
(2002) 04 AP CK 0107

In the Andhra Pradesh High Court

Case No : Writ Petition No. 24065 of 2001

A. Sambi Reddy

APPELLANT

Vs

Government of A.P. and Another

RESPONDENT

Date of Decision : 03-04-2002

Acts Referred:

Notaries Rules, 1956 — Rule 4A

Citation : (2002) 3 ALD 424 : (2002) 3 ALT 568

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Posani Venkateswarlu, for the Appellant; Government Pleader for Revenue, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner is a practising lawyer, who was enrolled in the Bar Council of Andhra Pradesh in the year 1984. He submitted an application on 8-9-2000 to the 2nd respondent, the competent authority, for appointment as Notary in respect of Siddardha Nagar area under Notaries Act, 1952 (for short "the Act") as well as the Notaries Rules, 1956 (for short "the Rules"). The application was duly processed and the 2nd respondent published a notification dated 30-3-2001 in the A.P. Gazette calling for objections. The notification reads as under:

Lr. No. NRI/21479/2000 - Under Rule 4(1) of the Notaries Rules, 1956, the Commissioner and Inspector General of Registration and Stamps who has been appointed as competent authority to receive. application for appointment as Notary has received an application from Sri A. Sambi Reddy, S/o Venkata Reddy, Advocate for appointment as Notary in respect of Sidhartha Nagar in Vengalrao Nagar, Hyderabad. In pursuance of Rules 6(2)(a) of Notaries Rules, 1956, it is hereby notified for the information of the public that any person or persons having any objections to the appointment of the applicant as a Notary, should represent the same in person or in writing to the undersigned within fourteen

days of the publication of this notification in the Official Gazette and file objection if any failing which no object will be considered and the application of Sri A, Sambi Reddy, advocate will be considered and decided on its merits.

2. The 2nd respondent sent a communication dated 26-6-2001 proposing to allow the application of the petitioner for appointment as Notary in respect of Siddardha Nagar Area, Vengalrao Nagar, Hyderabad, By Memo No. 61833 /R&M 1/2000-3, dated 10-7-2001 the same was accepted and the Government passed the following order:

With reference to the letter cited, the Commissioner and Inspector General of Registration and Stamps, Andhra Pradesh, Hyderabad is informed that, his proposal to allow he application of Sri A. Sambi Reddy, advocate for appointment as Notary in respect of Siddardha Nagar Area in Vengalrao Nagar, Hyderabad city is accepted by the Government. He is therefore requested to take further necessary action in the matter.

3. After allowing the application under Rule 8(4) of the Rules, the appropriate Government is required to appoint the applicant as Notary and also direct that his name be entered in the Register of Notaries maintained u/s 4 of the Act. The petitioner having complied with all the conditions did not receive any communication appointing him and therefore he filed this writ petition praying a writ of mandamus to the respondents to enter his name in the Register of "Notaries" and issue a consequential certificate.

4. A counter-affidavit is filed by the Assistant inspector General (Law) on behalf of the respondents. The relief prayed is sought to be denied placing reliance on the Government own notification dated 9-5-2001 notifying amendments to Notary Rules which came into force with effect from 9-5-2001. As per sub-rule (4A) as amended, an appropriate Government may appoint Notaries in the State not exceeding the number of Notaries specified in the schedule. The schedule prescribes maximum number of Notaries to be appointed by the Central Government at 575 and the maximum number of Notaries to be appointed by the State Government at 575. The counter is silent as to the maximum number of Notaries appointed by the Central Government. However, it is stated that the State has already appointed 1,256 Notaries and therefore no further appointment can be made. Reliance was also placed on a D.O. Letter No.5 (271)/2000 dated 18-5-2001 wherein it was clarified that all further appointments shall stand barred if the existing appointments already exceeded the quota.

5. In the background of these pleading and counter pleadings, the only question that arises for consideration is whether the Notaries (2nd amendment) Rules, 2001 bar the appointment of the petitioner as Notary in the State of Andhra Pradesh.

6. Before considering this question, it is necessary to examine the effect of the Government of Andhra Pradesh accepting the proposal made by the 2nd respondent to appoint the petitioner as "Notary".

7. As per Section 3 of the Act, the State Government as well as the Central Government are the competent authorities to appoint legal practitioners and other persons who possess the prescribed qualifications as Notaries. When a legal practitioner is appointed by the appropriate Government, his name shall be entered in the register as per Section 4 of the Act. Section 5 requires renewal of the registration after a period of 5 years from the date of initial appointment or subsequent appointment, as the case may be. In exercise of that power u/s 15 of the Act, the Central Government made Notaries Rules, 1956. The procedure for appointment of a "Notary" is regulated by Rules 4 to 8. The conspectus of the rules shows that an application made under Rule 4 will be subjected to preliminary scrutiny by the Government or an officer or authority known as competent authority appointed by the appropriate Government by notification in the gazette. Under Rule 7(1) of the Rules, the competent authority is required to hold enquiry as he thinks fit and submit his report to the appropriate Government recommending either to allow the application or to reject the same for appointment of "Notary". Under Rule 8, the Government, on receipt of the report shall consider and allow the application. No discretion is left to the Government to reject the recommendation made by the competent authority under Rule 7(1) and (2). It is necessary to extract Rule 8, which reads as under:

8. Appointment of a Notary:--(1) On receipt of the report of the competent authority, the appropriate Government shall consider the report and shall--

- (a) allow the application in respect of the whole of the area to which it relates; or
- (b) allow the application in respect of any part of the area to which it relates; or
- (c) reject the application;

and shall also make such orders as that Government thinks fit regarding the persons by whom the whole or any part of the costs of the application including the cost of hearing, if any, shall be borne;

(2) An applicant shall be informed of every order passed by the appropriate Government under Sub-rule (1).

(3) Any applicant whose application has been rejected (or allowed in respect of only a part of the area to which it relates) or against whom an order as to costs has been made under Sub-rule (1) may, within sixty days of date of the order apply to the appropriate Government for reviewing the order and the Government may, after making such further inquiry as it thinks fit, pass such order as it considers necessary.

(4) Where the application is allowed, the appropriate Government shall appoint the applicant as a notary and direct his name to be entered in the Register of Notaries maintained by that Government u/s 4 of the Act, and issue to him a certificate on payment of prescribed fees authorizing him to practice in the area to which the application relates or in such part thereof as the appropriate Government may specify in the certificate as a notary for a period of three years

from the date on which the certificate is issued to him.

(5) The Register of Notaries shall be in Form II-A and the certificate of practice shall be in Form II-B.

8. A plain reading of the rule leaves no doubt that the procedure for appointment of a "Notary" u/s 3 and entering his name in the register u/s 4 comes to an end the moment the competent authority appointed under Rule 4 makes recommendation under Rule 7(1) and (2) which is binding on the Government. The moment the Government accepts the proposal of the competent authority, in this case, the Commissioner and Inspector General of Registration and Stamps, there is a conclusive decision and what is to be followed with reference to sub-rule (4) of Rule 8 is mere ministerial act i.e., a formal order appointing an applicant as notary and to enter the name in the Register of Notaries is to be made. Admittedly, the amended rules were notified in the gazette dated 10-5-2001 and by reason of Rule 4-A as inserted by the second amendment Rules, 2001, the appropriate Government including the State Government is barred from making any appointment exceeding the number of notaries specified in the schedule, in this case, 575. This legal position is not denied by Sri Posani Venkateswarlu, learned Counsel for the petitioner.

9. In the case on hand, the 2nd respondent made a recommendation on 26-6-2001 whose proposal to appoint the petitioner as a notary was accepted by the 1st respondent on 10-7-2001. Therefore, it is obvious that the Government of Andhra Pradesh could have issued an appointment order to the petitioner appointing him as a "Notary" in the teeth of Rule 4-A as amended by the Second Amendment Rules, 2001.

10. Learned Counsel for the petitioner places reliance on a judgment delivered by me in *Parchuri Kishore Vs. Government of A.P. and Another*, . In that case, Inspector General recommended the appointment prior to 2001 amendment which accepting the proposal to appoint the petitioner therein whereas the amendment came into force on 9-5-2001. I held that the amendment has no application to the appointments already made. In this case, the proposal to appoint the petitioner was made after amendment. Therefore, Rule 4A acts as a bar for issuing the appointment order.

11. In the result and for the foregoing reasons, the writ petition fails and the same is accordingly dismissed.

12. For the above reasons, the writ petition fails and the same is accordingly dismissed.