

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 8313 OF 2022

Smt. Kaushlabai wd/o. Ranchoddas
Vaishnav (Bairagi), Age 80 years,
Occu. Household through her G.P.A. Holder
son Vijay s/o late Ranchoddas Vaishnav (Bairagi)
Age: 50 years, Occu. Private job,
R/o. Bhoigalli Kadrabad Jalna,
Dist. Jalna (M.S.)

....Petitioner

Versus

- 1] Union of India
through the Secretary Ministry Home
Affairs, New Delhi – 4100011.
- 2] The State of Maharashtra
Through it's Secretary,
General Administration
Department (Freedom Fighter Division)
New Administrative Building,
Mantralaya, Mumbai.
3. The Collector,
The Collectorate Premises, Jalna.

....Respondents

Mr. R.M. Sharma, Advocate for the petitioner.

Mr. R.B. Bagul, Advocate for respondent No. 1/UOI.

Mr. P.K. Lakhotiya, Advocate for respondent No. 2/State.

**CORAM : RAVINDRA V. GHUGE &
ARUN R. PEDNEKER, JJ.**

**CLOSED ON : 22/09/2022
DELIVERED ON : 14/11/2022.**

JUDGMENT : [Per Arun R. Pedneker, J.]

- 1) Rule. Rule made returnable forthwith. With the consent of parties, heard finally.

2) We have heard Advocate R.M. Sharma for the petitioner, Advocate Shri Bagul for Union of India and Advocate P.K. Lakhotiya, advocate for respondent No. 2/State.

3) By this writ petition, the petitioner [wife of deceased Ranchoddas Vaishnav (Bairagi)] is praying for quashing of communications dated 22.3.1999 issued by Gaurav Samiti and 31.7.1999 issued by the Collector, Jalna and further communication dated 16.8.2000 of the Under Secretary to the Government of India, rejecting the freedom fighter's claim of the petitioner's deceased husband. She further prays for direction to the respondents to grant freedom fighter pension to the petitioner as the widow of a freedom fighter.

4) The petitioner is the widow of late Ranchoddas Vaishnav (Bairagi) and she is residing at Jalna. The petitioner claims that her husband, at the relevant time, was involved in Hyderabad Liberation Movement and his activities were prejudicial to the then occupying forces. The husband of the petitioner was an underground activist. The petitioner further submits that her husband had filed application in the year 1995 claiming for freedom fighter pension and he had given various reminders continuously to the authorities to process his application. The petitioner's husband, at the relevant time, had also filed revised application in prescribed proforma along with necessary information on 24.11.1997, supported by the required affidavits. Moreover, another application was filed to Union of India on

18.12.1997 to get the freedom fighter pension as per the Central Government's scheme of 1980.

5) It is submitted that the petitioner's husband also filed Writ Petition No. 2689/1996, challenging the non grant of pension and inaction on the part of the authorities to decide his freedom fighters pension claim application. The said writ petition was decided on 19.11.1996 by this Court by directing respondent No. 1 - Collector Jalna to decide and dispose off the application filed by the petitioner for grant of freedom fighter pension dated 25.7.1995 and revised application dated 24.11.1997 within a period of four months. The petitioner's husband thereafter filed Contempt Petition No. 3/2000 in Writ Petition No. 2689/1996 for inaction on the part of the respondents/authorities. The Collector, thereafter, decided the application filed by the petitioner's husband and contempt petition was accordingly disposed of.

6) The petitioner submits that due to old age of the husband of the petitioner, he could not visit the office of the Collector and therefore, he made representations to the Collector, Jalna and filed application in prescribed format, earliest being dated 25.7.1995 and subsequently dated 24.11.1997 and last on 30.11.2006 with affidavits. Thereafter, the petitioner's husband applied under the Right to Information Act, seeking information on the status of his application. The petitioner's husband was informed that his pension claim has been rejected by order dated 31.7.1999, not only by the

Collector, but also by the Freedom Fighter Committee, for having not fulfilled the conditions in Government Resolutions (GRs) dated 4.7.1995. Similarly, by letter dated 16.8.2000, the Central Government also informed that the claim of the petitioner's husband was rejected for not being eligible to get the freedom fighter's pension. However, the petitioner's husband has not challenged order dated 31.7.1999 in his litigation.

7) After the demise of the husband on 27.11.2017, the petitioner, being widow of Ranchoddas Vaishnav by present writ petition is challenging the impugned order passed by the State Government dated 31.7.1999 and the impugned rejection of the claim of freedom fighter pension of her husband by the Central Government dated 16.8.2000.

8) The petitioner being the widow of Ranchoddas Vaishnav has also filed an independent application dated 5.1.2018, which also had been rejected by the Government. By this writ petition, the petitioner also challenges the rejection of her own claim as a widow of freedom fighter. She contends that her husband had met with all the conditions required in terms of GRs and the scheme applicable, however, no freedom fighter's pension has been granted to the petitioner or her husband.

9) On perusal of the communication of the District Collector, Jalna dated 15.3.2008 produced by the petitioner, we find that the husband of the petitioner was specifically informed by letter dated

26.6.1999 about rejection of his claim and he has not challenged the said rejection. The aforesaid communication by District Collector, Jalna is as under :-

"आपले वरील अर्जाचे अनुषंगाने कळविण्यात येते की, सदर अर्जाची संचिका ही जालना जिल्हा गौरव समितीपुढे दिनांक २२.३.१९९९ रोजी झालेल्या बैठकीत मान्यतेसाठी ठेवण्यात आली होती. परंतु आपणास वेळोवेळी देण्यात आलेल्या नोटीसमधील कागदपत्रांची पूर्तता न केल्यामुळे तसेच शासन निर्णय दिनांक ४.७.१९९५ मधील निकषांची पूर्तता न केल्यामुळे संबंधीत अर्जदार श्री रणछोडदास ओंकारदास वैष्णव यांचा स्वातंत्र सैनिक निवृत्तीवेतन मिळणेबाबत अर्ज गौरव समितीने दिनांक २२.३.१९९९ रोजी नामंजूर केला आहे. तसेच त्यानंतर जिल्हाधिकारी जालना यांनी दिनांक ३१.७.१९९९ रोजी श्री रणछोडदास ओंकारदास वैष्णव यांचा स्वातंत्र सैनिक निवृत्तीवेतन मिळणेबाबत अर्ज नामंजूर केला आहे. वरील निर्णयाची माहिती आपले वडीलांना या कार्यालयाचे पत्र क्र.९९/आरबी/डेस्क. १/पोल.२/कावि. दिनांक २६.७.१९९९ अन्वये देण्यात आलेली आहे.

तसेच जालना जिल्हा गौरव समितीने व जिल्हाधिकारी जालना यांनी एकदा प्रकरण नामंजूर केल्यानंतर तेच प्रकरण परत मंजूर करण्याचा अधिकार या कार्यालयास व समितीस नाही याची कृपया नोंद घ्यावी"

English translation of the aforesaid communication is as under :-

"With reference to your application referred supra it is informed that, the file was put-up before the Jalna Zilla Gaurav Samiti in the meeting dated 22-3-1999 for their approval. However, due to non-compliance of the documents as demanded in the notices issued to you from time to time and non-compliance of the criteria as given in the Govt. Resolution dated 4-7-1995, the Gaurav Samiti has rejected the application of Shri Ranchchodas Onkardas Vaishnav of granting Freedom Fighters' Pension on 22-3-1999. Further, the District

Collector, Jalna also has rejected the application of Shri Ranchchodas Onkardas Vaishnav for granting Freedom Fighters' Pension on 31-7-1999. This decision has been informed to your father vide letter of this Office, No. 99/RB/Desk-1/Pol-II/Desk dated 26-7-1999.

Further, please take a note that once the application has been rejected by 'Jalna Zilla Gaurav Samiti' and Collector, Jalna, this Office and the Samiti have no powers to approve the same."

10) There is another communication by Under Secretary to the Government of India dated 16th August, 2000, by which he had been informed about the rejection of the claim of the petitioner's husband in respect of freedom fighter pension. Paragraph No. 6 of the said communication is as under :-

"6. As per the report of the State Government of Maharashtra dated 20.7.2000 you have not furnished the documents required to recommend your case for grant of central pension and therefore the State Government have regretted their inability in recommending your case for grant of central pension. In view of the fact that you did not fulfil the criteria for central pension and your case has not been recommended by the State Government, you are not eligible for the grant of pension."

11) However, although there was no challenge by the husband of the petitioner, to the order rejecting his claim to the Freedom Fighters Pension, we have considered the case of the petitioner on merits. The petitioner has not filed any material, demonstrating that the petitioner's husband was in jail for any underground activities. In the case of claim of Freedom Fighter's Pension on the basis of

underground activities of freedom fighter, there are conditions stipulated in GR dated 4th July 1995, which are as under :-

"इ) भूमिगत स्वातंत्र सैनिक :-

जे स्वातंत्र्य सैनिक "भारत छोडो" आंदोलनामध्ये १९४२-४४ या कालावधीत व हैद्राबाद मुक्ती संग्रामात १९४७-४८ मध्ये भूमिगत राहून कार्य करित होते, त्यांचेकडून खालीलप्रमाणे दाखले आवश्यक आहेत :-

१) स्वातंत्र्य संग्राम आंदोलनात सहभागी झाल्यामुळे अर्जदारास खालीलपैकी कोणत्या प्रकारच्या अडचणी, हालअपेष्टा सोसाव्या लागल्या त्यांचे दाखले सादर करावे.

अ) त्याला घरदार सोडून बाहेर रहावे लागले.

ब) शिक्षण सोडावे लागले किंवा त्याला शैक्षणिक संस्थेतून काढून टाकण्यात आले.

क) त्याला पोलीसांचा असा मार खावा लागला की, ज्यामुळे अपंगत्व आले.

२) ज्यांना कमीतकमी २ वर्षे शिक्षा झाली किंवा ज्यांना फरारी घोषित करण्यात आले व जे कमीत कमी दोन वर्षे फरारी राहिले असे त्यांचे भागातील दोन स्वातंत्र्य सैनिकांचे दाखले असे दाखल्यांचे सोबत दाखला देण्या-या स्वातंत्र्य सैनिकांचे तुरूंगवासाचे किंवा फरारी घोषित झाल्याची जाहिरात वा शासकीय आदेशांच्या प्रती जोडल्या पाहिजेत. तसेच, दाखला देणा-यांचे सत्यांकन शपथपत्र बरोबर जोडले पाहिजे.

३) भूमिगत राहिल्याचे त्यावेळचे शासकीय अभिलेख उपलब्ध असल्यास, त्याची प्रमाणित प्रत.

४) त्यावेळच्या वर्तमानपत्रात भूमिगत झाल्यासंबंधी अर्जदाराची नावासह माहिती छापली गेली असल्यास त्याची मूळ प्रत

५) जिल्हा गौरव समितीची शिफारस जिल्हा गौरव समितीने अभिप्राय देताना अभिप्रायासंबंधी निकषांचा तसेच त्याबद्दल त्यांना असलेल्या माहितीचा स्पष्ट उल्लेख करावा."

English translation of the portion of aforesaid GR is as under :-

"E) UNDERGROUND FREEDOM FIGHTER :-

The following documents are necessary to be submitted by those freedom fighters, who worked as underground freedom fighters during 1942-44 in 'Quit

India Movement' and during 1947-48 in 'Hyderabad Liberation Movement'.

1) The applicant should submit the certificate stating as to what type of problems and hardships he had to face on account of participation in freedom movement.

A) He had to remain away from his house and family.

B) Whether he had to give up education or he was expelled by any educational institution.

C) He was beaten up by the police in such a manner that he has become disabled.

2) It should be certified by two Freedom Fighters of their respective areas who had either undergone at least 2 years imprisonment or those who had been declared absconded or who had been absconding for at least 2 years. Such certificate should be accompanied with the copies of jail certificates about the imprisonment or copies of Government orders or an advertisement declaring the freedom fighter as absconder. Besides this, duly verified affidavit of the freedom fighter issuing the certificates, should also be enclosed with it.

3) Certified copy of the Government record, if available showing him that he was an underground (freedom fighter).

4) The original newspaper of the news describing the name etc. of the applicant, if he has worked as underground freedom fighter.

5) While recommending its opinion, the 'Zilla Gaurav Samiti' should clearly mention about the criteria of remarks and give the information thereof."

12) The requirement to get Freedom Fighter's Pension is that the

application has to supported by an affidavit of two freedom fighters, who have suffered atleast two years imprisonment for their proclaimed offence and has to be absconding for atleast two years from the area where the person claims to be a freedom fighter. The freedom fighter, who has been imprisoned as mentioned above is competent to give affidavit in support of the Freedom Fighter's Application, stating that the applicant freedom fighter was also his accomplice and was involved in freedom fighting activity along with him.

13) In the present case, the husband of the petitioner has filed his own affidavits along with the application, which serves no purpose. The application has to be supported by the affidavit of the freedom fighter, who has suffered incarnation or imprisonment for a period of two years as noted above. In absence of any material, which shows that the husband of the petitioner was involved in freedom fighter's activities and in view of the fact that the State Government as well as the Central Government rejected the applications of the petitioner's husband, which were not challenged by the petitioner's husband, the present writ petition is liable to be dismissed.

14) The Hon'ble Supreme Court while considering a case of grant of Freedom Fighter's Pension, in the case of **Bhaurao Dagadu Paralkar Vs. State of Maharashtra and others**, reported in (2005) 7 SCC 605 has held as under :-

"When one talks of freedom fighters the normal image

that comes to one's mind is a person who had suffered physically and mentally for unshackling chains of foreign rule in our country. The normal reaction when one sees such person is one of reverence, regard and respect. The brave courageous deeds of these persons is a distinctive part of India's fight for freedom. Many persons lost their lives, many were injured and large number of such persons had languished in jails for various periods. The common thread which must have passed through the minds of these people is their sole objective to see that their motherland has a government of its own, free from foreign rule. But these images get shattered when one hears that with a view to gain financially, vague documents have been produced, false claims of participation in the freedom movement have been made. It is a sad reflection on the moral values of the citizens of our country that a large number of cases have surfaced where it has been established that people who were not even born when the freedom fight was on or the country got independence or were toddlers when the country got independence have applied for and managed to get "Sammanpatra", pensionary and other allied benefits. The appeals at hand deal with such allegations. This is "Asanman" (disrespect) to the whole country and such dishonourable ventures have to be dealt with strenness to send out a message that they are not freedom fighters, but are traitors sullyng the name of freedom fight."

15) Relying upon the the aforesaid case of **Bhaurao Paralkar** (supra), this Court in the case of **Damu Punjaji Shejul Vs. The State of Maharashtra**, reported in **2022 (4) Mh.L.J. 295**, while dealing with the applicants who falsely claimed themselves to be freedom fighters and bring disrespect to the names of the freedom fighters, in paragraphs 28 and 29 has held as under :-

"28. The judgment delivered by the learned Division Bench of this Court to which one of us is a party (Coram : Ravindra V.Ghugre, J.) in Kalidas Nivrutti (supra) is cited. This Court had referred to the judgments of the Hon'ble Apex Court in several matters and has considered the object of the scheme. It would be apposite to reproduce paragraph No.19 hereunder :-

"19. In the case of State of Orissa Vs. Choudhuri Nayak (Dead) [(2010) 8 SCC 796, the Hon'ble Apex Court has held as follows :-

"10. This Court in Mukund Lal Bhandari V. Union of India (1993 Supp.(3) SCC 2)] Gurdial Singh V. Union of India [(2001) 8 SCC 8] and State of M.P. Vs. Devkinandan Maheshwari [(2003) 3 SCC 183], considered the object of the Freedom (10) Writ Petition No.3447 of 2011 Fighters Pension scheme and indicated what should be the approach of the authorities in dealing with the applications for pension under the scheme as follows :-

(i) The object of the scheme was to honour, and where necessary, to mitigate the sufferings of those who had struggled to achieve independence for the country. Many freedom fighters, even though they did not have sufficient income to maintain themselves, would even be reluctant to receive the Pension under the Scheme, as they would consider it as putting a price on their patriotism. The spirit of the Scheme being both to assist and honour the freedom fighters and acknowledge the valuable sacrifices made by them, the authorities should treat the applicants with respect and courtesy. The scheme should not be converted into some kind of routine scheme for payment of compensation.

(ii) The persons intended to be covered by the Scheme are those who sacrificed and suffered for achieving the independence of the country, without expecting any reward for their sacrifice and sufferings. Therefore they can not be expected to maintain and produce perfect records or documents about their

participation in the freedom struggle.

(iii) Once the country has decided to honour freedom fighters by granting a pension, the approach of the authorities implementing the scheme should not be obstructionist or technical while examining the applications and documents produced, but be practical having regard to the fact that most of the applications (11) Writ Petition No.3447 of 2011 are by old persons with no proper records.

(iv) The criterion for pension under the scheme is not age, but participation in freedom struggle. The freedom fighters pension can, therefore, in exceptional cases, be granted even to those who were minors at the time of struggle, if evidence clearly showed that they had participated in the freedom struggle and fulfilled the requirements of the scheme.

The above principles were spelt out to ensure that no genuine freedom fighter was denied pension under the scheme.

11. Grant of freedom fighters' pension to bogus claimants producing false and fabricated documents is as bad as genuine freedom fighters being denied pension. The only way to respect the sacrifices of freedom fighters is to ensure that only genuine freedom fighters get the pension. This means that the Government should weed out false and fabricated claims and cancel the grant when the bogus nature of the claim comes to light.

29. Considering the record before us, we are of the view that, by entertaining applications like the one presented by the petitioner, which has been rejected on 2 occasions and he has approached this Court after 11 years of the rejection, the scheme would be converted into a bounty and those who have actually rendered valuable sacrifices, may remain deprived. This would amount to an abuse of the scheme. The principles carved out by the Hon'ble Supreme Court were to ensure that no genuine freedom

fighter should be denied the pension. If the claim of the present petitioner is accepted, less said the better, it would amount to an abuse of the scheme.”

16) In view of the law laid down by this Court in the case of **Damu Shejul** (supra) and the above stated judgment of Supreme Court in the case of **Bhaurao Paralkar** (supra), all care has to be taken to see that the real freedom fighters do not suffer and their claims are accepted, but at the same time, fictitious claims have to be sternly dealt with on merits.

17) In the instant case, there is no case made out to claim freedom fighter’s pension. Thus, this petition is liable to be dismissed for the reasons that the petitioner’s husband did not challenge the order of rejections and the petitioner cannot challenge the same belatedly. On merits also, we hold that the petitioner is not entitled to claim pension of her husband as she has not been able to produce any material to show that the petitioner’s husband was a freedom fighter. In the result, the petition stands dismissed.

18) Rule is discharged accordingly.

[ARUN R. PEDNEKER J.]

[RAVINDRA V. GHUGE, J.]

SSC/