

Kerala High Court

N.K. Raghavan vs Union Of India on 11 April, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 29732 of 2007(M)

1. N.K. RAGHAVAN,  
... Petitioner

Vs

1. UNION OF INDIA,  
... Respondent

2. STATE OF KERALA,

For Petitioner :SRI.K.K.SATHEESH

For Respondent :SRI.P.PARAMESWARAN NAIR, SC, KFC

The Hon'ble MR. Justice T.R.RAMACHANDRAN NAIR

Dated :11/04/2008

O R D E R

T.R. Ramachandran Nair, J.

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W.P.(C)NO.29732 of 2007-M  
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Dated this the 11th day of April, 2008.

JUDGMENT

The petitioner is a freedom fighter who had actively participated in the Punnapra - Vayalar movement during the freedom struggle. In connection with case No.P. E. 7/1122 ME he was detained as an undertrial prisoner also. After the case was withdrawn by the Government, he was let off. Again, he was arrested by the police in the year 1124 ME in connection with case No. CC 280/1124 ME before the Divisional First Class Magistrate Court, Alleppey. After trial, the criminal court convicted and sentenced him to undergo R.I. for a period of two years as per judgment dated 6.2.1125 ME. He had undergone imprisonment in the Central Prison, Trivandrum for a period of one year and 8 months from 8.2.1125 ME to 21.5.1951 after earning remission of four months. Ext.P1

is the true copy of the extract of the Convict Register of Central Prison, Trivandrum.

2. The petitioner is a recipient of State Pension which is evidenced by Ext.P3 order passed by the District Collector, Alappuzha. Ext.P4 is the application for grant of SSS pension. At that time, he could not submit the copy of Ext.P1 and he submitted the co-prisoners' certificates issued by prominent freedom fighters. They include Shri H.K. Chakrapani and Shri P.K. Sukumaran. Finally, he was informed by the District Collector as per Ext.P6 that his application is rejected as the documents relating to the period of imprisonment of the certifiers, viz. Shri H.K. Chakrapani and Shri P.K. Sukumaran, have not been produced. The Central Government, by Ext.P7 clarified that as far as freedom fighters of Punnapra - Vayalar struggle are concerned, even if the imprisonment period is after the independence, they will be eligible for grant of SSS pension. Therefore, he produced Ext.P1 extract of the Convict Register of Central Prison, Trivandrum along with Ext.P8, before the second respondent. Since there was undue delay in the matter, he filed Writ Petition No.11859/2004 and while the writ petition was pending, his application was rejected by the State Government by Ext.P9 order. This was rejected on the ground that there is discrepancy between the period of imprisonment claimed in the application for pension and as covered in the true extract of the Convict Register.

3. This court, by Ext.P10 judgment, quashed Ext.P9 after finding that the reasons are not correct. It was directed to consider the matter afresh. But finally, by Ext.P11 again the application has been rejected for the very same reasons. This is under challenge in this writ petition.

4. Learned counsel for the petitioner submitted that in Ext.P10 judgment, the matter was elaborately considered and it was held that as the Convict Register is an authentic document maintained by the officers of the second respondent itself in which imprisonment of the petitioner is mentioned as two years, there is no reason to suspect the genuineness of the Convict Register. It was also held there in that merely because the petitioner mentioned in his application that the period of imprisonment is six months and 28 days, that does not render the extract of the Convict Register unacceptable. It was also directed by this court that the second respondent ought to have considered the claim of the petitioner on the basis of the extract of the Convict Register and made appropriate recommendation to the first respondent for consideration of the petitioner's application for grant of SSS pension.

5. A reading of Ext.P11 shows that the State Government, without considering the import of the findings contained in Ext.P10 judgment, again for the very same reasons, did not recommend the application. This is clearly impermissible. After this court found that the said reason is not correct, it is un-understandable as to how the State could have restated the very same reason while forwarding the verification-cum-entitlement report. The reason that the claim is doubtful because of the fact that in the application for SSS pension he claimed only imprisonment for six months and 28 days, but in the Convict Register the imprisonment is for two years, is not correct. His application for pension is dated 30.4.1998. At that time Ext.P7 clarification by the Central Government that the condition of imprisonment for six months in the main land jails before independence could not apply in case of Punnapra - Vayalar struggle, was not there. Ext.P7 is dated 7.4.2003. It is obviously for the said reason that in the application Ext.P4, he relied upon the detention for a period of six

months and 28 days in Alleppey Sub Jail. The petitioner has explained as per Ext.P8 representation that the true extract of the Convict Register, Ext.P1 was produced by him after Ext.P7 clarification was issued by the Central Government. This aspect has been lost sight of by the State Government while forwarding the verification-cum-entitlement report. Apart from that, Ext.P1 is a genuine document showing the period of sentence and the date of admission into the jail and date of release, etc. The period therein will entitle him for grant of SSS pension. Therefore, clearly there is primary evidence available here in the form of Ext.P1, the genuineness of which has not been disputed at all. The authorities have lost sight of the findings contained in Ext.P9 judgment also, as noted already. When the very foundation for the rejection of the application as per the proceedings issued at that time has been set aside by this court in Ext.P10 after rendering a finding on merits, the respondents ought to have given a positive recommendation based on Ext.P1 itself. For all these reasons, I find that Ext.P11 has to be set aside. I hold that the petitioner is fully entitled to rely on Ext.P1, true extract of the Convict Register. The reason stated in Ext.P11 for rejection of the application that there is no record of primary evidence, that there is no valid NARC and that in the absence of valid NARC, the co-prisoners' certificates cannot be accepted, are all therefore unsustainable.

Therefore, the second respondent is directed to forward a fresh verification-cum-entitlement report to the first respondent, recommending the application of the petitioner for SSS pension in the light of Ext.P1, true extract of the Convict Register, within a period of one month from the date of production of a copy of this judgment. The first respondent shall thereafter consider the application afresh in the light of the primary evidence available (Ext.P1) and the certificates issued by the co-prisoners. Final orders shall be passed within a further period of two months thereafter. The entitlement of the petitioner for arrears of pension from the date of receipt of the application for SSS pension (Ext.P4), will also be considered while sanctioning pension.

The writ petition is disposed of as above. No costs.

(T.R. Ramachandran Nair, Judge.) kav/ T.R. Ramachandran Nair, J.

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O.P. No.

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JUDGMENT 6th March, 2008.