

THE HONOURABLE SRI JUSTICE BATTU DEVANAND

WRIT PETITION NO.21104 of 2019

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WRIT PETITION No.10448 of 2020

COMMON ORDER:-

Writ Petition No.21104 of 2019:

1. This writ petition has been filed by 175 petitioners praying this Court to issue writ, order or direction more particularly in the nature of mandamus declaring the action of the respondents in discontinuing pensions to them as illegal, arbitrary, discriminatory and against the rules governing distribution of pensions and direct all the respondents to distribute arrears of pension to the petitioners from September, 2019 to December, 2019 and continue to pay the pension to them thereafter and pass such other orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

Writ Petition No.10448 of 2020:

2. This writ petition has been filed by the 5 petitioners against the action of the respondents, particularly the 8th respondent issued the impugned complaint against the petitioners to stop the old aged/widow pensions as illegal, discriminatory, without enquiry, without verifying the records in violation of the Government Orders and violative of principles of natural justice and against to the rights

guaranteed under Articles 14, 16 and 21 of the Constitution of India.

3. Heard Sri Kolla Venkateswarlu, learned counsel for the petitioners and the learned Government Pleader for Panchayat Raj appearing for respondent Nos.1 & 2 and Sri I. Koti Reddy, learned standing counsel appearing for respondent Nos.4 and 5 and Sri Raviteja Padiri for Respondent No.3 in W.P.No.21104 of 2019. Sri M. Krishna Rao, learned counsel for the petitioners and the learned Government Pleader for Panchayat Raj appearing for respondent Nos.1 & 2 and the learned Government Pleader for Revenue appearing for 3rd respondent and Sri I. Koti Reddy, learned standing counsel appearing for respondent Nos.5 to 8 and Sri Raviteja Padiri for Respondent No.4 in W.P.No.10448 of 2020.

4. With the consent of both counsel these writ petitions are disposed of at the stage of admission.

5. Sri Kolla Venkateswarlu, learned counsel for the petitioners in W.P.No.21104 of 2019 submits that all the petitioners are Birlangi Village, Itchapuram Mandal, Srikakulam District, which is a backward village. All the petitioners belong to downtrodden communities. All the petitioners are either widows or single women, who were deserted by respective husbands. Learned counsel submits that as per caste custom prevailing in their area even a wife

and husband separated, they do not go to Court to take divorce and they go by decision of caste elders, who declare that couple got separated. He also submits that due to this reason most of the petitioners, who got separated from their husbands or deserted by their husbands, there is no documentary proof. He also submits that most of deaths of husbands of the petitioners were also not recorded in gram panchayat. All the petitioners are eking out their livelihood by doing coolie works even that also will not be available regularly.

6. Learned counsel for the petitioners further submits that as the petitioners have no properties and no guaranteed source of income for survival, about five years back petitioners were selected as eligible for pension either as widows or as single women after following due procedure and scrutiny. These pensions were paid in the earlier government in the name of "*NTR BAROSA*" which was at Rs.2,000/- per month. After the present government came to power also the pension was enhanced to Rs.2,250/- per month and continue in the name of "*YSR PENSION KANUKA*" and it was also paid to the petitioners from May, 2019 to till August, 2019. The learned counsel submits that suddenly since September, 2019 pensions to the petitioners were stopped by the respondents. Enquiries by the petitioners with the respondent Nos.4 and 5 revealed that at the instance of leader of one political party in the village, pensions of petitioners were

discontinued. In spite of repeated representations to 4th respondent personally and through local MLA, pensions of the petitioners were not continued. It is contended by the learned counsel for the petitioners that without conducting any enquiry and without following any procedure due to political pressure stopped payment of pension to the petitioners though they are eligible for continuation of pensions as per rules and as such the decision of the respondents to discontinue pensions of the petitioners is illegal, arbitrary and unconstitutional and against their right to life guaranteed under Article 21 of the Constitution of India.

7. On behalf of the respondent Nos.4 and 5, a counter-affidavit has been filed. Sri I. Kotireddy, learned standing counsel for ZPP, MPP and Gram Panchayat appearing on behalf of the respondent Nos.4 and 5 submits that after receipt of the complaints against the petitioners and others in the village that they are getting the pensions as widows and single women for which they are not eligible. After making such enquiry in the village, it is found that the petitioner Nos.84 and 128 only are eligible and other petitioners failed to produce any documentary evidence showing their eligibility for grant of pension. He further submits that after verification of records, a report was sent to the 3rd respondent stating that the petitioners were illegally granted the pensions and hence recommended for cancellation of their pensions. It is also submitted by the learned standing counsel that basing

on the report sent by respondent Nos.4 and 5, the 3rd respondent cancelled the pensions of the petitioners along with the others in the village except petitioner Nos.84 and 128 and also submits that there is no political interference in cancelling the pensions.

8. Sri M. Krishna Rao, learned counsel for the petitioners in W.P.No.10448 of 2020 contend that the petitioners are residents of Penubarthi Village in Ponduru Mandal, Srikakulam District. Learned counsel submits that the Government of Andhra Pradesh through Rural Development Department under “*INDIRAMMA PADAKAM*” introduced a pension scheme called as social security pension scheme and after conducting elaborate enquiry, the petitioners identified and selected for the pension scheme and they were paid pension up to February, 2020 and from the month of March, 2020 the payment of pension to the petitioners was stopped. On enquiry, they learnt that basing on the complaint made by the 8th respondent i.e., Village Volunteer the pensions of the petitioners were stopped. It is contended by the learned counsel for the petitioners that no enquiry was conducted and no notice was issued before stopping the payment of pension to the petitioners which is contrary to the procedure and nothing but violation of principles of natural justice.

9. On instructions, Sri I. Koti Reddy, learned standing counsel submits that the petitioners are not eligible for

pensions basing on the eligibility criteria. The learned standing counsel submits that some of the petitioners' sons are government employees and some of the petitioners are having land in their name and as such they are not eligible.

10. Having heard the submissions of the learned counsel appearing for both sides and upon perusing the material available on record, this Court intends to look into the Government Orders issued time to time for implementation of social security pension schemes in the State.

11. The Government of Andhra Pradesh vide G.O.Ms.No.83, Panchayat Raj and Rural Development (RD.II) Department dated 27.03.2006 issued "Operational guidelines for implementation of all the pension schemes in the rural areas of the state". In the said G.O. it was mentioned that the Government of Andhra Pradesh is implementing various pension schemes as part of its welfare programmes for most needy and vulnerable people i.e., the persons in old age, widows, people with disabilities and weavers to provide them some succor. Relevant paragraphs of the said GO are extracted hereunder :

5.2 Eligibility Criteria

a. Eligibility criteria common to all Pensions

- i. The proposed beneficiary shall be from BPL family.
- ii. He/she shall be a local resident of the district.
- iii. He/she are not covered under any other Pension Scheme.

b. Old Age Pension

Old age pensions, both male and female, who are 65 years of age or above and are destitute (with little or no means of subsistence and no family or relative to depend upon).

c. Weavers Pension

Weaver is 50 years of age or above and destitute.

d. Widow Pension

Widows irrespective of age limit.

e. Disabled Pension

Disabled persons having a minimum of 40% disability and are above 18 years of age.

5.3 Pension Amount

The scale of benefit under each pension will be notified by the Government shortly.

5.4 Sanctioning Authority

The MPDO is the sanctioning authority for all pensions, in favour of eligible persons recommended by the Gram Sabha.

5.5 Sanction Procedure for New Pensions

Government will make district-wise allocation of new pensions to be sanctioned under INDIRAMME programme. The District Collector shall allocate Mandal-wise pensions based on eligible pensioners identified in Gram Sabha. The MPDO shall make Panchayat-wise allocation based on the eligible pensioners identified in the Gram Sabhas. The procedure is given in detail below:

- a. The Gram Sabha resolution recommending the pensions to the eligible persons shall be sent by the Panchayat Secretary to the MPDO.
- b. Gram Panchayat shall maintain a separate Register on pensions. Part-A of the Register contains list of the all the persons who are receiving pensions and Part-B contains list of eligible persons identified in the Gram Sabha who have not been sanctioned pensions.

- c. The Register will be sent to the MPDO along with the GP resolution.
- d. The MPDO scrutinizes the eligibility of the persons recommended by the Gram Sabha and draws up the list of new pensioners keeping in view the number allotted to each Panchayat.
- e. The sanction proceedings will be given by the MPDO in the Format given in Annexure-I.
- f. Copies of the sanction proceedings will be sent to the PD, DRDA and also to the pensioners in the village. A copy of the same shall also be sent to the Village Organization for securing greater transparency.
- g. The names of the persons who are sanctioned pensions shall be rounded off in the Part B of the register and shall be added to Part A of the register with the proceedings number. The entries made in the Part A should be duly authenticated with the seal of the MPDO at the end of the list. The register along with copies of the sanction proceedings shall be returned to the GP.

12. Originally, these pensions are included in “*INDIRAMMA PROGRAMME*” starting from 2006-2007. The said pension schemes were continued thereafter in the name of “*NTR BHAROSA*”. At present the Government of Andhra Pradesh issued G.O.Ms.No.103 Panchayat Raj and Rural Development (RD.I) Department dated 30.05.2019 named the social security pension scheme as “*YSR PENSION KANUKA*”.

13. It appears from the material paper filed by the petitioners along with the copy of the written arguments, at present the Government of Andhra Pradesh is implementing the following social welfare pension schemes:

- (1) Old Age Pension
- (2) Weavers Pension
- (3) Widow Pension
- (4) Disabled Pension

- (5) Toddy Toppers Pension
- (6) ART Pension
- (7) CKDU Pension
- (8) Transgender Pension
- (9) Fisherman Pension
- (10) Single Women Pension
- (11) Traditional Cobblers Pension
- (12) Dappu Artists Pension

14. On perusal of the Government Orders issued time to time it is clear that as part of welfare programmes the Government is implementing various social security pension schemes for the benefit of needy and vulnerable sections of the people to provide them some succor. In view of the poverty conditions in the society, the attempt of the government to implement these "Social security pension schemes" to provide the people belong to vulnerable sections to provide some succor is undoubtedly laudable.

15. But, it has to be noted that the government is the trustee of the public money. The government is empowered to utilize the public money in a proper manner for the benefit of the public at large. The government is not supposed to spend public money as per their whims and fancies as this public money is accrued from the payment of the taxpayers. This public money is the property of every citizen. The courts, time and again held the same.

16. The following observations of the Hon'ble Apex Court in ***Ramana Dayaram Shetty Vs The International Airport***

Authority of India and Ors.¹ would be of a great assistance:

“11. Today the government, in a welfare state is the regulator and dispenser of special services and provider of a large number of benefits, including jobs, contracts, licenses, quotas, mineral rights, etc. The government pours forth wealth, money, benefits, services, contracts, quotas and licenses. The valuables dispensed by government takes many forms, but they all share one characteristic. They are sturdily taking the place of traditional forms of wealth. These valuables which derive from relationships to government are of many kinds. They comprise of social security benefits, cash grants for political sufferers and the whole scheme of state and local welfare”.

It is further observed that:

“The discretion of the government has been held to be not unlimited in that the government cannot give or withhold largess in its arbitrary discretion or at its sweet will. The government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licenses only in favor of those having grey hair or belonging to a particular political party or professing a particular religious faith. The government is still the government when it acts in the matter of granting largess and cannot act arbitrarily. It does not stand in the same position as a private individual”.

¹ AIR 1979 S.C. 1628

17. A long back in the year 1969, in **V.Punnan Thomas Vs State of Kerala**², a Full Bench of High Court of Kerala observed as under :

“The government, is not and should not be as free as an individual in selecting the recipients for its largess. Whatever its activity, the government is still the government and will be subject to restraints, inherent in its position in a democratic society. A democratic government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal”.

18. A Division bench of the High Court of Patna in **Green Polytubes Pvt. Ltd. Vs State of Bihar and Ors**³ made very interesting observations as extracted hereunder :

“30. It would necessary for us to say that these days, the public money is partaking the character of ice. Every hand which comes into its contact, without any effort becomes wet. It depends upon the skill of such person to handle the ice in a manner so that he would also have some drops of water. The person who is entitled to the ice sometimes may get small piece of ice or few drops of water or a feeling of coolness or an apology that some ice was sent for him but unfortunately it melted on the way. The state government is the trustee and the caretaker of the public funds. The public reposes absolute confidence in the system of the government and the officers running the government. The public money should be handled in such a manner that any leakage, seepage or pilferage is not possible”.

² (AIR 1969 Ker81) (FB)

³ (AIR 2003 Pat 60)

19. The Hon'ble Supreme Court of India in ***Chenchu Rami Reddy and another Vs the Government of Andhra Pradesh and Ors***⁴ made the following observation:

More often than not, detriment to what belongs to 'many', collectively, does not cause pangs to 'any', for no one is personally hurt directly. That is why public officials and public minded citizens entrusted with the care of 'public property' have to show exemplary vigilance.

20. In ***Jamshed Hormusji Wadia's*** case⁵, the Hon'ble Apex Court held that the State's actions and the actions of its agencies/instrumentalities must be for the public good, achieving the objects for which they exist and should not be arbitrary or capricious.

21. In ***Kasturi Lal Lakshmi Reddy Vs State of J&K***⁶, the Hon'ble apex court has held as under:

"12. ...any action taken by the government with a view to giving effect to anyone or more of the directive principles would ordinarily, subject to any constitutional or legal inhibitions or other over-riding considerations, qualify for being regarded as reasonable, while an action which is inconsistent with or runs counter to a directive principle would incur the reproach of being unreasonable"

⁴ (1986 AIR 1158)

⁵ (2002) 3 SCC 214

⁶ (1980) 4 SCC 1

“14. Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the government cannot act in a manner which would benefit a private party at the cost of the state, such an action would be both unreasonable and contrary to public interest.”

22. This Court noticed, earlier also crores of public money was spent for different activities in the state of Andhra Pradesh. Did any person in the state ask the State government to spend thousand crores of rupees for organizing “*GODAVARI AND KRISHNA PUSHKARALU?*”. Did any Christian ask for “*CHRISTMAS KANUKALU ?*”. Did any Muslim request for “*RAMJAN THOFA?*”. But, thousands of crores of rupees were spent for these activities at the cost of public exchequer. At present also, thousands of crores of rupees are being spent under various programmes stating that it is for the welfare of the people. Can any one forgets spending crores of rupees for painting one political party colours to the government offices?

23. If the intention of the government to spend crores of rupees for all these programmes out of the public exchequer is for the interest and welfare of the poor and vulnerable sections of the people, definitely it has to be accepted. One

has to question himself whether the public money is being utilized properly as it seems to be.

24. This Court is of the opinion that while spending crores of rupees of public money for all the programmes as stated above, it is unreasonable to stop payment of meager amount being paid towards social security pension in favour of the petitioners.

25. In Writ Petition No.21104 of 2019 175 petitioners who are claiming to be widows or single women complaining that the pension being paid for them for all these years was stopped under political considerations. If the reason for stopping the pensions is really under political considerations, it is not acceptable in the opinion of this Court.

26. In the counter-affidavit filed by respondent Nos.4 and 5 stated that except petitioner No. 84 and 128, remaining petitioners are not eligible for pensions as widows and single women. They were illegally granted the widow pensions and single women pension.

27. This court intends to visualize the situation in a different way. According to our Indian culture and customs, marriages hold great sanctity. This sacred tie is defined by mutual fidelity and devotion of partners towards each other. Married women, especially, are accorded with a certain level of dignity and respect in the society. With the death of one's

spouse, a widow must face several social and psychological problems, in addition to the economical problems, if the husband was the sole bread earner of the family. Widows suffer a great deal of traumatic grief and loss of self-esteem. Married women are often identified in relation to their marriage, and the loss of the role of spouse shatters her entire social life.

28. In account of this, as per our culture and customs, no married woman would claim herself to be a widow, while her husband is alive and no married woman declares herself as single woman as and when she is living with her husband. Assuming that the women were indeed claiming themselves to be widows while their spouses are alive or declaring to be a single woman, just for the sake of argument, the reason for their claim can solely be the financial aid given to widows and single women. The poor economic conditions of the women and their families may have driven them to strip off the pledge of marriage and enter widowhood while their husbands are still alive, to avail financial aid. In such event, as and when the government is implementing these social security pension schemes to provide some succor to the needy and vulnerable sections of the society, the condition of the poor women as stated supra has to be understood and considered with human touch.

29. In Writ Petition No.21104 of 2019, the respondents except contending in the counter-affidavit or in the arguments that the petitioners are not eligible for pensions as per the complaints received by the respondents and the enquiries made by them, in fact, there is no mention in the counter-affidavit with regard to the enquiries conducted by the respondents to decide that the petitioners are not entitled for payment of pensions. In the counter-affidavit, nowhere it was stated on which date the enquiry was conducted. There is no mention with regard to issuing any notice to the petitioners before cancelling the pensions. There is no mention in the counter-affidavit on which date the proceedings were issued to cancel/stop the payment of pension to the petitioners and on which date the said proceedings were communicated to the petitioners.

30. As and when the procedure provided for selection and sanction for pensions in G.O.Ms.No.83, Panchayat Raj and Rural Development (RD.II) Department dated 27.03.2006 and as and when the petitioners were selected considering their eligibility and as recommended by the Gram Sabha, stopping payment of pension without placing the complaints received against the petitioners in the Gram Sabha for appropriate enquiry and stopping the payment of pensions even without issuing any notice is nothing but depriving the petitioners and throwing the helpless vulnerable women and old aged persons into starvation.

31. In W.P.No.10448 of 2020 all the petitioners are senior citizens and aged between 62 to 78 years. The reason stated for stopping payment of pension for these petitioners, as submitted by the learned standing counsel on instructions that the sons of the petitioner Nos.3 and 5 are government employees. The petitioner Nos.1, 2 and 4 are having some extent of land in their favour. As such, they are not eligible for pension. The reasons stated to disqualify the petitioners for pension appears to be unreasonable and unsustainable. Is it right contending that 78 years old woman is not eligible for old age pension saying that her son is a government employ. With regard to other petitioners the allegation is that they are having some land in their name. It has to be verified whether the allegation is correct or not and if so, the said lands are fit for cultivation and the petitioners are getting anything from that land to survive themselves. All these issues to be examined and considered with human touch.

32. The respondents have to follow the procedure for sanction of pensions as provided at para.no. 5.5 of G.O.Ms.No.83, Panchayat Raj and Rural Development (RD.II) Department dated 27.03.2006. Though the sanction proceedings will be given by the MPDO, the basis for such sanction is resolution of the Gram Sabha, which recommends the eligible persons for pensions through the concerned Panchayat Secretary. As such, if for any reason the respondents intend to stop/cancel the payment of pension to

the beneficiary, it has to be placed before the Gram Sabha. Before placing Gram Sabha, it is legal to put the petitioner/beneficiary on notice for submitting his/her stand. In the present cases, it is clear that no such procedure was followed. As such the action of the respondents is nothing but violation of principles of natural justice.

33. The view of this court is fortified by the principle laid down by the Hon'ble Apex Court in ***Raghunath Thakur Vs State of Bihar and Ors***⁷ in which it was held that:

“In the aforesaid case, that a person adversely affected by an order has right of being heard and making representations against order, even though rules donot provide so expressly”.

34. In ***S.N. Mukherjee Vs Union of India***⁸ the Hon'ble Apex Court held as follows :

“Administrative action should be supported by reasons and the principles of natural justice should be followed”.

35. In the case of ***D.K.Yadav Vs J.N.A Industries Ltd***⁹, the Hon'ble Apex Court held as under :

“Requirement of natural justice was held to be a precondition and action taken without following the principles of natural justice was held to be violative of Article 14 of the Constitution of India”.

⁷ AIR 1989 SC 620

⁸ AIR 1990 SC 1984

⁹ (1993) 3 SCC 259

36. For the reasons stated above, this Court is holding that stopping payment of social security pension to the petitioners without conducting any enquiry or without issuing any notice is illegal, arbitrary, discriminatory and against the object of social security pension scheme, against the principles of natural justice and violative of Article 14 and 21 of the Constitution of India.

37. In the result, the W.P.No.21104 of 2019 and W.P.No.10448 of 2020 are allowed with the following directions:

- (1) The respondents are directed to make payment of pension to the petitioners from the month when it was stopped to till date within a period of 15 days.
- (2) The respondents are directed to continue the payment of pension every month to the petitioners till the appropriate orders to be passed by the competent authority after conducting appropriate enquiry, in accordance with law, if so advised, to ascertain the eligibility of the petitioners in Gram Sabha after giving opportunity to the petitioners.
- (3) No order as to costs.

Miscellaneous petitions pending, if any, in this writ petition shall stand closed.

JUSTICE BATTU DEVANAND

Date: 08.09.2020

Note: L.R. copy to be marked.

PGR/eha

THE HONOURABLE SRI JUSTICE BATTU DEVANAND

Common order passed in

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&

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Date :08.09.2020

PGR/eha