
(2002) 02 MP CK 0113

In the Madhya Pradesh High Court

Case No : Writ Petition No. 381 of 1997

Raghunath Digambar Paprikar

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 15-02-2002

Acts Referred:

Citation : (2002) 2 MPLJ 531

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : J.P. Gupta, with Tapan Trivedi, for the Appellant; J.D. Suryavanshi, Government Advocate for State, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Mishra, J.

Heard the learned counsel for the parties.

Perused the record.

The petitioner has moved an application on 22-2-1988 claiming "Samman Nidhi" admissible to a freedom fighter which has been denied to him as per order, annexure P/1 passed on 22-7-1995 by the State Government.

The petitioner participated in the freedom movement of India and remained underground since 15-8-1942 for four months. Rules were framed by the State Government known as Madhya Pradesh Swatantrata Sangram Sainik Samman Nidhi Niyam, 1972 (hereinafter referred to as the Rules of 1972). Rule 3(3) provides the entitlement in case one had remained underground for three months while participating in the freedom struggle or owing to the activities had to remain underground. Certificate of freedom fighter who had remained in jail for a period of three months during freedom struggle and a resident of the revenue division is the proof of remaining underground as per the said rule.

Petitioner claims that as a freedom fighter, he has participated in the "Bharat

Chodo Andolan" and remained underground for more than three months. One certificate (Annexure P/4) was given by Yashwant Singh Kushwaha. Another certificate was given by Leeladhar Joshi (Annexure P/5) and the other certificate was given by Ramchandra Naval (Annexure P/5-A) who were all the freedom fighters as per requirement of the rule, they had certified that the petitioner participated in the freedom struggle actively, conducted the meetings and participated in various other activities like "Asahayog", "Nyaya Andolan", "Bharat Chodo Andolan", "Khadi", "Harijan Sewak Sangh etc.," which movements helped India in India attaining the freedom.

The Collector, district Gwalior declared petitioner as a freedom fighter and his name was entered in the register of freedom fighters at serial No. 188 of the District Gwalior. The case of the petitioner was considered by a Committee which had recommended the name of the petitioner.

Petitioner submits that in spite of the overwhelming evidence and in spite of the fact that this Court in M. P. No. 297 of 1991 Sobaransingh and others vs. State of Madhya Pradesh and another decided by a Division Bench on 5-8- 1992, delivered by Hon"ble Mr. Justice R. C. Lahoti, as he then was laid down in para 8 which is quoted below :-

Having perused the record of the proceedings, we are satisfied that there is substance in the submissions of the learned counsel for the petitioners. The Rules are self-contained Rules. Having laid down its own policy, as projected in the Rules, the State Government is bound to follow the same and apply it uniformly to all the candidates aspiring for the benefit of the Rules. All claimants have to be dealt with uniformly and applied the same standard. Differentiation in the manner of treatment offered, justifiably attracts the charge of arbitrariness and/or hostile discrimination. So also, the cases of the claimants have to be disposed of in a reasonable time. It cannot be lost sight of that in the very nature of the things the claimants would be old aged persons, in the evening of their lives, and they are more than justified in claiming disposal of their applications expeditiously and within a reasonable time.

This Court further opined that whether or not, a freedom fighter had remained underground has to be determined by applying the test prescribed by Rule 3(3) and not by the personal knowledge of the Sub-Committee Members.

In the present case, the State Government has passed an order in mechanical manner that as per rules sufficient proof was not given as such the application stands dismissed. Nothing was discussed in the order.

In the return filed by the respondents, contends that the petitioner has not produced the relevant record which may classify him as a freedom fighter. It is contended that the petitioner did not submit the documents which may show that he remained underground for a period of more than three months as per Rule 3(3) of the Rules of 1972. The respondents have not stated any deficiency specifically in the certificates furnished by the petitioner.

An application, I.A. No. 2663/98 was filed by the petitioner pointing out that the applications of Shri Keshav Kumar Mukhraiya and Shri Narmadeshwar Sahay Sharma have been allowed by the State Government. The case of the petitioner was that his case was also similar to these freedom fighters and he has been discriminated with.

Shri J. P. Gupta, learned Senior Advocate for the petitioner submits that the case of the petitioner has not been dealt with properly by the respondents. Petitioner was clearly entitled to the freedom fighters "Samman Nidhi" and the rejection of the same is illegal and is not sustainable in law. It is also submitted that in the return no flaw is pointed in the certificates furnished by the petitioner. It is further contended that on the basis of certificates of freedom fighters whose certificates petitioner had submitted whereas their applications were allowed under Rule 3(3) of the Rules of 1972 by the State Government is absolutely illegal, bad in law and application of petitioner deserves to be allowed.

Shri J. D. Suryavanshi, learned Government Advocate submitted that the order passed by the respondent No. 1 is proper. It is the satisfaction of the Sub-Committee which is material in the matter. No interference is called for in the writ jurisdiction by this Court.

It is not disputed that the petitioner had filed two certificates of the freedom fighters of the category whose certificates are conclusive and fulfils the compliance of rule 3(3) of Rules of 1972. Learned counsel for respondents has not been able to point out any flaw in the certificates furnished by the petitioner or to say the respondent No. 1 found any flaw in the case of petitioner owing to which, his application met with rejection. In the return also nothing has been stated as to insufficiency of the material submitted by the petitioner. The material which was produced is not disputed and that was enough as per the requirement of rule 3(3) of Rules of 1972 to allow the "Samman Nidhi" to the petitioner as a freedom fighter. In similar cases, the respondents have acted upon on such certificates as is apparent from documents, annexures, P/11 & P/12. This Court long back in the year 1993 had laid down that furnishing of certificate is adequate compliance of rule 3(3) of Rules of 1972 and it has to be acted upon and the rule has to be applied uniformly to everybody.

It is surprising that freedom fighters who rendered the yeomen service to the cause of the nation which in unforgettable owing to whose efforts, the nation freed from the clutches of the foreign rule are treated in such a manner. When the State has framed the rules and has prescribed a particular certificate to be the requirement of the rule and on fulfilling of that requirement various persons who have participated in the freedom struggle in various forms and remained underground for the prescribed period cannot be denied unreasonably the benefit of "Samman Nidhi". The very purpose of enacting the law for "Samman Nidhi" defeats if a person is unreasonably denied of the same in spite of furnishing certificates which is admissible under the rules.

In number of other similar cases, this Court had directed that such certificates should be acted upon which is provided under the rules itself. The conclusion is inescapable that the case of the petitioner has not been dealt with properly and he ought to have been sanctioned the "Samman Nidhi" when the order was passed on 22-7-1995 (Annexure P/1). The date of the order of the State Government in the instant case has to be taken as the date on which State Government decided the application of the petitioner. The State Government should have allowed the application of the petitioner on 22-7-1995. It has grossly erred in law and acted in violation of the rules framed for granting "Samman Nidhi" while disallowing the application of the petitioner.

The writ petition is allowed. The impugned order, annexure P/1 is quashed. State Government is directed to release the "Samman Nidhi" with effect from the date of the order passed on 22-7-1995. The arrears of "Samman Nidhi" be paid within a period of three months from the date of production of a certified copy of this order along with interest at the rate of 12% per annum and continue to pay the "Samman Nidhi" falling due in future regularly.

Costs on parties.