

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF NOVEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE S.G.PANDIT

AND

THE HON'BLE MR. JUSTICE RAMACHANDRA D. HUDDAR

WRIT PETITION NO.27154 OF 2019 (GM-KLA)



BETWEEN:

SRI. M.V. SRINIVASA GOWDA
S/O LATE SRI. G. VENKATARAME GOWDA
AGED ABOUT 85 YEARS
RESIDENT OF MANDIKAL VILLAGE
KOLADEVI POST, MULBAGAL TALUK
KOLAR DISTRICT
PIN-563 131

... PETITIONER

(BY SRI. G. PAPI REDDY, SENIOR ADVOCATE FOR
SRI. VARUN PAPI REDDY, ADVOCATE)

AND:

- 1 . THE STATE OF KARNATAKA
DEPARTMENT OF ADMINISTRATIVE REFORMS
(POLITICAL PENSIONS)
VIDHANA SOUDHA
DR. AMBEDKAR VEEDHI
BENGALURU-560 001
BY ITS SECRETARY
- 2 . THE UPA-LOKAYUKTHA
MULTISTOREYED BUILDINGS
DR. AMBEDKAR VEEDHI
BENGALURU-560 001
- 3 . THE DEPUTY COMMISSIONER
KOLAR DISTRICT
KOLAR-563 101

- 4 . THE ASSISTANT COMMISSIONER
KOLAR SUB-DIVISION
KOLAR-563 101

- 5 . THE TAHSILDAR
MULBAGAL TALUK
MULBAGAL
KOLAR DISTRICT
PIN-563 131

- 6 . SRI. NAGARAJ
S/O SRI. NARAYANA GOWDA
MAJOR
RESIDENT OF: MANDIKAL VILLAGE
KOLADEVU POST
MULBAGAL TALUK
KOLAR DISTRICT
PIN-563 131

...RESPONDENTS

(BY SRI. BHOJEGOWDA T. KOLLER, AGA FOR R1 AND
R3 TO R5;
SRI. K. PRASANNA SHETTY, ADVOCATE FOR R2;
R6 - SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE PROCEEDINGS INITIATED BY THE R-2 BASED ON THE COMPLAINT OF THE R-6 DTD.1.8.2014 VIDE ANNEXURE-E AND ACTION TAKEN THEREOF WITHOUT AUTHORITY OF LAW AND WITHOUT JURISDICTION AND CONSEQUENTLY QUASH THE WRITTEN COMMUNICATION DTD.14.11.2018 ISSUED BY THE DEPUTY COMMISSIONER, KOLAR DISTRICT TO R-5 VIDE ANNEXURE-H AND NOTICE DTD.20.05.2019 ISSUED BY THE R-5 VIDE ANNEXURE-K.

THIS WRIT PETITION HAVING BEEN RESERVED FOR ORDER COMING ON FOR PRONOUNCEMENT OF THIS DAY, **RAMACHANDRA D. HUDDAR J.**, MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
AND
HON'BLE MR. JUSTICE RAMACHANDRA D. HUDDAR

CAV ORDER

(PER: HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR)

Petitioner by filing this writ petition has prayed to issue appropriate writ or order by granting the following reliefs:

a) *Declare that the proceedings initiate by the Respondent-2 in No.COMPLAINT/UPALOK/BD/7088/2014 based on the complaint of the Respondent-6 dated 01.08.2014 vide **ANNEXURE-'E'** and action taken thereof without authority of law and without jurisdiction.*

aa) *Quash the order of Respondnet-1 dated 04-07-2019 in No.CAASUEE 36 PFS 2017 vide **'ANNEXURE-L'**.*

b) *Consequently quash the written communication dated 14-11-2018 issued by the Deputy Commissioner, Kolar District to the Respondent-5 vide **ANNEXURE-'H'** and notice dated 20-05-2019 issued by the Respondent-5 in No. Swa, Tan, Ho, C.R/04/2018-19 vide **ANNEXURE-'K'**.*

c) *Grant such other relief/s as the situation demands to meet the ends of justice.*

2. The facts narrated by the petitioner in his petition in nutshell are as under:

That he was a freedom fighter participated in freedom struggle including Rajupet Sathyagraha Camp in Andhra Pradesh. He also participated in Mysuru Palace Chalo Sathyagrahis Movement in the year 1947. It is his specific averment that, he was imprisoned in the sub-jail in Kolar during the months of September and October, 1947 in connection with his participation in Mysuru Chalo Sathyagrahis Movement stated supra. As he was a freedom fighter, in view of the orders of the Government of Karnataka by its order dated 01.07.1981 with regard to the Karnataka State Freedom Fighters Welfare Rules, 1969 ('Rules' for short) and to treat the freedom fighters pension as Honorarium, the petitioner applied for grant of the said honorarium and accordingly on 01.07.1981, the petitioner was granted State Political Pension as he participated in the said Mysuru Chalo Movement so also Hyderabad freedom struggle. At the time of seeking such honorarium, he obtained the certificate from co-prisoner so also obtained the certificate from Member of Parliament

and Member of Legislative Assembly both past and present. The State Government accepted his prayer to grant honorarium and accordingly granted honorarium as per Annexure-A.

3. It is stated that, one M.V.Venkatappa was the co-prisoner along with him and he issued a certificate stating that the petitioner was in the sub-jail as a freedom fighter. The said certificate is produced at Annexure-V. Accordingly, he was granted freedom fighters pension/honorarium and Government has sanctioned Rs.100/- per month after detailed examination. He is getting the said honorarium from 26.12.1990.

4. It is alleged by the petitioner that respondent No.6 so arrayed in this petition is working against the petitioner and out of ill-will with ulterior motive filed false complaint to respondent No.2 on 01.08.2015 alleging that falsely the petitioner is claiming honorarium by producing fabricated documents. The said complaint was referred to the Additional Registrar Enquiry No.6 in the Office of Karnataka Lokayukta, Bengaluru. In turn, the said

complaint was sent to the Deputy Commissioner, Kolar District for conducting enquiry and to submit a report. Therefore, the said complaint was referred by the Deputy Commissioner to the Asst. Commissioner, Kolar Sub-Division. The Asst. Commissioner issued show-cause notice to the petitioner and called upon him to furnish his explanation. He collected a report from the Tahsildar, Mulbagal Taluk. Accordingly, the petitioner submitted his explanation in writing on 14.12.2015 and produced all the documents in support of his explanation. Thereafter, the Deputy Commissioner Kolar District directed the Tahlsidhar, Mulbagal Taluk vide letter dated 14.11.2018 to initiate proceedings against the petitioner and recover the entire amount paid as honorarium to him. The said communication was issued at the instance of Addl. Registrar, Lokayukta, Enquiry No.6. Even with regard to the initiation of the proceedings for recovery of honorarium received, it was published in Kannada daily newspaper, Udayavani dated 23.11.2018.

5. The petitioner had not received any communication from Tahsidlar, Mulbagal to that effect. It is stated by the petitioner that, he filed WP No.300/2019 before this Court to declare that the proceedings initiated against him and the action taken thereon was without authority. The said writ petition came for preliminary hearing and this Court declined to entertain the writ petition on the ground that, it was premature and reserved liberty to challenge the proceedings if initiated against him.

6. It is alleged that, now the Tahsildar, Mulbagal Tq. i.e., respondent No.5 had issued notice dated 20.5.2019 and called upon the petitioner to refund Rs.9,08,661/- within 30.5.2019 failing which, legal action will be initiated. It is alleged that, respondent no.2 has no jurisdiction to entertain the complaint of Respondent no.6 and initiate action as per the provisions of Sec.8 (1) Karnataka Lokayukta Act, 1984 (in short `the Act'). Either Lokayukta or Upalokayukta shall not conduct any investigation. As the petitioner is aggrieved by the said

notice, to quash the said notice and other annexure, he has filed this petition.

7. Though the learned counsel for the petitioner relied upon Section 8 of Karnataka Lokayukta Act, but, the very complaint so filed by Respondent No.6 definitely attracts filing of such complaint before the Lokayukta and the said complaint can be referred for investigation. Thus, the exercise made by the office of the Lokayukta cannot be found fault with. Therefore, we do not find any merit in the submission. He also urged several grounds in his petition which are nothing but, repetition of facts narrated above.

8. The learned AGA appeared for respondent nos.1 and 3 to 5 and one Sri K. Prasanna Shetty appeared for respondent no.2. Notice to R6 served, but, he remained unrepresented.

9. We have heard the arguments of both the side and have given thoughtful consideration to the arguments of both the side.

10. It is submitted by the counsel for the petitioner in addition to the facts and grounds urged in the petition that, petitioner being a freedom fighter, as per the Government Order of grant of monthly honorarium to the freedom fighters, he applied and accordingly, the Government of Karnataka granted monthly honorarium to the petitioner at Rs.100/- per month. To prove the said fact, he has produced Annexure-A the proceedings of the Government with regard to Karnataka State Freedom Fighters Welfare Rules, 1969. Annexure-C affairs of the Government of Karnataka sanctioning honorarium to the petitioner and also pension payment order.

11. It is the grievance of the petitioner that, because of false complaint lodged by respondent no.6 before the Lokayukta, it was referred by the Registrar Enquiry-VI to the Deputy Commissioner to conduct enquiry and submit a report. In turn, the D.C. referred the complaint to the Asst.Commissioner, Kolar Sub-Division. The said Asst.Commissioner, Kolar Sub-Division, Kolar obtained the report from the Tahsildar, Mulbagal and it

was informed to his higher authorities. Now, because of said false complaint, it was directed by the Deputy Commissioner to recover the honorarium so received by the petitioner and accordingly, the subsequent payment of honorarium is stopped. Therefore, he would submit that, he is seeking the writ as prayed in the petition. The learned counsel for the petitioner would submit that, in fact Sec.8 of the Act has no application to the facts of this case but, even then, the Lokayukta has referred the false complaint for investigation which is outside the purview of Act. The provisions of Section 8 of the Act speaks of matters not subject to investigation. The learned counsel for the petitioner would submit that the very action of respondent nos. 1 to 5 is contrary to the provisions of order of the Government of Karnataka produced at Annexure-A and such action would not have been initiated against the petitioner who was the real freedom fighter. He submits to allow this Writ Petition and prays to grant the writ so prayed.

12. As against this submission, the learned AGA Sri. Bhojgowda T. Koller for respondent nos. 1, 3 to 5, submits that, by placing fabricated documents before the authority concerned, illegally the petitioner was able to get the freedom fighter's pension. It came to the knowledge of the authorities only when the complaint was referred for investigation. As per the report of the Tahsildar, the action was initiated by the Deputy Commissioner. The learned counsel for the respondents would submit that, there is no illegality or perversity in passing such orders to refund the honorarium received by the petitioner illegally. No fault can be found with the authorities concerned. Supporting the action of the Lokayukta and also in turn, the legal action of recovery initiated by the respondents nos. 1 to 5, he would submit to dismiss the petition.

13. As the learned counsel for the petitioner much relies upon the provisions of Section 8 of the Act, it is just and proper to incorporate the provisions of Section 8 in this judgment. The said provision reads as follows:

"8. Matters not subject to investigation.-

(1) Except as hereinafter provided, the Lokayukta or an Upalokayukta shall not conduct any investigation under this Act in the case of a complaint involving a grievance in respect of any action,-

(a) if such action relates to any matter specified in the second Schedule; or

(b) if the complainant has or had, any remedy by way of appeal, revision, review or other proceedings before any tribunal, 1[court, officer or other authority and has not availed of the same.]1 1. Substituted by Act 1 of 1988 w.e.f. 25.2.1988.

(2) The Lokayukta or an Upalokayukta shall not investigate,-

(a) any action in respect of which a formal and public inquiry has been ordered with the prior concurrence of the Lokayukta or an Upalokayukta, as the case may be;

(b) any action in respect of a matter which has been referred for inquiry, under the Commission of Inquiry Act, 1952 with the prior concurrence of the Lokayukta or an Upalokayukta, as the case may be;

(c) any complaint involving a grievance made after the expiry of a period of six months from the date on which the action complained against becomes known to the complainant; or

(d) any complaint involving an allegation made after the expiry of five years from the date on which the action complained against is alleged to have taken place; Provided that he may entertain a complaint referred to in clauses (c) and (d) if the complainant satisfied that he had

sufficient cause for not making the complaint within the period specified in those clauses.

(3) In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lokayukta or an Upalokayukta to question any administrative action involving the exercise of a discretion except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion can prima facie be regarded as having been improperly exercised.

14. On perusal of the provisions of Section 8 of the Act, certain complaints cannot be investigated by the Lokayukta. But, the complaint allegations as per the petition averments show that, this petitioner is receiving the freedom fighter's honorarium by producing the fabricated documents. That means, there is a grievance of fabricating the documents in getting the honorarium therefore, a complaint is lodged.

15. The Government of India launched a scheme called as 'Freedom Fighter's Pension Scheme'. The main object of this scheme is indicated in the scheme itself with regard to the grant of such pension. It indicates that the approach of the authorities in dealing with the applications

for pension under the Scheme. The requirements are summarized 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 cannot 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."

16. Thus, the object of the scheme is, to provide pension to the genuine freedom fighters who deserve to be treated with reverence, respect and honour. The Hon'ble Apex Court in ***Union of India v. Avtar Singh***, reported in **2006(6) SCC 493** held that:

".....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".

17. Here in this case, there are allegations made by respondent no.6 of fabrication of the claim by the petitioner to claim the compensation. As per the requirement, to get such pension, as narrated in the foregoing paras, certain essential requirements have to be fulfilled. As per the documents produced by the petitioner, he has produced Annexure-B a letter issued by one

M.V.Venkatappa the then General Secretary, KPCC(I) dated 24.8.1989 wherein it is stated that, this petitioner was with him at Rajupet Satyagrahi's camp in Andhra Pradesh for more than one month and also participated in 1947 Mysore Palace Chalo Satyagrahi's movement and they were caught by the Police at Mulbagal. He is eligible for all concessions under the Political Suffers Rules. This Annexure-B is the sheet anchor placed by the petitioner to get such honorarium. Even he has produced Annexure-I, a co-prisoner's certificate i.e. of M.V.Venkatappa himself. According to this Annexure-B1, the said MLA suffered imprisonment during freedom struggle and was lodged in Kolar Jail in Kolar District from 9th September to October 1947. He states that even the petitioner being a bona fide freedom fighter was also imprisoned on account of his participation in the year 1947. For how many days, months years the petitioners was in jail is not stated in this document. Though the Government of Karnataka has granted the honorarium to the petitioner and issued the pension payment order but, subsequent to that, because of the complaint, a preliminary investigation report was

obtained by the Lokayukta office and proceedings were conducted. Ultimately matter was referred to the Deputy Commissioner for submitting a report. Based upon the first investigation report, it was submitted that, a false claim is made by the petitioner to claim the honorarium. Thereafter, a show-cause notice dated 3.11.2015 was issued by the Asst. Commissioner, Kolar Sub-Division, Kolar as per Annexure-F. It was replied by the petitioner justifying his action of getting the said freedom fighter's honorarium. Having not satisfied with the said explanation, the Deputy Commissioner directed to take necessary action to recover the honorarium so received by the petitioner. Thereafter, the Tahsildar, Mulbagal Taluk issued Annexure-R dated 20.5.2019 calling upon the petitioner to refund Rs.9,08,661/- on or before 30.05.2019 and in case of failure, action will be initiated.

18. Now, the petitioner contends that, he is a genuine freedom fighter. But, the requirement as per the scheme is, the freedom fighters have to show to get such honorarium that they really participated in the freedom

struggle and the persons intended to be covered by the scheme are, those who sacrificed and suffered for independence of the country without expecting any reward for their sacrifice and sufferings.

19. The object of the scheme to honour and wherever necessary, to mitigate the sufferings of those who have struggled to achieve independence for the country. Even it is said that 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 putting a price on their patriotism.

20. Under the scheme, such a freedom fighters pension can be granted in exceptional cases and cannot be granted as a matter of course. It is held by the Hon'ble Apex Court in ***State of Orissa v. Choudhuri Nayak***, reported in **(2010) 8 SCC 796** in para.11 it is observed that:

"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".

21. In this case also, as per the complaint filed by Respondent no.6, the authorities concerned investigated and submitted a report stating that, the claim so made by the petitioner is false and based upon fabricated documents he has claimed the honorarium. Even under the provisions of the Scheme, the applicant freedom fighter should submit the certificate stating as to what type of problems and hardships he had to face on account of participation in freedom movement, is to be explained. He should fulfill the criteria that, the said applicant if had to remain away from house and family, whether he had to give up education or he was expelled by any educational institution, whether he was beaten up by the police in such a manner that, he has become disabled. It should be certified by two freedom fighter of their respective areas who had either undergone atleast two years imprisonment

or those who had been declared absconded or who had been absconding for atleast two years. Such a certificate should be accompanied with the copies of jail certificate about the imprisonment or copies of govt. orders or an advertisement declaring the freedom fighter as absconder. Even the certified copy of the Government record, if available with regard to imprisonment, so also the original newspaper describing his name etc., so also recommending opinion.

22. But, in this case, no such documents are made available to show that really the petitioner had participated in the freedom struggle. It is held by the Hon'ble Apex Court in ***Bhaurao Dagdu Paralkar v. State of Maharashtra and others***, reported in **(2005) 7 SCC 605** while considering the case of grant of freedom fighter pension, it is observed as under:

"2. When one talks of freedom fighters the normal image that comes to one's mind is a person who suffered physically and mentally for unshackling the chains of foreign rule in our country. The normal reaction when one sees such person is one of reverence, regard and respect. The brave and courageous deeds of these persons are a

distinctive part of India's fight for freedom. Many persons lost their lives, many were injured and a 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 "Asamman" (disrespect) to the whole country and such dishonorable ventures have to be dealt with sternness to send out a message that they are not freedom fighters, but are traitors sullyng the name of freedom fight".

23. Considering the record before us, we are of the considered view that, by entertaining applications like the one presented by the petitioner without any proof regarding his participation in freedom struggle which has been dealt with by the respondent no.1 to 5 on investigation and directing to take necessary action to get refund of the honorarium received, cannot be found fault with.

24. The petitioner has approached this Court challenging the impugned orders passed by the authorities concerned. If such applications are entertained, the scheme would be converted into a bounty and those who have actually rendered valuable sacrifices may remain deprived. This would amount to abuse of scheme. The principles laid down by the Hon'ble Apex court regarding the grant of freedom fighters pension 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 abuse of scheme.

25. In view of the law laid down by the Hon'ble Apex Court and various High Courts all care has to be taken to see that 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.

26. In the instant case, there is no case made out by the petitioner to issue the writ as prayed in the petition. Thus, this petition is liable to be dismissed for the reason that, there is no acceptable evidence placed on

record by the petitioner to grant the relief so claimed by him in the petition.

27. In the result, the petition is ***dismissed***. Rule is discharged accordingly. Costs made easy.

**Sd/-
(S.G.PANDIT)
JUDGE**

**Sd/-
(RAMACHANDRA D. HUDDAR)
JUDGE**

SK