

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 6818 OF 2010
[Arising out of SLP(C) No(s).22277/2004]

STATE OF ORISSA

Appellant(s)

VERSUS

CHOUDHURI NAYAK (DEAD) THR.LRS. & ORS.

Respondent(s)

WITH C.A. NO.6819 OF 2010 [Arising out of SLP(C) 22279/2004]

Date: 20/08/2010 This matter was called on for judgment today.

For Petitioner(s) Ms. Kriti Renu Mishra, Adv.

Mr. P. Parmeswaran, Adv.

For Respondent(s) Ms. Sushma Suri, Adv.

Mr. Debasis Misra, Adv.

Ms. K. Sarada Devi, Adv.

Hon'ble Mr. Justice R.V. Raveendran pronounced the judgment of the Bench comprising of His Lordship and Hon'ble Mr. Justice H.L. Gokhale.

Leave granted.

Appeals are allowed in terms of the signed order.

(Ravi P. Verma)
Court Master

(M.S. Negi)
Court Master

[Signed reportable judgment is placed on the file]

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6818 OF 2010
[Arising out of SLP [C] No.22277/2004]

State of Orissa

... Appellant

Vs.

Choudhuri Nayak (dead by LR) & Ors.

... Respondents

With

CIVIL APPEAL NO. 6819 OF 2010
[Arising out of SLP [C] No.22279/2004]

Union of India

... Appellant

Vs.

J U D G M E N T

R.V.RAVEENDRAN, J.

Leave granted.

2. Choudhuri Nayak, first respondent in these appeals (who died during the pendency of the special leave petitions leaving his widow as his legal representative) filed an application on 18.9.1978 claiming pension under the Freedom Fighters Pension Scheme, 1972 ('scheme' for short). In his application, he claimed that he was convicted by the Sub-Divisional Officer, Bhadrak, under Rule 38(5) of the Defence of India Rules ('DIR' for short) and sentenced to seven months' simple imprisonment. He further stated that in pursuance of such conviction and sentence, he was taken into custody and suffered imprisonment from 19.3.1943 to 10.10.1943 in Balasore jail. The said application for freedom fighter's pension was accompanied by a typed unsigned copy of a certificate dated 12.3.1974 said to have been issued by the Superintendent, Balasore District Jail, certifying that the first respondent was convicted and sentenced to seven months simple imprisonment by Sri. P.C.Mohanty, Sub-Divisional Officer, Bhadrak under Rule 38(5) of DIR on 10.3.1943 and he was confined in the said jail from 19.3.1943 till 10.10.1943. Therefore first respondent was asked to produce some acceptable proof of imprisonment. In the year 1982, he produced a certified copy of the Entries made on 12.10.1943 in the criminal case register (Sl.No. 278 of Challan Register) being brief summary of the case decided by Sri. P.C. Mohanty, SDO in case No. G.327of 1942. The said certified copy was obtained by the first respondent from the Record Section of SDO's office on 30.12.1981. The said certified copy showed that Sri P.C. Mohanty, SDO, Bhadrak

had made a final order in case titled Emperor v. Salar and 32 Others, in regard to offences punishable under sections 147, 35 to 38 IPC and Rule 38(5) of DIR. The name 'Choudhari' also figured in the names of accused who were convicted and sentenced in that case.

3. The State Government accepted the said certified extract of Challan Register as proof of first respondent having undergone imprisonment for more than six months and processed his application and recommended his case for pension. The first respondent was sanctioned Freedom Fighters Pension with effect from 1.8.1980 by the Central Government and with effect from 1.1.1984 by the State Government. The first respondent was being paid pension in terms of the scheme ever since then.

4. A public interest litigation (OJC No. 15977/1997) was filed by one S.Sanyasi Charan Das before the Orissa High Court alleging that the first respondent was drawing freedom fighter's pension by producing false and fabricated documents and that an inspection of the Challan Register in the office of SDO, Bhadrak would show that the name of the first respondent had been fraudulently inserted among the names of accused who were convicted and sentenced in the criminal case (with respect to which the first respondent had produced the certified copy). It was also stated that the first respondent was hardly fourteen years old in 1943 and he had concealed his date of birth (13.9.1928) while applying for and securing the pension and had falsely shown his age as 56 years in his application dated 18.9.1978 (which would make him 21 years old in 1943). In view of these allegations, the State Government conducted an inquiry through the Superintendent of Police, Bhadrak. The said inquiry disclosed that in the Entries in the Challan Register (at Sl.No. 278), the name of first respondent and another ("Choudhari" and "Banabehari") had been inserted

among the names of persons convicted and sentenced, shown under the column "final order passed with details of sentence and date of decision" and that such insertion was clearly visible even on a casual inspection as the two names were in a different handwriting and different ink and impression. The enquiries also revealed that the date of birth of first respondent was shown as 23.9.1926 in the school records and was recorded as 13.9.1928 in his service record.

5. The State Government therefore issued a show cause notice dated 14.12.2000 to the first respondent asking him to show cause why the grant of pension should not be cancelled in view of pension being secured by fabricating documents. On the basis of the information furnished by the State Government, the Central Government also issued a similar show cause notice dated 19.7.2001 to the first respondent. The first respondent sent a reply denying knowledge of any addition or alteration in the entries relating to Sl.No.278 in the Challan Register. He however admitted that his date of birth was 13.9.1928 as entered in the Service Record but did not explain why he had shown a wrong age in the application for pension. After considering the explanation given, the Central Government, by order dated 14.8.2001 cancelled the freedom fighters pension granted to first respondent. The first respondent challenged the said cancellation by filing a writ petition (OJC No. 11859/2001) before the Orissa High Court. The High Court by the impugned order dated 14.10.2003 allowed the writ petition on the ground that there was no justification for the cancellation, as the State Government had recommended the case of first respondent only after verification of the application and records. The High Court also referred to some certificates produced by the first respondent, alongwith the writ petition, allegedly issued

by his co-prisoners about his imprisonment. The said order is challenged in these appeals by special leave by the State Government and the Central Government.

6. The Government of India cancelled the pension, by a detailed reasoned order dated 14.8.2001 after issuing a show cause notice and after considering the explanation given by the first respondent. It gave the following two reasons for the cancellation:

(i) In the Challan Register, the name of the first respondent (Choudhuri) had been fraudulently inserted among the names of accused who were convicted and sentenced in a criminal case, in a different handwriting and in a different ink. This showed that first respondent was not really an accused in that case, nor was he convicted or sentenced or undergone any imprisonment.

(ii) The school records showed his date of birth as 23.9.1926. His service record showed his date of birth as 13.9.1928 (which was accepted to be the correct date of birth). If so, his age at the time of alleged conviction was only 14 years. But in his application for pension given on 18.9.1978 he had clearly shown his age as 56 years, that is, 21 years in 1943.

The question for consideration is whether in the circumstances the central government was justified in cancelling the pension; and whether the High Court was justified in setting aside the said order.

7. It is of some interest to note from the statistics furnished by the Central government in their additional affidavit, that 1,70,813 freedom fighters/dependants have been sanctioned freedom fighters pension (as on 31.5.2010). At present as many as 60000 persons are getting pension or family pension as freedom fighters/dependants. The average pension of a freedom fighter and after his/her death to the spouse is Rs.12400/- p.m. and the average pension paid to a dependant unmarried daughter is Rs.3000 per month. The expenditure for the year 2009-10 under the scheme was

Rs.785 crores. We have referred to these figures only to show that when false claims come to the notice of the Central Government, it is bound to take stern action. Any complacency on the part of the Government in taking action against bogus claims under any scheme would encourage bogus claims under all schemes, by undeserving candidates who are 'well connected and influential'. False claimants walking away with the benefits meant for genuine and deserving candidates has become the bane of several welfare schemes.

8. 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. v. Devkinandan Maheshwari* [2003 (3) SCC 183] considered the object of the Freedom Fighters Pension scheme and indicated what should be the approach of the authorities in dealing with the applications for pension under the scheme. We may summarize them as under:

(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 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.

9. 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. In *Union of India v. Avtar Singh* [2006 (6) SCC 493] this Court therefore cautioned:

"The genuine freedom fighters deserve to be treated with reverence, respect and honour. But at the same time it cannot be lost sight of that people who had no role to play in the freedom struggle should not be permitted to benefit from the liberal approach required to be adopted in the case of the freedom fighters, most of whom in the normal course are septuagenarians and octogenarians."

We will have to examine allegations of fabrication of the claim in this case, keeping the aforesaid principles in view.

10. The first ground mentioned by the Central Government is that the name 'Choudhuri' in the Entries relating to Sl.No. 278 of the Challan Register of 1943 is a subsequent addition in a different handwriting and different ink which indicated that first respondent did not really undergo imprisonment as claimed. The fact that the name Choudhuri is in a different ink and different

handwriting is not in serious dispute. The only explanation given by first respondent is that he did not make the said correction. When the background in which the document was produced and how it contradicted the claim of first respondents is considered, the bogus nature of the claim becomes evident. Alongwith his application for pension submitted in 1978, the first respondent had produced only one document, that is, a typed copy of the alleged certificate issued by the Superintendent, Balasore Jail dated 12.3.1974 which stated that he was convicted and sentenced to seven months' simple imprisonment by P.G. Mohanty, SDO, Bhadrak under Rule 38(5) of DIR and he was confined in Balasore Jail between 19.3.1943 to 10.10.1943. This, of course supported the claim of the first respondent in his application about his conviction and period of imprisonment. But the said certificate did not bear any signature and was not corroborated by any other document. Therefore first respondent was required to produce other material to support his claim. It is at that stage the first respondent produced a certified copy of an extract from the Challan Register (obtained by him on 31.12.1981). This certified copy of the sheet relating at Sl.No. 278 of Challan Register for 1943 issued by the District Record Room showed that one Salar and 32 others were convicted by P.C. Mohanty, SDM, Bhadrak in case under 'Section 147 and 35 to 38 IPC and 38(5) of DIR'. The names of accused enumerated therein included 'Choudhari'. But a detailed examination of the records of SDM, Bhadrak showed that the names 'Choudhari' and 'Banabehari' were inserted among the names of persons shown as convicted in that case, in a different ink and in a different handwriting. Further the said entry showed that the persons convicted were sentenced to one year RI under section 147 IPC, two years RI under section 152 read with 149 of IPC and two years RI under Rule 38 of DIR. This is at complete variance with first

respondent's claim (which he sought to support by the typed Jail Certificate dated 12.3.1974) that he had been given a sentence of seven months simple imprisonment. Thus the unsigned typed copy of jail certificate and the particulars given by the first respondent in his application are proved to be false by the contents of the certified copy of the Challan Register produced by him which showed that the persons convicted were sentenced to one year, two years and two years of rigorous imprisonment to run concurrently and not seven months simple imprisonment claimed by first respondent. Evidently, the first respondent was not one of the persons convicted or sentenced or imprisoned in that case.

11. The second ground for cancellation is the false claim of age. The application showed that his age was 22 years when he was sentenced and imprisoned. But his school records showed that he was born on 23.9.1926 and was therefore 16 years old in 1943. The service record of the first respondent on the other hand showed his date of birth is 13.9.1928 (which first respondent accepted as the correct date of birth) which meant that he was 14 years old in 1943 when he claims to have been convicted and sentenced. The order of cancellation of pension stated that if he was 14 years, he would have been kept in Borstal/Juvenile home and not imprisoned in jail and that showed that the claim of first respondent that he was imprisoned in a Jail was highly improbable. The learned counsel for first respondent attempted to contend that several youngsters aged around 14 years or even less, had participated in the freedom struggle and if British Rulers had wrongly sent them to jail instead of treating them as juveniles, the youngster could not be blamed. But The above principles were spelt out to ensure that no genuine freedom fighter was denied pension under the scheme.

9. 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. In Union of India v. Avtar Singh [2006 (6) SCC 493] this Court therefore cautioned:

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pension showing his age as 56 years which made him 21 years old when he allegedly underwent imprisonment in 1943 whereas subsequently he admitted that he was born on 13.9.1928 which means that he was hardly 14 years in 1943. This shows that the first respondent made a deliberate false claim about his age to secure the pension. Obviously the issue is not whether a youngster aged 14 years could be a freedom fighter or could be sent to jail. The issue is that the first respondent had given the application for pension showing his age as 56 years which made him 21 years old when he allegedly underwent imprisonment in 1943 whereas subsequently he admitted that he was born on 13.9.1928 which means that he was hardly 14 years in 1943. This shows that the first respondent made a deliberate false claim about his age to secure the pension. Obviously he thought that if he disclosed his true age, there would be objections or a detailed examination and he might not get the pension.

12. The undisputed facts leave no doubt that the claim of the first respondent was based on false and fabricated documents. He was a teacher/Headmaster of a school when he made the claim and clearly knew that he was making a false claim. Therefore the cancellation of the pension was justified and cannot be found fault with. The scheme was introduced with the noble intention of honouring those who fought for the freedom of the country. As noticed by this Court in Mukund Lal Bhandari, many freedom fighters even refused to receive such pension as they felt that it would amount to putting a premium on their patriotism. There are also several unscrupulous persons who made false claims and received the benefits. The Government shall not allow such false claimants to mock at the genuine freedom fighters. What is rather disturbing is the fact that many false claimants have taken advantage of the observations of this

Court that the authorities processing the applications should not be very rigid or technical in scrutinizing the applications for freedom fighter's pension.

13. The High Court ignored the relevant principles. It ignored the reasons for the cancellation, merely because the state government did not discover the false claim when first respondent made the application and the first respondent had produced before the High Court for the first time, some certificates from alleged co-prisoners. The High Court could not have ignored the production of false and fabricated documents which would automatically disentitle the applicant to any benefit under the scheme.

14. In view of the above we allow these appeals, set aside the order of the High Court and affirm the order of the Central Government cancelling the pension. Having regard to the fact that the first respondent has died in the year 2004, it is made clear that there shall be no recovery of any amount already paid to the deceased first respondent from his widow or other legal heirs.

.....J
(R V Raveendran)

New Delhi;
August 20, 2010.

.....J.
(H L Gokhale)