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(2018) 07 MP CK 0114

In the Madhya Pradesh High Court

Case No : Writ Petition No.5765 Of 2018

Chhotelal Khare — APPELLANT

Vs

State Of Madhya Pradesh And Anr — RESPONDENT

Date of Decision : 13-07-2018

Acts Referred:
Madhya Pradesh Swantrata Sangram Sainik Samman Nidhi Niyam, 1972 — Rule 3(1)

Citation : (2018) 07 MP CK 0114

Hon'ble Judges : Sanjay Dwivedi, J

Bench : Single Bench

Advocate : Anil Khare, R.S. Khare, G.P. Singh

Final Decision : Allowed

Judgement

At the request parties since the pleading are complete, the matter is heard finally.

2. This petition has been filed seeking a direction to the respondents-authority for granting Samman Nidhi to the petitioner in view of the order dated

02.04.2013 passed by this Court in identical matter i.e. W.P. No.2902/2012. It is also claimed that order dated 14.05.1999 (Annexure-P/15) passed by

the respondents be also quashed.

3. Basically, this petition has been filed claiming that the petitioner be declared eligible and entitled for grant of Samman Nidhi as per the provision of

Rules known as Madhya Pradesh Swantrata Sangram Sainik Samman Nidhi Niyam, 1972 (in short â??Niyam 1972â??).

4. Facts lie in narrow compass, leading to the case are as under:-

â??The petitioner has stated in his petition that Vindhya Division of the State of Madhya Pradesh was associated with 35 princely states. The State of

Orchha was one of the states. The ruler of State of Orchha got shelter from

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British Government and ruled in the State as per the policies of British

Empire. The freedom movement in the State of Orchha was managed and led under the banner â??Orchha Seva Sanghâ?. Since, the State of

Orchha was being run as per the policy of the British Empire, the Orchha Seva Sangh was part of National Freedom Movement in the State of

Orchha and this organization was involved against the British Empire as well as State of Orchha. The petitioner has contended that in the year 1943,

he constituted an Organization known as â??Bal Mandalâ? alongwith other colleagues of Village Prithvipur, District Tikamgarh, which was later on

merged in the Orchha Vidhyarythi Congress. As per the petitioner, he was rusticated from Sabai Mahendra High School Tikamgarh alongwith other

students on account of active participation in the functions of the Orchha Vidhyarthi Congress and thereafter he took part in the movement under the

banner of â??Orchha Seva Sanghâ?. As per the petitioner, he participated in the National Freedom Movements viz. â??Chandera Kandâ? and

â??Aston Jhanda Satyagrahâ? and resultantly he was declared offender by the State of Orchha and warrant of his arrest was issued. He remained

underground and participated in the freedom movement and could not be arrested. Because of his active participation in freedom struggle despite the

warrant of arrest was in force, he had to underground for the period commencing from 01.12.1945 to 31.03.1946. It is also stated that the State

Government after independent issued a list of freedom fighters in view of the provisions of Niyam 1972 and the name of the petitioner was at serial

No.135 in the freedom fighters register maintained by the Collector. An identity card was issued in his favour by the Collector Tikamgarh showing him

freedom fighter as per the list published by the Collector. The petitioner was also awarded a Certificate by the-then Chief Minister.

The said certificate is available on record as Annexure-P-3. It is also averred by the petitioner that a gazette notification was also issued by the State

of M.P. of District Tikamgarh in which name of the petitioner shown at serial no. 151 as freedom fighter. The said notification is on record as

Annexure-P-4. The petitioner has submitted that the provisions of Niyam 1972 especially Rule 3(1) stipulates the eligibility criteria for grant of

Samman Nidhi and proviso appended to the said Rule provides that a person who remained in confinement for a period, even one day would be

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entitled to grant of Samman Nidhi. As per Niyam 3(3) of Niyam 1972 apprehension of arrest by virtue of arrest warrant against a person who

remained underground during the freedom movement would also be held him entitled for Samman Nidhi. As per the petitioner, the involvement of a

person has to be certified by any freedom fighter who suffered jail sentence more than three months. The petitioner has stated that his involvement

has been verified by Shri Laxmi Narayan Nayak who was a very prominent freedom fighter of the State of M.P. and ex-member of Assembly. Shri

Ram Sahay Tiwari who was also ex-member of the Parliament and former Chief Minister of the responsible Government (Uttardai Sashan) and

Savitri Saxena the-then Executive Member of M.P. Swatantrata Sangram Sainik Sangh verified the name of the petitioner and also found him entitled

to get the benefit of Samman Nidhi ascertaining that from 01.12.1945 to 31.03.1946 the petitioner remained underground. They have also verified that

the petitioner was a proclaimed offender and warrant of arrest was issued by the State of Orchha. Meaning thereby, the entitlement of the petitioner

as per Niyam 1972 for getting Samman Nidhi being a freedom fighter has been verified by the competent persons. It is also verified that due to protest

of Chandera Kand, the petitioner was arrested and confined for 16 days. All those certificates have been filed by the petitioner collectively as

AnnexureP-5. He has also filed recommendation letter dated 23.09.1994 of the President of District Level Association of Freedom Fighters

recommending the name of the petitioner to be entitled to get the benefit of Samman Nidhi as per Niyam 1972.

The petitioner has contended that despite completing all formalities and requirement to get Samman Nidhi his application remained pending before the

authority for long and after considerable long time, his claim has been rejected and list in this regard was issued i.e. Annexure-P/1 showing the name

of persons whose claim for Samman Nidhi was rejected. The petitioner was placed at serial No.5 in the said list and therefore the District Level

Association protested his claim against the State Government saying his application has wrongly been rejected and thereafter the General

Administration Department issued direction to the Collector Tikamgarh that the case of the petitioner be reexamined providing an opportunity of

hearing to the concerned freedom fighters. It was also directed that in case of non-availability of government records, necessary steps be taken by the

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Collector Tikamgarh on its own level and thereafter the petitioner was asked to submit an application afresh and said application was submitted by the

petitioner alongwith affidavit on 15.07.1997.

Vide order dated 14.05.1999, his claim was again rejected mainly on the grounds that the period in respect of underground mentioned by the petitioner

in both the applications dated 29.03.1988 and 15.07.1997 are different to each other; he has not produced the government record in respect of his

claim and no record relating to the detention or rustication of the petitioner is available. The petitioner has sought quashment of said order dated

14.05.1999 (Annexure-P/15).â??

5. Learned counsel for the petitioner has argued that there was no difference of the period shown about his underground, but on the wrong premise,

his claim has been rejected. It is further argued that there were sufficient documents annexed by the petitioner showing his claim has been verified as

per the requirement of Niyam 3(1) and (3) of Niyam 1972 and as such his claim should have been allowed. He has also placed reliance on the orders

passed by this Court on 02.04.2013 and 26.04.2013 in petitions preferred by similarly situated persons and those orders of this Court are available on

record as Annexure-P-16. Learned counsel for the petitioner further submits that the order passed by the writ Court was challenged by the State

Government by filing writ appeals but those appeals were also dismissed. The orders passed by the Division Bench in writ appeal have also been

annexed as Annexure-P/17. The petitioner has also stated that when case of similarly situated persons was considered and an order was passed by

this Court, the petitioner has also moved representation on 22.09.2016 which is still pending before the respondentauthority and no decision has been

taken so far.

6. With the aforesaid premise it is argued on behalf of the petitioner that the petitioner is otherwise entitled for grant of Samman Nidhi as there were

ample documents filed by him in respect of his claim fulfilling the requirement of Niyam 1972 and therefore, the claim of the petitioner for grant of

benefit of Samman Nidhi deserves to be allowed.

7. Combating the claim of the petitioner, learned State Counsel has stated that the petition filed by the petitioner is liable to be dismissed mainly on the

ground of limitation as the same suffers from delay and latches as the petitioner

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filed the petition in year 2018 challenging the order passed in the year

1999 and as per the respondents the petitioner has not come with proper explanation regarding delay. Counsel for the State has also argued that there

were no documents made available by the petitioner before the authority to convince that the petitioner was a freedom fighter and/or is otherwise

entitled to get the benefit of Samman Nidhi. Based on the above grounds, learned State counsel has supported the order passed by the authority on

14.05.1999.

8. After hearing the learned counsel for the parties and perusing the record available, this Court finds that the contention of the respondents in respect

of objection regarding maintainability of petition on the ground of delay and laches and relying on a judgment of the Supreme Court reported in 2012(3)

MPLJ 346 parties being - Ashok Kumar vs. District Magistrate, Basti and another, the petition cannot be dismissed for the reason that the petitioner is

90 years old person, who has been fighting for a claim for grant of Samman Nidhi. Looking to his sacrifice and devotion for the Nation, he cannot be

compared with a normal litigant, although explanation has been given by the petitioner in paragraph 4 of the petition saying that he made a

representation to the authority asking benefit as has been granted by this Court to similarly situated persons but his representation is pending and no

order has been passed by the authority on the said representation. Thus, the objection raised by the respondents regarding delay and laches is not

accepted and hence rejected.

9. Apart from this, the respondents cannot supplement the other grounds in their reply but as per settled principle of law the Court has to proceed with

the reasons assigned in the order, which is subject matter of the petition. It depicts from a perusal of the order impugned dated 14.05.1999 that the

respondents have rejected the claim of the petitioner assigning reason that in the petitionerâ??s application submitted on 29.03.1988, he has shown

that he remained underground; participated in the freedom movements; was rusticated and also remained in jail w.e.f. 12.09.1947 to 19.09.1947, but in

his subsequent application dated 15.07.1997 he has stated that from 01.12.2014 to 31.03.1946 he remained underground just to avoid his arrest and in

the year 1946, he was in custody for 16 days. As per the respondents, no government documents have been produced by the petitioner regarding his

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underground period; remaining in jail and also in respect of other information supplied by him and thus adverse inference was drawn in respect of

period he remained underground so also in custody.

10. Although, this Court has examined the documents submitted by the petitioner alongwith his petition and also examined the relevant provision of

Niyam, 1972. Rule 3(3) of Niyam 1972 very categorically provides the requirement of filing certificate in absence of availability of government record.

The petitioner has filed the certificates of freedom fighters, who remained in jail for a period 3 months and belonged to same revenue division. In

absence of any specific denial regarding correctness of said certificate in the reply of the petitioner by the respondents and even in the order

impugned, there is no occasion for this Court to disbelieve or discard the said Certificates. Although, in the reply of State in paragraph 9 there is simple

denial saying that condition mentioned under Rule 3(3) of Niyam 1972, has not been fulfilled, but that denial cannot be accepted as proper denial since

the documents filed by the petitioner in respect of his claim have not been specifically said to be false and fabricated certificate. There were other

documents and even the gazette notification filed by the petitioner in respect of his claim in which he has been declared as a freedom fighter and he

secured his position in the list published by the authority with respect to freedom fighter of District Tikamgarh. There were other recommendations of

the State authorities and also of Chief Minister showing certificate in favour of the petitioner declaring him freedom fighter.

11. The petitioner is also relying upon an order passed by this Court in case of similarly situated person namely Sitaram Manav Dangi, who was also

shown as freedom fighter in the list of freedom fighters published on 02.03.2000 in which the name of petitioner was also shown at serial No.5

whereas the name of Sitaram Manav Dangi was at serial No.148. Likewise, there was a case of Ram Sahay Nagrik who was also a freedom fighter

of District Orchha but his case was rejected by the authority then this Court comparing his case with Sitaram Manav Dangi allowed the petition

granting him benefit of Samman Nidhi as per Niyam 1972 and that order was also affirmed by the Division Bench. Thus, I do not find any substance

in the contention raised by the respondents and stand taken by them in their reply. Prima facie, the reasons assigned in the order impugned do not

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carry any substance for the reason that the petitioner fulfilled the requirement of Rule 3(3) of Niyam, 1972 and there was no specific denial by the

respondents regarding those certificates and documents and also no denial as to how the authorities have issued the list of freedom fighters containing

the name of the petitioner. The respondents-State has also not denied as to how a gazette notification was issued showing the petitioner to be a

freedom fighter alongwith the name of Sitaram Manav Dangi, whose claim has been considered by the Court and petition was allowed.

12. Accordingly, this Court finds the claim of the petitioner regarding grant of Samman Nidhi has substance and the petitioner is entitled to get the said

benefit.

Therefore, the order impugned dated 14.05.1999 (AnnexureP/15) is set aside for the reason that the same has been passed on a false and fictitious

premise. The respondents are directed to make payment of Samman Nidhi to the petitioner w.e.f. the date when his claim was rejected vide order

dated 14.05.1999. In other cases, although the Court had granted interest @7% but in the case at hand, interest is not awarded to the petitioner for the

reason that the petitioner has assailed the order of rejection of his claim belatedly and therefore for this reason it is not proper to grant interest as

awarded in other similar cases.

13. The petition is accordingly allowed. The respondents are directed to calculate the amount of Samaan Nidhi as per prevailing rate for respective

period from 1999 and pay the amount of arrears to the petitioner within a period of two months from the date of passing of this order.

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