

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

MAT 248 of 2016
The State of West Bengal & Ors.
Vs.
Kalipada Mondal & Anr.

**With
MAT 1925 of 2015
State of West Bengal & Ors.
Vs.
Shiba Prasad Roy & Ors.**

For the Respondents :- Mr. Bikash Ranjan Bhattacharyya,
Sr. Adv,
Mr. Dibyendu Chatterjee
Ms. Pritam Majumder.

I. P. Mukerji, J.:-

The subject matter of these appeals was a decision of the government of West Bengal dated 15th January, 2013, titled as a Memorandum by which the state government declared that the scheme granting pension to freedom

fighters and “post democratic political sufferers” be discontinued from 1st February, 2013. On the same day another scheme was introduced by the government only for providing monthly allowances to freedom fighters and their dependent family members.

Now, a look at the past.

In or about 1988 the Government of West Bengal added as beneficiaries to the existing pension scheme for freedom fighters, persons who had taken part in political or social movements after independence for the cause of the poor, downtrodden, weaker or economically backward sections of the society. The government started paying pension to those persons or their dependents, together with the freedom fighters and their dependents.

Each of the respondent/writ petitioners was receiving pension as a dependent of his father who had taken part in a post independent movement.

Challenging the decision dated 15th January, 2013 the writ applications were maintained.

The grounds in the writ petitions were four in number. They were most cryptic, almost asking for the pension amount as mercy to run the living expenses of the writ petitioners and their families. The writ application **WP 13754(W) of 2014 (Kalipada Mondal vs. The State of West Bengal & Ors.)**, was heard along with similar writ applications **WP 17078(W) of 2013 (Sri Shiba Prasad Roy & Ors. vs. The State of West Bengal & Ors.)** and **WP 17080(W) of 2013 (Sri Anurup Panda vs. The State of West Bengal & Ors.)** where the cause of action and grounds were similar.

By the impugned common judgment and order dated 26th November, 2015 the writ applications were allowed, the 15th January, 2013 scheme was struck down resulting in reverting to the situation existing before the said notification.

It appears that at the time of hearing of the writ applications the grounds for maintaining them took a different turn. They assumed political colour. It was argued in court that the cancellation of the pension scheme of 1988 of the former government with effect from 1st February, 2013 was most arbitrary and illegal on the part of the new government which assumed power in 2011. There was no reason for depriving these poor pensioners of their pension. These pensioners or their ancestors had devoted their life in taking part in the movement for the welfare of the people post independence as a result of which they suffered imprisonment or oppression in the hands of the government. They and their dependents were thus entitled to receive pension.

The principle of legitimate expectation was also advanced to canvas the case of the writ petitioners.

The government is up in appeal.

The most fundamental argument advanced by Mr. Kalyan Bandopadhyay, learned senior advocate for the appellant state is that the original pension scheme was made for freedom fighters, who stood on an entirely different pedestal than that of the present writ petitioners. They fought for the country against the British to bring freedom to the country. They were tortured, jailed and suffered a lot of pain and suffering, taking part in the freedom movement. But those added to the list of the revised pension scheme only took part in anti-government post independence movements. They fought for specific sections of the society, fought to espouse the cause of certain sections of the society only or certain groups with different political persuasions, against the ruling Indian Government.

This group of persons could never be equated with freedom fighters. To include these persons in the group of freedom fighters was itself wrongful on the part of the earlier government. It was correctly rectified by the present government in 2013. The scheme has been amended on the basis

of a rational and reasonable classification made of freedom fighters and those political activists post independence. Therefore, the amendment of the scheme can never be called arbitrary or malicious.

The learned judge while allowing the writ applications advanced several reasons to support his decision. He declared the writ petitioners to be “political sufferers” who had sacrificed their “personal interest”. They had led an austere life. These political sufferers were to be treated as “unsung heroes”. The State Government had a moral obligation to provide financial assistance to them so that they could live life “with minimum dignity”. “Stoppage of such allowance would spell disaster and complete ruination for these persons”. Although the learned judge emphasized that a court should not ordinarily interfere with a political decision of the government, nevertheless it ruled that, when a policy or a change thereof contravened a constitutional provision or was in breach of a statutory provision the court had the right to intervene. His lordship remarked that the government should not change or vary a policy unless there were some “cogent reasons” which should be reflected in the decision itself. The change of policy should not be the result of an act which was arbitrary capricious or whimsical.

The learned judge also invoked the principle of legitimate expectation to justify his judgment. Receiving monthly pension with time to time increment gave rise, according to his lordship to a legitimate expectation on the part of the beneficiary of the scheme that they would continue to receive such benefit. The government had an obligation not to defeat this expectation “without some overriding reason of public policy”. Before doing so, opportunity of hearing to the persons likely to be affected was required. A change of policy must be made fairly so as to obviate any allegation of arbitrariness or ulterior motive. Receiving a substantial benefit by itself gave rise to legitimate expectation. Every legitimate expectation required due consideration in a fair decision making process. The change in the

policy, according to the court did not reflect “in what manner the scheme did not serve the interest of the public in general”.

I accept the contention of Mr. Bandopadhyay, learned senior advocate appearing for the appellants that freedom fighters who sacrificed their lives for the country were most eligible to get pension for themselves and their dependents. It was part of the solemn obligation of the government to provide a means of livelihood to these deserving persons, many of whom with passage of time and age were lacking in financial resources. It was wrongful on the part of the government to alter the scheme and to declare as eligible and include in it persons who had no role to play in the freedom struggle but had taken part in political movements after the country gained independence. Freedom fighters fought the British. But these persons under political patronage had led movements against the post independent governments to further their political or social agenda. Therefore, these persons were not similarly situated as the freedom fighters and could not be equated with them. Their inclusion went against the very purpose for which the scheme was formulated. Their inclusion by the government was improper. This entitled the government to remedy the wrong and rectify the scheme. By excluding these persons, the government was only discharging its obligations under article 14 of the Constitution of India to make a rational classification of eligible persons to receive freedom fighters’ pension by excluding from that classification persons who had not taken any part in the freedom struggle.

It is true that the respondent writ petitioners as beneficiaries of the scheme or as legal heirs and dependents of the beneficiaries were receiving pension under the scheme for a considerable length of time. But when a scheme or an action of the government is completely flawed in its conception and application founded on a mistaken notion or on erroneous or extraneous considerations or is against the concept of equal treatment of equals, then the policy or whatever benefit that flows from that particular policy or

scheme cannot be a source of legitimate expectation for any person or group of persons. It could never be said that even after discovery of the wrong or the mistake the government would continue to foster the scheme or continue the policy, knowing that it was against the Constitution and the laws. Therefore, reliance of the learned judge on the principle of legitimate expectation in supporting his decision to strike down the impugned scheme was misplaced.

Although the writ petitioners cannot have a legitimate expectation to get pension, nevertheless, there is a human side to it. The government cannot refuse to acknowledge that under the directive principles of state policy it has the duty to promote social and economic justice. These beneficiaries of pension as the dependent heirs of political sufferers are socially backward and completely lacking in economic resources. This pension received was utilized by them to eke out some kind of a livelihood. Deprivation of this pension after a period of thirty years has certainly caused a setback to their lives. It has resulted in sudden and untold hardship. Even if the political sufferers post-independence cannot be placed in the same bracket as freedom fighters, it cannot be ignored that in substantial cases the persons who had taken part in political or social movement post-independence had done it honestly and in good faith with the intention of promoting the goals, aims and objectives of the freedom fighters.

Considering Article 38 and 51A of the Constitution of India some recognition must be given to the cause of social and economic justice. Efforts to further the goals set by the freedom fighters must be made by all citizens.

Keeping all these facts in mind, which are humanitarian in nature, we are of the view that the government while implementing its decision to pay pension to the dependent heirs of freedom fighters only under the subject scheme should address its mind to the respondent writ petitioners who are the dependent heirs of political sufferers post-freedom by paying some

compensation to them in lieu of discontinuation of the policy of granting them monthly pension.

While upholding the impugned decision of the government, we direct that a team of three high officials presided over by an Additional Chief Secretary of the State of West Bengal should be constituted by the Chief Secretary of the State to consider reasonable compensation to be paid to the respondent writ petitioners for discontinuation of this policy of receiving pension.

We direct that a sum of Rs.5,00,000/- be paid as adhoc compensation to each of the respondent writ petitioners within two months of communication of this order. If the amount of compensation is adjudged to be higher, the differential amount shall be paid to them. If it is adjudged to be lower, the adhoc amount shall be taken to be the final compensation. The government shall make a decision in accordance with this order within three months of communication thereof.

The impugned decision of the government dated 15th January, 2013 is affirmed. The scheme for compensation of the respondent writ petitioners now deprived of their monthly pension shall be considered by the above team in accordance with this order.

All the appeals and connected applications, if not already disposed of, are disposed of by this order, setting aside the impugned judgment and order dated 26th November, 2015.

Urgent certified photo copy of this judgment and order if applied for be furnished to the appearing parties on priority basis upon compliance of necessary formalities.

I Agree:-

(Biswaroop Chowdhury, J.)

(I. P. Mukerji, J.)