganga Singh, Parmanand Singh, Jagannath Jha and others have recommended and certified the petitioner being a true participant of freedom struggle.

17. Ld. Counsel argued that the case of the petitioner and the case of Satish Chandra Mishra (Supra) verbatim on the same footing and if the pension in

question has been granted in favour of the freedom fighter mentioned above, then why there is a discrimination in the case of the petitioner.

18. On the other hand, Id. Counsel for the respondent submitted that the petitioner had filed no documents to establish his claim as enumerated in the scheme. As per the scheme, a person who remained underground has to prove that on account of his participation in freedom struggle, he remained underground for more than six months provided he was: A. A proclaimed offender; or B. One on whom an award on his head or for arrest was announced; or C. One for whose detention, order was issued but not served. Explanation: Voluntary underground suffering or self-exile suffering for party work under command of the party leaders, are not covered as eligible sufferings for pension under the Central Scheme. The claim of underground suffering is considered subject to furnishing of the following evidence:(a) Documentary evidence by way of Courts / Govt.s orders proclaiming the applicant as a proclaimed offender, announcing an award on his head or for his arrest or ordering his detention. OR (b) In case records of the relevant period are not available, secondary evidence in the form of a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who has proven jail suffering of a minimum two years and who happened to be from the same administrative unit could be considered provided the State Government / Union Territory Administration concerned, after due verification of the claim and its genuineness, certifies that documentary evidences from the official records in support of the claimed sufferings were not available.

19. The procedure and acceptability of the secondary evidence prescribed in the said scheme is as under: Procedure Persons who consider themselves eligible for Samman Pension under the Scheme and desire the Samman Pension, should apply in duplicate on the prescribed application form. The application, duly filled in and supported with required documents as proof of claim of suffering, should be sent to the Chief Secretary of the concerned State Government / Union Territory Administration. A copy of such application should be sent to the Deputy Secretary to the Government of India, FF Division, MHA, New Delhi as an advance copy. However, claims can be processed by the Central Govt. only on receipt of verification & entitlement to pension report from the State Govt. / U.T.

Administration concerned. In case the requirements of the Scheme are fulfilled, samman pension is granted to the applicant. Acceptability of Secondary evidence. Secondary evidence can be considered only if supported by a valid Non-Availability of Records Certificate (NARC). The provisions of the Scheme were clarified to the State Governments in several circulars of the Govt. of India, gist of which is available in the Appendix attached herewith. The instructions on NARC were reiterated by the Govt. of India, Ministry of Home Affairs, vide Circular No. 8/12/95-FF (P) dated 02.11.1998, relevant extracts of which are reproduced as follows: As per the scheme, claims of the applicants for samman pension are required to be supported by the duly verified official records of the relevant times. Only in case of nonavailability of such records, secondary evidences, as specified in the scheme, can be made basis of such claims. However, due care and caution is required in such cases in view of several instances of bogus / forged claims which have come to the notice of the Central Government. It is of utmost importance that before recommending such cases, complete facts of the case in which the applicant claims involvement, are verified from all the agencies which could have been concerned with the matter. These may include the police station concerned, the District administration, the jurisdictional court, competent authority issuing detention order, the advisory board / appellate court, prison authorities, and intelligence agencies. Discrete enquiry should also be made to ascertain genuineness of the claims. The NARC should be issued only after the above verification. It is reiterated that the NARC should invariably be worded as follows. All concerned authorities of the State Government who could have relevant records in respect of the claim of the applicant, have been consulted and it is confirmed that the official records of the relevant time are not available.

20. He further submitted that the present case is of a secondary evidence. The petitioner could not prove his case. Every case has to stand on its facts and evidence. The petitioner cannot take shelter of the case of Satish Chandra Mishra (Supra). Application of the petitioner was examined and not found eligible for grant of pension under the Scheme.

21. The Govt. of Bihar recommended the case of the petitioner vide letter dated 20.02.1993 on the basis of the underground suffering from August, 1942 to

February, 1944 supported by Personal Knowledge Certificate (PKC) given by Jagannath Jha. The case was examined keeping in view of the provision of the scheme and was rejected vide letter dated 25.02.1994.

22. On receipt of the application of the petitioner, the concerned state authority had verified from the record that he was involved in GR 75/1942 and further stated that the relevant record had been destroyed. Under the provision of the scheme, it cannot be taken as non availability of record certificate, however required to be in the following form: All concerned authorities of the State Government who could have relevant records in respect of the claim of the applicant, have been consulted and it is confirmed that the official records of the relevant time are not available.

23. Ld. Counsel further submitted that the concerned state authority stated above that the relevant record had been destroyed, but they still gave details of the sections under which the accused were booked and thereafter were released. It created suspicion to the Government, as to how, the authorities mentioned the details of the case when the record had already been destroyed. Moreover, the observations made had given the full details of the case. It would not be proper to infer the meaning from the observation that charges against the petitioner were dropped and he was discharged after the Britishers decided to transfer the powers to the Indians.

24. He further submitted that as regards the parity with the case of Satish Chandra Mishra, each case for grant of Central Samman Pension is considered on its merits keeping in view the provisions of the scheme. The grounds on which the case of the Satish Chandra Mishra was rejected were different from the one on which the case of the petitioner has been rejected. Therefore, it would not be proper to equate these two cases.

25. The case of the petitioner was examined on recommendation of the State Government vide letter dated 20.02.1993. Personal Knowledge Certificate (PKC) given by Sh. Jagannath Jha in the prescribed format was received with the State Government vide letter dated 20.02.1993. Under the provisions of the Scheme, Personal Knowledge Certificate (PKC) can be considered only if a nonavailability of record certificate is furnished by the competent authority of the State

Government in the prescribed format.

26. In the case of the petitioner, NARC has not been produced on a prescribed format. Therefore, PKC of Jagannath Jha cannot be considered acceptable. Personal Knowledge Certificate (PKC) should be from a prominent freedom fighter, who has proven jail suffering of a minimum two years and who happened to be from the same administrative unit. Said Jagannath Jha did not furnish any record / evidence of his jail suffering of minimum two years.

27. Ld. Counsel for the respondent has relied upon a case of Union of India v. Bikash R. Bhowmik and Ors. (2004) & SCC 722, wherein it is held as under: Learned Additional Solicitor General appearing on behalf of the Union of India relied upon two decisions of this Court viz., Mukund Lal Bhandari v. Union of India and Union of India v. Mohan Singh to the effect that pension could be sanctioned only as per proof as required in the Pension Scheme and in no other manner. We think there is great force in the submission made by the learned Additional Solicitor General. We find that the High Court could not have travelled beyond the Pension Scheme to find that there was substantial compliance with the prerequisites as to suffering of imprisonment. In order to get the benefit of the Pension Scheme, the proof required must be as provided in the Pension Scheme itself. As long as such proof was not available, the benefit could not have been granted. Therefore, we set aside the order by the High Court and dismiss the writ petition filed by Respondent 1. The appeal is allowed accordingly.

28. Further relied upon the case of Union of India v. K. Indrasena Reddy & Anr. AIR 200.SC 248, wherein it is held as under:

9. Learned Counsel appearing on behalf of the respondents, on the other hand, would contend that keeping in view the intent and purport of the scheme framed by the appellant itself, there cannot be any doubt, whatsoever, that in the event primary evidence, namely, the Court records are not available: a certificate granted by a veteran freedom fighter would serve the purpose.

10. A person is entitled to the benefit of the Samman Pension Scheme provided he fulfills the criteria laid down therein. One of the criteria laid in the said scheme,

as noticed hereinbefore, was that the concerned person on account of his participation in freedom struggle, had to remain underground for more than six months. However, the same would be subject to the conditions laid down therein, namely, (i) he has to be a proclaimed offender; or (ii) he is one on whom an award for arrest was announced; or (iii) he is one for whose detention, an order of arrest was issued but not served.

11. If only an order of detention was issued, the same by itself may not lead to a conclusion that the first respondent had to remain underground for more than six months, unless he proves one or the other requisite condition precedents therefore mentioned in the scheme.

12. The appropriate authority as also the learned Single Judge had clearly come to the conclusion that the first respondent was neither declared a proclaimed offender nor an award for his arrest was announced or an order of detention had been issued but could not be served. The Division Bench of the High Court, therefore, in our opinion committed a manifest error in passing the impugned judgment in so far as it proceeded on the basis that respondent No. 1 herein was entitled to grant of pension under the Samman Pension Scheme. only because an order of detention had been issued against him.

29. I have heard Id. Counsel for the parties.

30. The case of the petitioner is that he participated in the Quit India Movement, 1942 and a criminal case was registered against him and his colleagues vide GR No. 75/42 on 20.08.1942 for the offences punishable under Section 147/193 IPC read with Section 348 (B), 38 (5), DI Rules in the name and style of Emperor v. Hira Prasad and Ors. NBWs were issued on 20.09.1942 against the petitioner and thereafter proceedings under Section 82 /83 were also initiated. His moveable properties were attached on 21.10.1942 and he was declared Proclaimed Offender while the other colleague were arrested and faced the trail.

31. Further the case of the petitioner is that after the Cabinet Mission Report, the British Government decided to drop all the cases against the absconded accused including the petitioner. Of his being impleaded in the aforesaid case, he is relying

upon a communication dated 30.09.1992 issued by the Record Keeper of Dumka, who stated that the records have been destroyed. He also relied upon a verification report made by the Government of Bihar i.e. respondent no. 3 and its successive State, State of Jharkhand i.e. respondent no.

4. Veteran Freedom Fighters namely Ganga Singh, Parmanand and Jagannath Jha and others have recommended and certified the petitioner being a true participant of the freedom struggle.

32. As pointed out by the Id. Counsel for the respondent, the petitioner has not filed any of the documents except the photocopy of the GR No. 75 of 1942 wherein his name is indicated. He has further relied upon a case of Satish Chandra Mishra (Supra) whose name was also indicated in the same GR i.e. 75/42 dated 20.08.1942.

33. Undisputedly, the case of the petitioner is of a proclaimed offender and is based on the secondary evidence. For a proclaimed offender one has to remain underground for more than six months provided (a) he was declared proclaimed offender (b) one on whom an award on his head or for arrest was announced and (c) one for whose detention order was issued but not served.

34. To prove the aforesaid facts as claimed by the petitioner, it can be considered subject to the said candidate produced documentary evidence by way of courts / governments orders, proclaiming the applicant as a proclaimed offender or announcing an award on his head for arrest or detention. In case, records of the relevant period are not available, secondary evidence in the form of a Personal Knowledge Certificate from a prominent freedom fighter, who has proven jail suffering of a minimum two years and who happened to be from the same administrative unit could be considered subject to verification from the concerned State / Union Territory.

35. As per the Scheme, secondary evidence can be accepted only if supported by a valid Non-availability of Record Certificate, duly verified final record of the relevant time. For this purpose due care and caution is required in view of several instances of bogus / forged claims which have come to notice of the Central

Government. Therefore, before recommending such cases, complete facts of case in which the applicant claims involvement are verified from all agencies, which could have been concerned with the matter. This may include the police station concerned, the District administration, the jurisdictional court, the competent authority issuing detention order, advisory board, prison authorities and intelligence agencies. Discrete enquiry should also be made to ascertain the genuineness of the claims.

36. The Non-availability Record Certificate should invariably be worded as that all concerned authorities of the State Government which could have relevant records in respect of the claim of the applicant have been consulted and it is confirmed that the official records of the relevant time are not available.

37. In the present case, the petitioner has not produced any of the documents as discussed above. Moreover, the Government of Bihar recommended the case of the petitioner vide letter dated 20.02.1993 on the basis of underground sufferings from August, 1942 to 1944 supported by Personal Knowledge Certificate (PKC) given by one Jagannath Jha.

38. As per the report of the concerned state authority, the relevant records had been destroyed, but they still had given details of the sections under which the accused were booked and were released thereafter.

39. The petitioner had given all the details i.e. GR No. with date, date of NBW, date of disposal of the case and the date of withdrawal of the case against him and his colleagues. However, not a single document has been filed in his support except the photocopy of GR mentioned above. The petitioner firstly did not produce NARC on a prescribed form, nor filed PKC with documentary proof. The petitioner has not filed any certificate, which establishes that Jagannath Jha suffered minimum 2 years and he happened to be from the same administrative unit.

40. The Supreme Court in case of Bikash R. Bhowmick (Supra) has decided that pension could be sanctioned only as per proof as required in the pension scheme and in no other manner. The courts should not travelled beyond the pension

scheme to find that there was substantial compliance with the pre-requisites as to suffering of imprisonment. In order to get the benefit of the pension scheme, the proof required must be provided as per the pension scheme itself.

41. The Apex Court in case of K. Indrasena Reddy (Supra) has held that if only an order of detention was issued, the same by itself may not lead to the conclusion that the person had remained underground for more than six months unless he proves one or the other requisite condition precedents mentioned in the scheme.

42. I am conscious as held in Union of India v. M.S. Mohammad Rawthere, AIR 200.SC 301.that the courts cannot encroach upon the executive or legislative domain and cannot assume the role of investigator of facts. The court has only judicial power to review that executive order on Wednesbury principles, but it cannot arrogate itself the power of the executive. The court must exercise judicial restraint in such matters.

43. No doubt, the name of Satish Chandra Mishra and the petitioner are indicated in the same GR. However, the petitioner failed to establish his case strictly as per the terms and conditions of the Scheme. Therefore, I do not find any discrepancy in the orders passed by the respondents.

44. In view of the above discussion and legal position, I find no merit in the instant petition. Same is dismissed with no order as to costs. SURESH KAIT, J JANUARY 31 2013 Jg

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