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**(2007) 10 MP CK 0057**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 2332 of 2004**

Kailashnath Choubey

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

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**Date of Decision : 01-10-2007**

**Acts Referred:**

**Citation : (2008) 2 MPLJ 288**

**Hon'ble Judges : Abhay M. Naik, J**

**Bench : Single Bench**

**Advocate : Sharad Verma, for the Appellant; Vinod Mehta, Government Advocate for State, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Abhay M. Naik, J.

This petition is for issuance of writ of mandamus directing the respondents to consider the case of petitioner for the benefit admissible under M.P. Swatantrata Sangram Sainik Samman Nidhi Rules, 1972.

In short the petitioner in his writ petition has stated that he actively participated in the freedom struggle movement and Quit India Movement. He was arrested on 12-8-1942 for an offence punishable under Rule 38(5) of Defence of India Rules and a fine of Rs. 251/- was imposed on him in Criminal Case No. 42/42. It was provided that in case of default, petitioner was liable to undergo rigorous imprisonment for a period of one month. Petitioner deposited Rs. 251 towards fine. Petitioner made a representation for grant of Samman Nidhi but the same was denied. Various commendatory letters and certificates issued by MLAs and M.Ps are placed on record cumulatively vide Annexure/P-2 to P-4. Petitioner requested the concerning jail authority at Damoh for supplying the requisite documents about the Criminal Case. In turn, Superintendent of Jail, Damoh informed the District Magistrate, Damoh vide Annexure/P-7 that the record pertaining to the year 1942 was destroyed/damaged. Vide Annexure/P-8 dated

17-7-2001, it was informed by the Deputy Secretary, G.A.D., Bhopal that the petitioner had deposited the amount of fine and has not undergone the imprisonment. Moreover, his name is not included in the list of Swatantrata Senani of the district. Accordingly, request of the petitioner for grant of Samman Nidhi could not be acceded to. This action has been challenged in the present writ petition on the ground of illegality and arbitrariness.

In the return, it is submitted by the respondents that the petitioner having deposited the fine of Rs. 251 was not required to undergo the imprisonment of one month. Petitioner was not found entitled in view of the provisions of M.P. Swatantrata Sangram Sainik Samman Nidhi Rules, 1972 (hereinafter referred to as "Rules of 1972").

Petitioner submitted certain more documents on 4-10-2006 to substantiate his claim of Samman Nidhi. Placing reliance on the decision of this Court in the case of Rewashankar Guha vs. State of M.P. and another, 2003(3) MPLJ 230, Shri Verma, learned counsel for the petitioner contended that the petition deserves to be allowed and a direction for consideration of grant of Samman Nidhi in favour of the petitioner deserves to be issued.

Heard the arguments of Shri Verma, learned counsel for the petitioner and Shri Vinod Mehta, Govt. Advocate in respect of their respective pleas which have been considered in the light of material on record and the relevant provisions governing the situation.

M.P. Swatantrata Sangram Sainik Samman Nidhi Rules, 1972 were brought into force w.e.f. 18-9-1972 by way of publication in M.P. Rajpatra (Asadharan), 18-9-1972. "Swatantrata Sangram Sainik" is defined in Rule 2 (Kha) of the Rules of 1972 in the following manner:

Rule 3 of M.P. Swatantrata Sangram Sainik Samman Nidhi Rules, 1972 empower the State Government to grant life long monthly Samman Nidhi to Swatantrata Sainik and other eligible persons.

Rules of 1972 were amended vide Gazette (Extraordinary) of M.P. dated 29th April, 1987 and sub-rule (3) has been added after sub-rule (2) in Rule 3 in the Rules of 1972. By virtue of this amendment a person who remained underground for a minimum period of three months in connection with Swatantrata Andolan (Freedom Movement) has also been made eligible life long for monthly Samman Nidhi.

Shri Sharad Verma, learned counsel also chose to argue on the basis of the aforesaid amendment in order to claim Samman Nidhi under the Rules of 1972.

Petitioner has placed on record Annexure/P-1 which is a copy of record room register of Criminal Cases with respect to the year 1942. In column No. 5 of Annexure/P-1, it is revealed that the petitioner was fined with Rs. 251/- under Rule 38(5) of Defence of India Rules and in case of default he was liable to undergo rigorous imprisonment of one month. In column No. 8, the file is shown

to have been destroyed on 1-11-1944. Petitioner has submitted certificates issued by the MLAs and MPs as contained in Annexure/P-2 and P-3 wherein it is clearly mentioned that the amount of fine was deposited by the petitioner. These certificates make it clear that the petitioner was not required to undergo imprisonment and as a fact had not undergone the rigorous imprisonment of one month which was liable to be suffered in lieu of amount of fine. Another certificate contained in Annexure/P-4 has also been placed on record which is issued by Shri Jayant Kumar Malaiya, M.L.A. from Damoh. Vide Annexure/P-4 it has been certified that the petitioner was imposed with a fine of Rs. 251/- under the Defence of India Rules and in case of default with an imprisonment of one month. It has been further certified in Annexure/P-4 that Kailash Nath Choubey (i.e. the petitioner) after he was released from jail extended direct co-operation to the freedom fighters and had been participating actively in the freedom struggle. It is pertinent to note that the author of Annexure/P-4 has also issued certificate contained in Annexure/P-2 wherein it has been clearly certified that the petitioner had deposited the amount of fine to the tune of Rs. 251/-. This being so, there was no occasion for the petitioner to undergo imprisonment in lieu of fine. Contrary to this, an impression has been given vide Annexure/P-4 that the petitioner was penalised with fine of Rs. 251/- and in case of default, with one month's imprisonment and the petitioner after release from jail participated in the freedom struggle actively. An attempt has been made to impress analogically that for default of fine the petitioner suffered the jail and after his release from jail, he actively participated in freedom movement. Since, in the petition as well as Annexure/P-2 and P-4, it has been clearly admitted that the fine of Rs. 251/- was deposited by the petitioner, there could have been no occasion for him to undergo imprisonment. Thus, the certificates contained in Annexure/P-2 to P-4 are of no assistance to the petitioner to establish his entitlement on the ground of having suffered imprisonment in connection with freedom struggle.

Petitioner's application for grant of Samman Nidhi was also rejected on 21-9-2000 as revealed in Annexure/P-8 dated 17-7-2001. It seems from Annexure/P-8 that earlier the petitioner claimed the Samman Nidhi merely on the ground of punishment imposed on him in Criminal Case No. 42/42. It seems to have been rejected on the ground that the petitioner did not undergo imprisonment, but was released directly on account payment of fine of Rs. 251/-. It further seems that after such rejection another attempt has been made by the petitioner on the ground that he actively participated in the freedom movement and remained underground for more than requisite period under the Rules, 1972.

Facts are narrated in paragraph-5 (5.1 to 5.9) of writ petition. It may be seen that there is absolutely no averment that the petitioner remained underground for more than requisite period in connection with the freedom struggle and no such ground has been raised in paragraph-6 of the writ petition with regard to entitlement of the petitioner to Samman Nidhi on the basis of having remained underground for the requisite period. It is true that the pleadings are not to be

construed in strict manner like in civil suits, however, that does not mean that pleadings have no role at all to play in writ petitions. In the instant case, the claim of the petitioner seems to have been rejected on 21-9-2000 as revealed in Annexure/P-8. This order has neither been placed on record nor has been challenged by the petitioner in the present writ petition. On the contrary, the same has not been even referred to in the averments contained in the writ petition. This apart, no prayer for quashment of Annexure/P-8 has been made in the writ petition and the claim of the petitioner is tried to have been built up on the basis of additional documents submitted on 4-10-2006.

This Court is not only fully conscious, but it entertains highest regard for the freedom fighters who in fact lost their lives or dedicated their lives for achieving freedom and it is only on account of them that we are enjoying the fruits of freedom. From this angle, it would be a crime to ignore any of the real freedom fighter and to deprive him of Samman Nidhi which is not being granted as a charity or mercy. On the contrary, the freedom fighters by giving their consent for accepting it are obliging the post independence generation. Worth of such freedom fighters cannot be assessed in terms of money and/or Samman Nidhi. Entire country owes to them much more. It is equally true that the person whose claim is not established shall not be allowed to avail the benefits admissible to actual freedom fighters.

On account of the aforesaid, this Court despite absence of necessary averments gave anxious consideration to the claim of the petitioner in the light of Rule 3(3) as amended vide Gazette Notification dated 29th April, 1987. Rule 3(3) of Rules of 1972 is reproduced below:

By virtue of the aforesaid provision, the State Government is empowered to grant life long monthly Samman Nidhi to a person who remained underground for a minimum period of three months during the struggle for freedom. In case of non-availability of Government record, Samman Nidhi may be granted to a person who has been certified to be eligible by any other freedom fighter of the same revenue division who has undergone an imprisonment for three months. Petitioner has submitted as additional documents, affidavits of Khemchand Jain and Gaya Prasad Pyasi. In the affidavits submitted by these two freedom fighters, it is nowhere mentioned that the petitioner remained underground at least for a period of three months. Thus, these affidavits are legally insufficient to hold that the petitioner remained underground for a minimum period of three months within the meaning of sub-rule (3) of Rule 3 of Rules of 1972.

Much reliance has been placed on the decision of this Court in Rewashankar Guha's case (supra). In the case of Rewashankar Guha (supra) this Court in paragraph-6 of the order found that the fact that the petitioner was in jail was not disputed in the return and the case of the petitioner was rejected on totally impermissible grounds. This Court further found as a fact that the register Annexure/P-1 indicates that the petitioner was taken into custody and confined and that the factum of arrest has not been disputed in return. This Court clearly

further found that the petitioner remained in custody for three days as claimed by him and there is overwhelming documents on record in support of the same. Case of Bene Prasad Tonk was found to be identical with that of Rewashankar Guha and the later was found to have been discriminated for no good reasons. Since, Beni Prasad Tonk was in receipt of freedom fighter pension, an identical treatment was to be extended to Rewashankar Guha which was directed by this Court.

In the present case, there is no iota on record to establish that the petitioner was imprisoned in connection with the freedom movement. As per the averments of the writ petition itself a penalty of Rs. 251/- and in default rigorous imprisonment of one month was imposed. It is further averred in the writ petition that the fine of Rs. 251/- was deposited. Thus, there was no occasion for the petitioner to undergo imprisonment. Although, in the affidavit of Gaya Prasad Pyasi it has been mentioned that the petitioner was penalised on 12th August, 1942 with Rs. 251/- as fine and in case of default imprisonment of one month and that the petitioner was sent to jail on 12th August, 1942. This statement contained in the affidavit is directly opposed to Annexure/P-1 as well as the averments of the writ petition contained in paragraph-5.3 wherein it has been clearly stated that the fine amount of Rs. 251 was deposited by the petitioner. Even the petitioner has not averred in the writ petition that on 12-8-1942, he was imprisoned and was sent to jail. Thus, the affidavit of Gaya Prasad Pyasi on this point being contrary to the writ petition and documents annexed thereto is not reliable. There being no proof that the petitioner was imprisoned in connection with the freedom movement and further that the petitioner remained underground minimum for a period of three months, the petitioner will not get any benefit from Rewashankar Guha's decision (supra).

In the result, I do not find any substance in the writ petition and the same is accordingly dismissed, however, without order as to costs.