



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 23220 of 2013

Application under Articles 226 & 227 of Constitution of India.

AFR

Chakradhar Pradhan

.....

Petitioner

- Versus -

Union of India and another

.....

Opp. Parties

Advocate(s) appeared in this case:-

For Petitioner : Mr. C.A. Rao, Senior Advocate with
M/s. Sarat Kumar Behera & S.K. Parida
Advocates.

For Opp. Parties : Mr. P.K. Parhi,
Deputy Solicitor General of India.
With Mr. S.S.Kashyap,
Central Government Counsel
[for O.P. No.1)

Mr. S. Behera,
Addl. Government Advocate.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

23rd December, 2024

SASHIKANTA MISHRA, J.

Being aggrieved by the rejection of his
claim for grant of freedom fighters' pension, the petitioner has
approached this Court seeking the following relief:

*"The petitioner, therefore, prays that this Hon'ble
Court may be graciously pleased to admit the
writ application, issue Rule NISI and calling upon*



*the Opp. parties to show cause as to why the Opp. parties will not be directed to sanction the freedom fighters pension, which he deserves, to the petitioner from the date of introduction of the Scheme or in alternative from the date of his application and if the Opp. parties fail to show cause or show insufficient cause then the said rule be made absolute directing the Opp. parties to release the pension in favour of the petitioner within a period stipulated by this Hon'ble Court;
And for this act of kindness, the petitioner as in duty bound, shall ever pray."*

2. The petitioner claims to have participated in the freedom movement of the country and remained underground during the period from 01.09.1942 to 5.10.1943 and imprisoned in Baripada Central Jail for seven days and again during 1941-42. After independence, the Government of India, in order to give benefit to the freedom fighters framed a scheme called the Freedom Fighters' Pension Scheme, 1972, which provided for grant of pension to those freedom fighters whose annual income did not exceed Rs.5000/-. Subsequently the Swatantra Sainik Samman Scheme, 1980, was formulated and adopted on 01.08.1980.

3. On 19.7.1988, a co-prisoner of the petitioner, who was lodged in the Baripada Central Jail, swore an affidavit before the Executive Magistrate, Baripada, stating therein that when he was detained in the said jail, the petitioner was also



detained and convicted for 7 days under the Forest Laws of Mayurbhanj in Goyal (Gayal=Bison) shooting case at Bangra, and that more than 300 persons were convicted by Prafulla Kumar Das, SDO, Udala. The petitioner was one among them. Further, the petitioner was also lodged in the Central Jail of Baripada during 1941- 42, when the deponent was a political prisoner.

4. The petitioner submitted an affidavit on 27.07.1988 sworn by him for grant of Freedom Fighters' Pension by stating the above facts. Since no action was taken, he submitted representation to the Chief Minister. He was also felicitated by the State Council for Artistic Research and Training on 25.12.2009 at Jayadev Bhavan, Bhubaneswar for his involvement and talent in the field of social service. On 09.02.2013, the petitioner again requested the B.D.O of Badasahi Panchayat Samiti to take necessary steps for sanction of pension. The office of the Panchayat Samiti forwarded the application of the petitioner to the Collector, Mayurbhanj for sanction of pension. On 11.05.2013, the District Culture Officer, Mayurbhanj forwarded the application



of the petitioner along with all related documents to the Deputy Director of Culture, Bhubaneswar for consideration and sanction of Freedom Fighters' Pension enclosing the report of BDO, Badasahi. A newspaper article was also published on 09.08.2013 indicating how the petitioner at the age of 87 was harassed by the authorities in getting pension even after 66 years of independence. It is the further case of the petitioner that he had sacrificed valuable part of his life for the country but has been wrongly denied pension.

5. Counter affidavit has been filed by the Deputy Secretary to Government in Finance Department (Opposite party No. 2). It is stated that the petitioner is not eligible to get pension from State and Central revenue under Swatantrata Sainik Samman Pension Scheme, 1980 as per the existing rule published by the Ministry of Home Affairs, Government of India and subsequent guidelines issued by the said Ministry on 15.09.2006. It is stated that if any citizen has suffered minimum imprisonment of 6 months or remained underground for more than 6 months then only he is eligible to get Freedom Fighters' Pension under the Scheme.



6. It is further stated that the petitioner claims to have remained underground from 01.09.1942 to 05.10.1943 but he has produced neither primary evidence nor secondary evidence in support of such claim. The affidavit furnished by the co-prisoner, Banshidhar Raj only indicates that the petitioner was detained being convicted for 7 days under the Forest Laws of Mayurbhanj and during 1941- 42, when he was lodged in the Central Jail of Baripada. The basic criteria for allowing pension as mentioned in the guidelines is not satisfied in the least for which the claim of the petitioner does not deserve any consideration as self-affidavit cannot be treated as evidence as per the existing guidelines. It is basically stated that the petitioner, not having proved that he remained underground for more than 6 months and was also imprisoned for more than 6 months, is not entitled to freedom fighters' pension.

7. Heard Mr. C.A. Rao, learned Senior Counsel with Mr. S. K. Behera, learned counsel for the petitioner; Mr. S. Behera, learned AGA for the State of Odisha and Mr.P. K. Parhi, learned DSGI with Mr. S. S. Kashyap, learned CGC for the Union of India.



8. Learned Senior Counsel Mr. Rao would argue that the authorities have adopted a hyper-technical approach to reject the claim of the petitioner even though the same is genuine and otherwise proved from the co-prisoner's affidavit submitted by him long ago. Elaborating his arguments, Mr. Rao would argue that as per law laid down by the Supreme Court, the object of the Scheme is to honour and mitigate the sufferings of those who had given their all for the country and therefore, a liberal and not technical approach is required to be followed while determining the merits of the case of a person seeking pension under the scheme. In this regard, Mr. Rao cites the judgment of the Supreme Court in the case of **Kamalbai Sinkar vs. State of Maharashtra and others**¹. Referring to the judgment, Mr. Rao would further argue that the case of the claimants under the Scheme is required to be determined on the basis of probabilities and not subjected to the test of beyond reasonable doubt. In the instant case, the petitioner has submitted the affidavit of one co-prisoner which clearly shows that he was imprisoned in Baripada Jail being a Praja Mandal activist. The jail authorities, despite being

¹ AIR 2012 SC 2960



directed by this Court failed to produce documentary evidence regarding imprisonment of the petitioner. Under the circumstances the petitioner, at the ripe old age of nearly 100 years, cannot be expected to produce strict evidence of his claim. Mr Rao also relies upon a judgment passed by this Court in the case of **Satrughna Sahoo vs. Union of India and others**² wherein it was held that the genuineness of the claim can also be found out from one certificate of the co-prisoner instead of two as insisted in the Pension Scheme of 1980.

9. Mr. Behera, learned State Counsel, on the other hand, would argue that the authorities cannot go beyond the provisions of the Scheme and the guidelines issued by the Central Government with regard to grant of Freedom Fighters' Pension. Since it is mandatory that the claimant must have been imprisoned for at least 6 months and there is no proof that the petitioner was imprisoned for such period, his claim was rightly not considered. Further, as against the requirement of furnishing two co-prisoner certificates, the petitioner produced one, which is also not very clear. As to the exact duration of the petitioner's imprisonment in Baripada Jail, Mr.

² 2016 (II) ILR-CUT-1366



Behera argues that even though the petitioner claims to have been underground, yet he neither produced primary nor secondary evidence as provided in the Scheme as well as the guidelines.

10. Mr. Parhi, learned DSGI also makes similar arguments as the State Counsel and submits that the petitioner's claim does not come within the purview of the Scheme and the guidelines issued by the Government of India inasmuch as the basic requirement of having suffered six months imprisonment during the freedom struggle has not been fulfilled.

11. As has been narrated hereinbefore, the petitioner's claim is two-fold – firstly, he was underground from 01.09.1942 to 5.10.1943 and secondly, he was lodged in Baripada jail for 7 days in connection with an agitation against the Forest Laws of Mayurbhanj and again during 1941-42 as a Praja Mandal activist. It would be useful to refer to the relevant provisions of the Scheme called, Swatantrata Sainik Samman Pension Scheme, 1980. Clause-4 of the Scheme deals with eligibility and reads as follows:



“4. WHO IS ELIGIBLE?”

For the purpose of grant of Samman Pension under the Scheme, a freedom fighter:-

(a) A Person 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 1.8.1980.

EXPLANATION:

1. Detention under the order of the competent authority will be considered as imprisonment.

2. Period of normal remission upto one month will be treated as part of actual imprisonment.

3. In the case of a trial ending in conviction, under-trial period will be counted towards actual imprisonment suffered.

4. Broken period of imprisonment will be totalled up for computing the qualifying period.

(b) 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.

(c) A person interned in his home or externed from his district provided the period of internment/externment was for six months or more.

(d) A person whose property was confiscated or attached and sold due to participation in the freedom struggle.

(e) A persons who became permanently incapacitated during firing or lathi charge.

(f) A person who lost his job, (Central or State Government) and thus means of livelihood for participation in National Movements.

A Martyr is a person who died or who was killed in-action or in detention or was awarded capital punishment while participation National Movement for emancipation of India. It will



include an ex-INA or ex-Military person who died fighting the British”

12. As regards proof of claims, Clause-9 is relevant, which reads as follows:

“9. HOW TO PROVE THE CLAIMS (EVIDENCE REQUIRED):

The applicant should furnish the documents indicated below whichever is applicable:

a) IMPRISONMENT/DETENTION ETC:

Certificate from the concerned jail authorities., District Magistrates or the State Government. In case of non-availability of such certificates. co-prisoner certificates from a sitting M.P. or M.L.A. or from an ax-M.P. or an 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 orders proclaiming the applicant as on 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 records are not forthcoming due to their non-availability.

c) IN TERNMENT OR EXTERNMENT :

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

(ii) Certificates from prominent freedom fighters who had themselves undergone imprisonment for five years or more if the official records are not available in addition to some circumstantial/ Co-lateral evidence (Annexure II in the application)

d) LOSS OF PROPERTY, JOB ETC:

Orders of confiscation and sale of property, Orders of dismissal or removal from service”



13. Admittedly, the petitioner has not adduced any proof in support of his claim of remaining underground for the period indicated above. However he has produced an affidavit sworn by one Bansidhar Raj, who was in receipt of Freedom Fighters' Pension from the Central Government as well as the Government of Odisha. Reading of the affidavit shows that when the deponent was convicted for 3 years under the Defence of India Act and Princes' Protection Act of India and was lodged in Baripada Central Jail, the petitioner was convicted and detained under police custody for 7 days under Forest Law of Mayurbhanj in Goyal shooting case [sic. Gayal (Bison) Shooting Case] at Bhangra and more than 300 persons were convicted by the SDO, Udala among whom the petitioner was one. The affidavit further states that the petitioner was a Praja Mandal worker and had worked with the deponent till 1941. Further, the petitioner was lodged in the Central Jail of Baripada during 1941- 42 when the deponent was a political prisoner. In the affidavit sworn by the petitioner himself before the Executive Magistrate on 27.07.1988, it is stated that he was in custody for 7 days in the shooting case and was imprisoned for a 'short duration' during 1941-42. Of course,



the exact duration of incarceration has not been stated by the petitioner. As already stated, the Scheme requires two co-prisoner's certificates but in the instant case, the petitioner has produced only one. In course of argument, Mr. Rao has contended that the scheme was introduced after about 40 years of imprisonment of the petitioner. So he produced whatever evidence he could.

14. Reference to the guidelines issued by the Ministry of Home Affairs, Freedom Fighters Division of Government of India on 15.09.2006 reveals that the Government acknowledges that the Scheme's objective is to honoUr genuine freedom fighters without harassment or delay but efforts have to be made to distinguish between fake and genuine claimants. Paragraphs 4 and 5 being relevant are quoted hereinbelow:

“xx

xx

xx

4. The regular scheme has been in existence for over three decades. While it is a fact that a large number of fake claims were/are made, the fact also remains that a clear distinction has to be made between the fake and the genuine claimants. The endeavor has to be to ensure that, on the one hand, fake claims are in no manner admitted, and, on the other hand, genuine claimants are in no manner impeded. The scheme's objective is to honour genuine freedom fighters (and eligible dependents of



deceased freedom fighters), without harassment or delay.

5. Therefore, while in no way diluting rule-bound, lawful functioning, the effort should also simultaneously be directed towards speedy disposal of claims and ensuring that genuine freedom fighters (and eligible dependents of deceased freedom fighters) should definitely be given the Samman which is long overdue to them.

xx

xx

xx”

12. Before proceeding further, this Court observes that significantly, the claim of the petitioner has not been rejected for being fake but was turned down only on the ground of non-production of proof regarding the required period of imprisonment. There is otherwise no material on record to suggest that the claim of the petitioner is not genuine. In fact in course of hearing, Mr. Rao has produced two certificates issued by two Members of Odisha Legislative Assembly, one on 11.10.2013 and the other on 07.08.2014, which support the claim of the petitioner of being a freedom fighter. Of course, this Court would hasten to add that said certificates, strictly speaking, do not fulfill the requirement of the Scheme inasmuch as the Members themselves were not co-prisoners of the petitioner. Nonetheless, they being public representatives of the very same area (Mayurbhanj) must at least be held to have



knowledge that the petitioner was a freedom fighter and incarcerated in connection therewith.

15. At this stage, it would also be apposite to refer to the observations of the Supreme Court in the case of **Gurdial Singh vs. Union of India and others**³:

"6. The scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. It has to be kept in mind that millions of masses of this country had participated in the freedom struggle without any expectation of grant of any scheme at the relevant time. It has also to be kept in mind that in the partition of the country most of citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the record from the foreign country is very cumbersome and expensive. Keeping in mind the object of the scheme, the concerned authorities are required that in appreciating the scheme for the benefit of freedom fighters a rationale and not a technical approach is required to be adopted. It has also to be kept in mind that the claimants of the scheme are supposed to be such persons who had given the best part of their life for the country. This Court in Mukand Lal Bhandari's case (supra) 1993 Supp (3) SCC 2 observed:

"The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it,

³ (2001) 8 SCC 8



since they consider it as an affront to the sense of patriotism with which they plunged in the Freedom Struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters or their dependents. The preference in employment, allotment of accommodation and in admission to schools and colleges of their kith and kin etc., are also the other benefits which have been made available to them for quite sometime now.”

13. As regards standard of proof to maintain a claim under the scheme, the Supreme Court in **Gurdial Singh (supra)** observed as follows:

"7.The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the scheme. It should not be forgotten that the persons intended to be covered by scheme have suffered for the country about half a century back and had not expected



to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme. The case of the claimants under this scheme is required to be determined on the basis of the probabilities and not on the touch- stone of the test of beyond reasonable doubt. Once on the basis of the evidence it is probabalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence."

16. It is relevant to note that this Court directed the State Counsel to obtain information regarding the petitioner's imprisonment in Baripada jail but the jail authorities categorically stated that the information relates to the year 1941- 42 i.e., more than 79 years, which is not available in the jail records and therefore, it is not possible on their part to intimate the period of detention of the petitioner in the jail custody. Such being the situation it would be too much to expect the petitioner to produce clear-cut or cogent proof regarding his incarceration in the jail nearly 80 years ago. It is therefore, necessary that the petitioner's claim must be considered favourably without adopting a strict or technical approach.



17. As already stated, the very object of the Scheme is to honour those who had made sacrifices for the country by participating in the freedom movement. In fact, the very ideals that inspired the freedom movement have been acknowledged by the Constitution as something to be remembered and cherished by the citizens as a Fundamental Duty. Article 51-A(b) of the Constitution enjoins upon the citizens to '*cherish and follow the noble ideals which inspired our national struggle for freedom*'. This is implicit in the 1980 Scheme as crystallized in the guidelines of the Govt. of India referred to herein before. Thus, the action of the authorities must be to further the object of the Scheme and not to frustrate it.

18. In the instant case, there is at least evidence that the petitioner was incarcerated in Baripada Jail in connection with Praja Mandal movement though the exact duration is not forthcoming from the records. In the case of **Shatrughana Sahoo (Supra)** this Court accepted one co-prisoner certificate as being sufficient proof of the petitioner's claim. Here, the petitioner has produced one such certificate (affidavit) of a freedom fighter who was his co-prisoner. His claim has



otherwise not been held to be fake or not genuine. There is some material on record to show that he is revered and respected as a freedom fighter in his locality. Thus, taking an overall view of the matter, the insistence of the authorities for adducing strict proof of his claim by the petitioner does appear to be quite harsh and in any case, serves to frustrate the very object of the Scheme. This Court would however, hasten to add that it is not being laid down as a dictum that the requirements of the Scheme are to be relaxed in every case, but having regard to the peculiar facts and circumstances of the case at hand and in particular, considering the inability of the petitioner to produce strict evidence in support of his claim for the reasons indicated earlier, the authorities can take a lenient view.

19. Thus, from a conspectus of the analysis made hereinbefore, this Court is of the considered view that the claim of the petitioner for grant of Freedom Fighter's pension deserves to be accepted.

20. In the result, the writ application is allowed. The Opp. Party authorities are directed to sanction Freedom



Fighters' pension in favor of the petitioner from the date of his application. Since the petitioner is aged about 100 years, the authorities shall do well to pass necessary orders in this regard and ensure that the benefits including the arrears are disbursed to him as early as possible, preferably within one month from today.

.....
Sashikanta Mishra,
Judge

Orissa High Court, Cuttack.
The 23rd December, 2024/ A.K. Rana, P.A.

Signature Not Verified

Digitally Signed
Signed by: AJAYA KUMAR RANA
Designation: Personal Assistant
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 23-Dec-2024 12:21:44

