
(1999) 11 MP CK 0063
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2983 of 1995

Gyan Chand Jain

APPELLANT

Vs

Collector, Dist. Jabalpur and another

RESPONDENT

Date of Decision : 27-11-1999

Acts Referred:

Defence of India Rules, 1939 — Rule 39

Citation : (2001) 1 MPJR 71 : (2001) 1 MPLJ 419

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : M.L. Chansoriya, for the Appellant; V. K. Shukla, Government Advocate For State, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

The petitioner claiming to be a freedomfighter submitted an application for grant of Freedomfighter Samman Nidhi to the State Government in the General Administration Department in the year 1972 in the prescribed proforma as stipulated under the Swantantrata Sangram Samman Nidhi Adhiniyam, 1972 (hereinafter referred to as "the Adhiniyam"). The application was forwarded for scrutiny and verification to the Collector, Jabalpur who conducted an enquiry and recommended the case of the petitioner for grant of the Samman Nidhi. The State Government vide Annexure-A dated 20-6-1973 allowed the application and the petitioner was paid the Samman Nidhi regularly up to 12-6-1979. But, thereafter, all of a sudden the said payment was stopped.

It is averred in the writ petition that before stopping such payment the petitioner was not issued any notice to show cause nor was he ever afforded an opportunity of being heard. On enquiry the petitioner was orally informed that the Samman Nidhi which was conferred on him earlier, was withdrawn as he was released on bail from Central Jail, Jabalpur on furnishing surety. The petitioner, as putforth in

the writ petition, submitted series of representations but the same were not dealt with by the State Government. Being unable to tolerate the sphinx like silence of the respondents the petitioner filed this writ petition in the year 1995 for mitigating his grievances. According to the petitioner he had remained in the Central Jail, Jabalpur from 5-3-1943 to 19-4-1943 for more than 45 days under Rule 39 of the Defence of India Rules, 1939 along with other prisoners and his name has been mentioned at serial No. 33/92 in the Freedomfighters Register kept in the Collectorate Jabalpur and there is no justification to withdraw the allowance.

A return has been filed by the answering respondents contending, inter alia, that the petition deserves to be dismissed as the petitioner has approached this Court after a considerable length of time. It is also pleaded that the petitioner was not kept in custody on the basis of any conviction but was detained as "hawalati" prisoner. It is also stated that as the petitioner had availed the concession of bail he is not entitled to the Samman Nidhi. It is also set forth that the State Level Advisory Board has issued instructions that the persons who had not suffered imprisonment being convicted would not be entitled to such Samman Nidhi.

I have heard Mr. M.L. Chansoriya, learned counsel for the petitioner and Mr. V. K. Shukla, learned Government Advocate for the State. Mr. Chansoriya has submitted that the petitioner, who had fought for this country in his youth, had immense faith and trust in the administration that his case would be looked into and his grievances would be mitigated and with the aforesaid unflinching faith and trust embedded, made representations to the State authorities but when his patience reached the zenith and he was unable to live with basic human dignity he approached this Court as a last resort. It is settled in law that a litigant who does not agitate his grievances well in time a writ petition at his instance is ordinarily not to be entertained and his visit has to be stopped at the very threshold. However, the present case stands in a different footing altogether. The concept of Samman Nidhi is a recognition, a recognition by the independent India to the freedomfighters who fought selflessly against the British Government. If the petitioner is entitled to the benefit under law, I am of the considered view, his right should not be curbed or curtailed because of delayed approach. In this context I may profitably refer to the observations by the Apex Court in the case of Mukund Lal Bhandari and others Vs. Union of India and others, :

7. As regards the contention that the petitioners had filed their applications after the date prescribed in that behalf, we are afraid that the Government stand is not justifiable. It is common knowledge that those who participated in the freedom struggle either at the national level or in the erstwhile Nizam State, are scattered all over the country and most of them may even be inhabiting the remotest parts of the rural areas. What is more, almost all of them must have now grown pretty old, if they are alive. Whether the freedom fighters are not alive and their widows and the unmarried daughters have to prefer to claims, the

position may still be worse with regard to their knowledge of the prescribed date. What is more, if the scheme has been introduced with the genuine desire to assist and honour those who had given the best part of their life for the country, it illbehoves the Government to raise pleas of limitation against such claims. In fact, the Government, if it is possible for them to do so, should find out the freedom fighters of their dependents and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of the working out such schemes. The scheme had rightly been renamed in 1985 as Swatantrata Sainik Samman Pension Scheme to accord with its objects. We, therefore, cannot countenance the plea of the Government that the claimants would be entitled to the benefit of the Scheme if they made applications before a particular date notwithstanding that in fact they had suffered the imprisonment and made the sacrifices and were thus qualified to receive the benefit. We are, therefore, of the view that whatever the date on which the claimants make the applications, the benefit should be made available to them. The date prescribed in any past or future notice inviting the claims, should be regarded more as a matter of administrative convenience than as a rigid time-limit.

I have referred to the aforesaid observations only to indicate that the belated approach by the petitioner cannot be regarded as an impediment for exercising the extraordinary jurisdiction of this Court.

Now to the merits. It is not disputed that the petitioner was kept in custody under the Defence of India Rules, 1939. In fact, this aspect gets support from the documents filed by the State under Annexure R-II. Submission of Mr. Shukla, learned Government Advocate for the State is that the petitioner was not convicted and no sentence was awarded and he availed the benefit of bail and, therefore he is ineligible to the said Samman Nidhi. It is his submission that as the petitioner was erroneously granted the Samman Nidhi the same was withdrawn in the year 1979. The withdrawal order has been brought on record as Annexure R-I. It is also putforth by Mr. Shukla that a copy of the order passed vide Annexure R-I was marked to be served on the petitioner. However, the learned counsel for the State fairly stated that the petitioner was not afforded an opportunity of hearing before the Annexure R-I was passed. Ordinarily this Court would have remitted the matter to the State Government for reconsideration as per the Rules in vogue, but as a pure question of law arises, it is thought appropriate to decide the matter on merits.

Mr. V. K. Shukla, learned Government Advocate for the State has referred me to the Rule 2(kha)(teen). It reads as under:

" "

He has also referred Rule 2(Ath)(a). It is as under:

" "

Mr. Chansoriya, learned counsel for the petitioner has laid emphasis on "Spashtikaran (chha)". It reads as under:

" "

Submission of Mr. Shukla is that if all the three clauses are read together, it would be amply clear that the petitioner is not entitled for the Samman Nidhi as he had not suffered imprisonment as a convict. He has also contended that that the period of 15 days has been reduced to one day by way of amendment w.e.f. 30-9-1997. Learned counsel for the petitioner on the other hand, has canvassed that the Rule 2(teen) uses the word "Qaid" and when a particular word has been employed by the rule-making authority and it has been further clarified that the period of "Qaid" would encompass the period of conviction, the period of detention, and the period spent as an undertrial prisoner, the State Government cannot introduce a new meaning to the same.

The core question that falls for consideration is whether the meaning of the term "Qaid" would engulf arrest in its sweep. It is the contention of Mr. Shukla that the Spashtikaran (chha) has only been introduced as a clarification to get the true import of the main provision i.e. Rule 2 (teen). The learned Government Advocate has tried his level best to impress upon this Court that the term "Qaid" must be construed in a narrow sense and should not be interpreted to engulf the period of detention, or arrest as the word "detention" has been used in different context under Rule 3(8)(a) in "Spashtikaran (teen)", but I am afraid, such an interpretation is not acceptable in view of the word "Qaid" used in Rule 2 (teen) and the explanation only makes an endeavour to clarify the word "Qaid". It is thus the word "Qaid" gains importance in the proper interpretation and true understanding of the Rule in the question. In this context it is apposite to refer to the meaning of the word "Qaid". In "Legal Glossary Publication, Bharat Sarkar Vidhi Nyay Mantralaya, Rajbhasha Khand" the meaning of the word "Qaid" is: "Karawas, "giraftari", "pratibandh". Considering the wide import of the term, it can unhesitatingly be concluded that it includes arrest.

In the case at hand, the petitioner remained in custody for more than 45 days and that would definitely come within the ambit and sweep of the word "Qaid" in its conceptual denotation and connotative expansion. This being the sole foundation for passing of the order contained in Annexure R-I, I am of the considered view, the same does not withstand close scrutiny and is sensitively susceptible being violative of the conscience and spirit of the Adhinyam. Though, no prayer has been made for quashment of the order as the same was not made available to the petitioner, Mr. Chansoriya, learned counsel for the petitioner has submitted that this Court may mould the relief. Accepting such prayer, the relief is moulded in exercise of power conferred under Article 226 of the Constitution, and the order passed in Annexure R-I is quashed.

Now to the relief. Submission of Mr. Chansoriya, learned counsel for the petitioner is that during the pendency of this writ petition the petitioner has

become a septuagenarian and is in the fag end of his life, and, therefore, mercy and pity must have their allowance and past benefit should be given to him.

Per contra Mr. Shukla, learned Government Advocate for the State has contended with vehemence that though this Court has entertained the writ petition but should not grant the relief from 1979 to 1995 as the petitioner had not agitated his grievance. True it is, justice has to be dispensed with mercy, but mercy also has to have its limitations. It is well known, a Judge does not decide the controversy or a lis in an emotional manner. It has been observed by William Scroggs in *The Kings vs. Johnson* (1678) 2 Shower's Reports K.B. 1,4.

..... as anger does not become a Judge, so neither doth pity, for one is the mark of a foolish woman, as the other is of a passionate man.

It is true the petitioner fought for the independence of this country, gave his due contribution in the prime of his youth but when he did not approach this Court from 1979 to 1995, it would not be apposite to extend the benefit for the said period. Hence, I am not inclined to accept the submission of Mr. Chansoriya for grant of benefit to the petitioner from 1979 to the date of presentation of this writ petition i.e. 7-8-1995. However, the petitioner would be entitled to the "Samman Nidhi" from 9-8-1995. The arrears are to be computed by the respondent and be paid to the petitioner within a period of three months from today. The petitioner would not be entitled to any interest on the arrears. Needless to emphasize the petitioner shall be given the benefits of the "Samman Nidhi" regularly in future.

The writ petition is allowed in part. However, there shall be no order as to costs.