

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No.9800 OF 2020

Between:

Gollapudi Varamma

... Petitioner

And

The Union of India & others

... Respondents

JUDGMENT PRONOUNCED ON: 29.11.2023

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**WRIT PETITION No.9800 OF 2020****% 29.11.2023****Between:**

Gollapudi Varamma

... Petitioner**And**

\$ The Union of India & others

... Respondents< **Gist:**> **Head Note:**

! Counsel for the Petitioner : Mr.K.Prabhakar Rao

^ Counsel for the Respondents 1&2 : Mr.G.Praveen Kumar,
Dy.Solicitor General of India,

^ Counsel for respondents 3 &4 : G.P. for Revenue

? Cases Referred:

(1) (2022) SCC Online SC 232

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. NO. 9800 OF 2020****ORDER :**

Heard Mr Kadaru Prabhakar Rao, learned counsel appearing on behalf of the petitioner and Mr G.Praveen Kumar, learned Deputy Solicitor General of India appearing on behalf of respondents 1 and 2 and learned Government Pleader for Revenue appearing on behalf of respondents 3 and 4.

2. This Writ Petition is filed to issue a Writ of Mandamus to declare the action of the 2nd respondent in rejection of pension to the petitioner vide orders dated 10.06.2020 in File No:52/CC/1/2018-FF (HC-C) in pursuance to para 1.5 of the Freedom Fighters Pension, Revised Policy Guidelines, dated 06.08.2014 as illegal, arbitrary and against the Article 14 of Constitution of India and principles of natural justice and violation of Freedom Fighters Pension Scheme, 1972 and the Swatantra Sainik Sanman Pension Scheme, 1980 and against the judgements passed by the Hon'ble Apex Court in similar matters and consequently, direct the 2nd respondent to sanction the pension considering the application in File no. 112/944/97 and

representations of the petitioner dated 22.06.2005, 25.09.2017 in favour of petitioner as dependant of Late G. Gopal Rao.

3. The case of the Petitioner as per the averments made by the petitioner in the affidavit filed by the petitioner in support of the present Writ Petition in brief, are as follows:

a) The petitioner's late husband had submitted an application before the 2nd respondent vide File No. 112/944/97 for sanction of pension under Swatantra Sainik Sanman Scheme, 1980 on account of his suffering during freedom struggle and the Special Screening Committee was pleased to consider the petitioner's husband application and passed an unanimous resolution and recommended to the Government of India for sanction of pension vide its Agenda Serial No.273 dated 05.01.1997.

b) Thereafter, the 2nd respondent in pursuance of the said recommendation, further directed the 3rd respondent, State Government vide letter No.112/2/2003 F.F. (HC) Misc., dated 26.05.2003 to enquire into identity and genuinity of records submitted by the petitioner's husband and sought for a report. Accordingly, the Government of Andhra Pradesh, Revenue,

(F.F.I) Department vide letter No.1366/FF.I/A2/2804-1 dated 30.01.2004 enquired and submitted a report to the 2nd respondent duly recommending for grant of Freedom Fighters Pension to the petitioner's husband.

c) Subsequently, the petitioner's husband passed away on 17.05.2005 during the pendency of the pension application proceedings. Therefore, the petitioner is entitled for Freedom Fighter Pension as dependent of political sufferer, under Swatantra Sainik Sanman Scheme 1980, and had filed an application on 24.06.2005 before the 2nd respondent to consider the petitioner's case for grant of pension on account of her husband's sufferings in pursuance of pending application vide File No.112/944/97.

d) However, there was no response from the 2nd respondent. Aggrieved by the same, the petitioner filed W.P No. 4224 of 2017 and the said writ petition was disposed of on 06.02.2020, directing the respondents to consider the application of the petitioner. Accordingly, the 2nd respondent passed orders on 10.06.2020, rejecting the application of the petitioner as per para 1.5 of circular orders issued revising the provisions of Swathanthra Sainik Samman Yojana, 1980. The 2nd respondent

contended that since no Freedom Fighters Pension was sanctioned to the petitioner's husband during his life time, as such the dependent is not entitled for family pension as per para 1.5 of the revised policy guidelines dated 06.08.2014 and further that there is some discrepancy in the name of the petitioner's father-in-law. Hence, this writ petition.

4. The Counter Affidavit filed by Respondent Nos. 1 and 2, in brief, indicates the stand of Respondent Nos.1 and 2 as under:

a) The claim of the Petitioner's husband for pension was received by the Ministry through State Government vide letter dated 17.02.2003, which was returned back to the State Government due to variation in the name of the applicant's father and further, the petitioner's husband's claim has never been received from the State Government. Even the husband of the Petitioner had never approached the Ministry regarding his claim. However, after a prolonged gap of 12 years, the Petitioner had filed W.P No. 42241 of 2017 before this court to grant Swatantrata Sainik Samman dependent Pension. The claim of the Petitioner is grossly barred by limitation and also creates doubt regarding genuineness.

b) In the year 2007, a decision was taken by the State Government to re-verify all the cases of freedom fighter pension as it was observed that a large number of fake applicants with bogus claims had obtained freedom fighter pension by submitting forged documents to establish their sufferings. This decision was conveyed by the State Government, vide its letter No.35649/FF.1/A2/2005, dated 13.04.2007. The State Government accordingly, carried out this re-verification exercise; however, they had also not forwarded re-verification report and recommendation in respect of petitioner's husband. Hence, the claim of the Petitioner is also not sustainable on this ground also.

c) Due to discrepancies and ambiguities relating to the documents and also due to non-production of required certificate, benefit of the Scheme could not be extended and the Petitioner's claim for dependent pension is not tenable in the eye of law as well as provisions of Swatantrata Sainik Samman Yojana.

d) Moreover, the representations dated 22.06.2005 and 25.07.2017 had never been received by the respondents. However, copy of the representations were obtained from the Petitioner and examined in accordance with the provisions of

Swatantrata Sainik Samman Yojana and it was found that the husband of the Petitioner had never been sanctioned Swatantrata Sainik Samman pension during his life time as such the petitioner was also not entitled for grant of Swatantrata Sainik Samman dependent pension in terms of Clause 1.5 of revised guidelines of Swatantrata Sainik Samman Yojana and accordingly the claim of the Petitioner was rejected vide letter dated 10.06.2020.

e) Furthermore, all persons who took part in freedom movement in some way or the other are not eligible for Samman Pension only those freedom fighters. Who fulfill the conditions of the Swatantrata Sainik Samman Yojana by furnishing the proof of claimed sufferings of the nature and in the manner specified in the Swatantrata Sainik Samman Yojana itself are entitled for the benefits of the said scheme. **Hence, a positive recommendation of the State Government is therefore, not binding on the Central Government, if the claim does not satisfy the eligibility criteria and evidentiary requirements prescribed under the Central Scheme.**

f) The decisions related to the same shall be at the instance of the Government of India and the pension cannot be claimed

as a matter of right contrary to the policy provided. Hence, the Writ Petition is not maintainable and deserves to be dismissed.

PERUSED THE RECORD :

5. The order impugned dated 10.06.2020 of the Secretary to the Government of India, reads as under:

"I am directed to refer to the order dated 06.02.2020 (copy enclosed) passed by the Hon'ble High Court for the State of Telangana in Writ Petition no. 42241/2017 Bed by Smt. Gollapudi Varamma for grant of Freedom Fighter Family Pension and to state that the Hon'ble Court has given the following directions:

that the writ petition can be disposed of directing the respondents to consider the representations submitted by the petitioner on 22.06.2005 and 25.09.2017 and pass appropriate orders in accordance with law within a period of eight (05) weeks from the date of receipt of a copy of this order.."

2. In pursuance of the above directions of the Hon'ble Court, Smt. Gollapudi Varamma was requested to forward the copies of the representations dated 22.06.2005 & 25,09.2017 referred in the Court Order as these were not received in the Ministry.

3. Smt. Gollapudi Varamma has forwarded the copies of the representations dated 22.06.2005 & 25.09.2017 vide her letter dated 08.05.2020 (copy enclosed) and her claim

has been examined on the basis of these representations and available records in the Ministry.

4. It is pertinent to mention here that vide this Ministry's letter no. 112/944/97- FF(HC) dated 04.05.2005 (copy enclosed), the claim of Late Shri G. Gopal Rao, husband of the petitioner, was referred back to the State Government of Andhra Pradesh for clarification on discrepancies between the claim made in application and the reports furnished by the State Government. However, there was no response from the State Government. The SSSY is a record based scheme and in absence of submission of the documents from the State Government the case of Shri G. Gopal Rao could not be considered in his lifetime. Moreover, after a lapse of 12 years, Smt. Gollapudi has pursued this matter in Court by filing WP no. 42241/2017 in the High Court for the State of Telangana.

5. It is further stated that Freedom Fighter Pension was never sanctioned in the name of Late Shri G. Gopal Rao during his lifetime and Para 1.5 of the revised policy guidelines dated 06.08.2014 states that "No pension shall be sanctioned in the name of freedom fighter after his/ her death even if his/her matter was under examination. This also entails that no Life time arrears or dependent pension shall be sanctioned to his/her spouse/ daughter after the death of the freedom fighter."

6. The claim of Smt. Gollapudi Vamma has been examined in light of the above cited Court Order dated 06.02.2020 after considering the representations dated 22.06.2005 & 25.09.2017 and all the records available in the Ministry and in consonance with the provisions of the Swatantrata Sainik Samman Yojana, 1980. **Since the pension was never sanctioned to her husband during his lifetime, she has not been found to be eligible for family pension as per the Para 1.5 of the revised policy guidelines dated 06.08.2014 which is stated above.**

7. In view of the above, the claim of Smt. Gollapudi Vamma does not meet the eligibility criteria of the SSS Yojana, 1980. It is therefore, regretted that she is not eligible for claim of Freedom Fighter Family Pension under SSS Yojana, 1980. Hence her claim is hereby rejected.

8. It is requested that this decision may please be communicated to Smt. Gollapudi Vamma w/o Lato Shri G. Gopal Rao R/o Somavaram Villaga, Wyra Mandal, Khammam District, Telangana.

9. This communication is issued in compliance of above cited Court Order dated 06.02.2020 in respect of Writ Petition no. 42241/2017 filed by Smt. Gollapudi Vamma.

10. This issues with the approval of the Competent Authority.

6. Counter affidavit filed by respondent Nos.1 and 2, in particular, para 10, reads as under:

"10 It is further submitted that moreover, in the year 2007, a decision was undertaken by the State Government of Andhra Pradesh (Telangana) to re-verify all the cases of freedom fighter pension as it was observed that a large number of fake applicants with bogus claims had obtained freedom fighter pension by submitting forged documents to establish their sufferings. This included all the cases which were recommended by the Screening Committee and to re-verify all cases including the already sanctioned cases as well as fresh applications. This decision was conveyed by the State Government, vide its letter no. 35649/FF.1/A2/2005 dated 13.04.2007. The re-verification report and recommendation in respect of Late Shri Gollapudi Gopal Rao was also never received in this Ministry. Further, the petitioner has kept silent on the issue for 12 years and agitated the matter in 2017 by filing WP no. 42241/2017. The decision taken by the answering Respondent is in consonance of policy dated 06.08.2014 of SSS Yojana which is just and proper and in accordance with the guidelines/provisions of SSS Yojana.

7. The Report of the Government of Andhra Pradesh Revenue (FF.I) Department, Letter No.1366/FF.I/A2/2804-1, dated 30.01.2004, reads as under:

"From
Deputy Secretary to Government,
Revenue (FF.I) Department,
R.B.Secretariat,
HYDERABAD.

To
The Under Secretary to Govt. of India,
Ministry of Home Affairs (FF Division),
Lok Nayak Bhavan, Khan Market,
New Delhi. (W.Es.).

Sir,

Sub:- Swatantra Sainik Samman Pension Scheme, 1980 –
Hyderabad Special Screening Committee – Regarding.

Ref:- 1. Your Letter No.112/2/2003-FF(HC)Misc.,
dt.26.05.03.

2. Application from Sri Gollapudi Gopala Rao, S/o. Late
Krishnaiah, R/o. Somavaram(V), Wyra Mandal, Khammam
District, dt. 12.12.03.

3. Application from Sri Narvaneni Koteswara Rao, S/o. Late
Venkata Narasaiah, R/o. M.V.Palem (V), Khammam (Rural)
Mandal, Khammam District, dt.12.12.03.

I am directed to invite your attention to the
reference 1st cited and to enclose the references 2nd
and 3rd cited together with its enclosers in original.
It is informed that the cases of Sri Gollapudi Gopal
Rao and Sri Narvaneni Koteswara Rao of Khammam
District has already been recommended by the
Hyderabad Special Screening Committee and also
recommended by the District Collector, Khammam
after due enquiry and sent his report enclosing
necessary documents and as such this State

Government has also recommended the cases for grant of Central Freedom Fighters Pension vide Letter No.12.02.03.

2. I request you to kindly take further necessary action in the matter for sanction of Central Freedom Fighters Pension under SSSPS, 1980 at an early date."

DISCUSSION AND CONCLUSION :

8. This Court opines that primarily on three reasons, the application of the petitioner seeking grant of Freedom Fighter Family Pension has been rejected vide order impugned dated 10.06.2020 of the 2nd Respondent;

(a) Firstly, that the clarifications as sought for vide the Ministry's letter dated 04.05.2005 from the State Government had not been answered by the State Government,

A bare perusal of the order impugned dated 10.06.2020 passed by the 2nd Respondent para 4 clearly indicates that on the ground that the clarifications as sought from the State Government had not been furnished in pursuance to the Ministry's letter dated 04.05.2005, the application of the petitioner vide File No.112/944/97-FF (HC) had been rejected.

(b) Secondly, that after lapse of 12 years, the petitioner had pursued the matter.

Para 4 of the order impugned dt. 10.06.2020 of the 2nd Respondent indicates that the Petitioner approached after a lapse of 12 years and the same has been one of the ground for rejecting Petitioner's request for sanction of Freedom Fighters Pension.

(c) Thirdly, the case of late Shri G.Gopal Rao, husband of the petitioner could not be considered in his life time and therefore as per para 1.5 of the Revised Policy Guidelines dt. 06.08.2014 the Petitioner is ineligible for grant of Freedom Fighter Pension.

Para 5 of the order impugned dt. 10.06.2020 of the 2nd Respondent indicates that as per 1.5 of the Revised Policy Guidelines dt. 06.08.2014 Petitioner's case cannot be considered for sanction of Freedom Fighters Family Pension. This also entails no life time arrears or dependent pension shall be sanctioned to his/her spouse/daughter after the death of the Freedom Fighter.

9. Learned counsel appearing on behalf of the respondents placed reliance on Para 1.5 of the revised policy guidelines dated 06.08.2014 and contended that as per Para 1.5 of the revised policy guidelines dated 06.08.2014 the petitioner is not entitled for the relief.

10. Para 1.5 of revised policy guidelines issued by the 2nd respondent, reads as under:

"1.5 Sanction of pension after the death of Freedom Fighter – No pension shall be sanctioned in the name of the freedom fighter after his/her death eve if his/her matte was under examination. This also entails that no Life time arrears or dependent pension shall be sanctioned to his/her spouse/daughter after the death of the freedom fighter."

11. This Court opines that three grounds raised in the impugned order by the 2nd Respondent herein are frivolous contentions and the same are untenable. The said grounds cannot be pleaded by the 2nd Respondent to deny relief to the Petitioner herein.

12. In so far as the first ground is concerned the Petitioner cannot be penalised because of the lapse of the State Government and Central Government in processing Petitioner's application for sanction of Freedom Fighters Pension because admittedly as borne on record the recommendation in favour of the petitioner's husband is dt. 05.01.1997. The second ground of delay of 12 years raised by the 2nd Respondent in the order impugned dt.

1.06.2020 passed by the 2nd Respondent is untenable since delay has been on the part of the Respondents in acting promptly in response to the application made by the Petitioner's late husband in the year 1997 and not the Petitioner herein. The third ground i.e., Clause 1.5 of the revised guidelines has no application to the case on hand in the present writ petition since the guidelines which came subsequently on 06.08.2014 cannot have retrospective effect since the application of the Petitioner's husband and recommendation in favour of Petitioner's husband for sanction of Freedom Fighters Pension was way back in the year 1997.

13. The Division Bench of High Court of Kerala at Ernakulam in W.A.No.1926/2016 in Union of India Vs. State of Kerala vide its judgment dt. 07.10.2016, in identical circumstances dealt with Clause 1.5 of Revised Pension Scheme and observed that it is wholly unnecessary to interpret the said clause since the same has no applicability to the case on hand since the guidelines cannot have retrospective effect.

14. Clause 1.5 of the Revised Pension Scheme which came into force w.e.f., 06.08.2014 cannot be applied retrospectively by the 2nd Respondent to deny relief to the Petitioner herein for the following reasons :

The three specific contentions as pleaded by the petitioner in the affidavit filed by the petitioner in support of the present writ petition given below had not been disputed by the respondents in the counter affidavit filed by the respondents 1 and 2 and the order impugned dated 10.06.2020 clearly indicates that the claim made by the petitioner was reverted back to the state Government for certain clarifications.

a) In the present case the application of the petitioner vide File No.112/944/1997, for sanction of pension under Swatantra Sainik Sanman Scheme 1980 was placed before the Special Screening Committee constituted by the Government of India and the said committee had passed a unanimous resolution and recommended to the Government of India for sanction of pension to Petitioner's husband vide its Agenda S.No.273, dt. 05.01.1997.

(b) The Respondent No.2 in pursuance of the said recommendation further directed the 3rd Respondent State Government vide Letter No.112/2/2003 F.F. (HC) Misc, dt. 26.05.2003 to enquire into identity and genuinity of records submitted by Petitioner's husband and sought a report.

(c) The Government of Andhra Pradesh, Revenue (FFI) Department, vide Letter No.1366/FF.I/A2/2804-1, dt. 30.01.2004 enquired and submitted a report to the 2nd Respondent duly recommending for grant of Freedom Fighters Pension in favour of Petitioner's husband. In the present case this Court therefore opines that the Petitioner cannot be penalised because of the delay on the part of the Respondents in considering Petitioner's application for grant of Freedom Fighters Pension.

15. The plea of the petitioner that lapse of 12 years occurred on the part of the petitioner in approaching the Court which has been pleaded in the counter affidavit and which also reflects in the order impugned dated 10.06.2020 is untenable, in view of the fact that the issue involves petitioner's fundamental right to life and

petitioner's fundamental right to livelihood. This Court opines that the rules which says that the Authority concerned may not enquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion and there is no inviolable rule that whenever there is delay, the Authority concerned must necessarily refuse to entertain the grant of relief.

16. The Apex Court in a judgment reported in (2022) SCC Online SC 232 in Sunil Kumar Rai and others v State of Bihar and others, dated 21.02.2022 at paras 7, 10 and 11 dealing on the point of delay observed as under :

Para 7 : Article 32 of the Constitution provides for a Fundamental Right to approach the Supreme Court for enforcement of the Fundamental Rights. The founding fathers contemplated that the very right to approach this Court when there is a violation of Fundamental Rights, should be declared as beyond the reach of Parliament and, therefore, it is as a part of judicial review that the right under Article 32 has been put in place and invoked from time to time. That in a given case, the Court may refuse to entertain a petition under Article 32 of the Constitution is solely a part of self-restraint which is exercised by the Court having regard to various considerations which are

germane to the interest of justice as also the appropriateness of the Court to interfere in a particular case. **The right under Article 32 of the Constitution remains a Fundamental Right and it is always open to a person complaining of violation of Fundamental Rights to approach this Court.** This is, no doubt, subject to the power of the Court to relegate the party to other proceedings.

Para 10 : We may take up the first preliminary objection by the State, namely, that the petitioners have approached this Court with considerable delay. The impugned Notification is issued in August, 2016. A person cannot be said to be aggrieved merely upon the issuance of an instrument or of a law by itself. In fact, the Court may refuse to examine the legality or the validity of a law or order on the basis that he may have no locus standi or that he is not an aggrieved person. No doubt, the Courts have recognized challenge to even a legislation at the hands of a public interest litigant. However, we may only indicate, ordinarily, the Court may insist on a cause of action and therefore, a person must be an aggrieved party to maintain a challenge. We must not be oblivious to the fact that based on the Notification, it appears that FIRs came to be lodged by persons claiming to be members of the Scheduled Tribe community and seeking to invoke the 1989 Act. The FIRs lodged in the year 2020 occasioned the

petitioners to approach Courts seeking protection under Section 438 of the Cr.P.C. Two of the petitioners have not secured such protection. Petitioner No. 1, it appears was not arrested. But even assuming for a moment, that the petitioners have come with some delay, we find reassurance from the opinion of this Court in the judgment reported in Assam Sanmilita Mahasangha v. Union of India (2015) 3 SCC 1, wherein this Court has inter alia held as follows:—

32. “.....Further, in Olga Tellis v. Bombay Municipal Corpn., it has now been conclusively held that all fundamental rights cannot be waived (at para 29). Given these important developments in the law, the time has come for this Court to say that at least when it comes to violations of the fundamental right to life and personal liberty, delay or laches by itself without more would not be sufficient to shut the doors of the court on any petitioner.”

Para 11 : Therefore, we do not think we should be detained by the objection. We would think that delay by itself cannot be used as a weapon to Veto an action under Article 32 when violation of Fundamental Rights is clearly at stake.

17. This Court, taking into consideration the facts as pleaded by the petitioner in the affidavit filed by the

petitioner in support of the present writ petition that there had been clear recommendation in favour of the petitioner's husband way back on 05.01.1997 and further the fact that the 2nd respondent directed the 3rd respondent - State Government vide letter dated 26.05.2003 to enquire into identity and genuinity of records submitted by petitioner's husband and sought for a report way back in the year 2003 itself which are not disputed by the respondents 1 and 2 in the counter affidavit filed by respondents 1 and 2 and even admitted and indicates in the order impugned dated 10.06.2020 that the claim of the petitioner was referred back to the State Government of Andhra Pradesh for certain clarifications in the matter and also recommendation of the State Government vide its Report dated 30.01.2004 (referred to and extracted above) duly recommending for grant of Freedom Fighter Pension in favour of petitioner's husband, this Court opines that all the pleas taken by the 2nd respondent in rejecting the request of the petitioner for sanction of pension vide orders dated 10.06.2020 in File No.52/CC/1/2018-FF (HC-C) are totally unjust, unreasonable, illegal and contrary to the very spirit of the

claim and the object of the scheme itself and hence untenable and rejected.

18. Taking into consideration the aforesaid facts and circumstances, and duly considering the law laid down by the Apex Court in the Judgment reported in (2022) SCC Online SC 232 in "Sunil Kumar Rai and others v State of Bihar and others" (referred to and extracted above), the writ petition is allowed, setting aside the order impugned dated 10.06.2020 and the 2nd respondent is directed to reconsider the application in File No.112/944/97 duly taking into consideration the recommendation of the State Government dated 30.01.2004 for grant of Freedom Fighter Pension in favour of the petitioner's husband and all the material on record and pass appropriate orders in accordance law, in conformity with principles of natural justice by providing an opportunity of personal hearing to the petitioner and pass appropriate orders within a period of four (04) weeks from the date of receipt of a copy of this order and duly communicate the decision to the petitioner. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 29.11.2023

Note : L.R. Copy to be marked.
(B/o) *Yvkr.*