
(1997) 09 MP CK 0041

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1259 of 1997

Ashok Kumar Chowdhary

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 23-09-1997

Acts Referred:

Notaries Act, 1952 — Section 15
Notaries Rules, 1956 — Rule 7(3)

Citation : AIR 1998 MP 76 : (1998) 2 JLJ 318 : (1998) 1 MPJR 99 : (1998) 1 MPLJ 490

Hon'ble Judges : Shravan Shanker Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.S. Jha, J.

The petitioner has filed this petition against non-consideration of his name for appointment of Notary under the Notaries Act, 1952 (hereinafter referred to as "the Act").

The State Government instead of filing return produced the record of selection of Notaries. Respondents Nos. 3 to 5 also relied upon the record and argued the case.

The applications were invited for appointment of Notaries in the district of Bhind by District & Sessions Judge, Bhind. Only one name was sent. However, the Law Minister vide order dated 20-9-96 directed that panel of the lawyers be placed before him. Thereafter, applications were invited and 11 Advocates including the petitioner applied for appointment as Notary under Rule 4 of the Notaries Rules, 1956 (hereinafter referred to as "the Rules"). Thereafter, a notification was published in Official Gazette inviting objections under Rule 6 of the Rules.

After no objections were raised, the District & Sessions Judge, Bhind, being competent authority, forwarded all the application forms to the State

Government without recording any finding as to the person more suitable than other applicants for appointment.

When the applications reached the State Government, a note-sheet was prepared on 28-7-97 and it was decided that out of 11 persons, 5 persons cannot be appointed as Notary. The ground was that two of them were already performing the functions of Oath Commissioner; in one case application was incomplete and in two cases certificates were not according to rules. However, after this 5 names remained for consideration. The Law Minister directed appointment of respondents Radhacharan Parashar, Girraj Kumar Sharma and Gumarayan Sharma, respondents 3, 4 and 5, respectively, as Notary.

The proceeding is challenged by the learned Counsel for the petitioner and he submits that the person more suitable should have been appointed, but the appointment is arbitrary and a writ can be issued against arbitrary action.

I have perused the record. From the record, it does not transpire that there was any application of mind in selecting respondents Nos. 3 to 5 as Notary of District Bhind.

Learned Counsel for respondents submitted that it is the choice of the State Government to select any of the persons from the list. Respondents Nos. 3 to 5 also supported the act of the respondent- State and submitted that the appointment is proper and according to law.

The contention of the respondents cannot be upheld. On going through the record it is apparent that procedure for appointment of Notary has not been followed and the selection deserves to be quashed.

Rule 7 of the Rules is reproduced below:--

"7. Recommendations of the competent authority.-- (1) The competent authority shall, after holding such inquiry as he thinks fit and after giving the applicant an opportunity of making his representations against the objections, if any, received within the time fixed under Sub-rule (2) of Rule 6, make a report to the appropriate Government recommending either that the application may be allowed for the whole or any part of the area to which the application relates or that it may be rejected.

(2) The competent authority shall also make his recommendation in the report under Sub-rule (1) regarding the persons by whom the whole or any part of the costs of the application including costs of hearing if any, shall be borne.

(3) In making his recommendation under Sub-rule (1), the competent authority shall have due regard to the following matters, namely :--

(a) whether the applicant ordinarily resides in the area in which he proposes to practise as a Notary;

(b) whether, having regard to the commercial importance of the area in which

the applicant proposes to practise and the number of existing notaries practising in the area it is necessary to appoint any additional notaries for the area;

(c) whether, having regard to his knowledge and experience of commercial law and the nature of the objections, if any, raised in respect of his appointment as a notary and in case of a legal practitioner also to the extent of his practice, the applicant is fit to be appointed as a Notary;

(d) where the applicant belongs to a firm of legal practitioners, whether having regard to the number of existing notaries in that firm, it is proper and necessary to appoint any additional notary from that firm; and

(e) where applications from other applicants in respect of the area are pending, whether the applicant is more suitable than such other applicants."

After the applications are received, the competent authority, that is, District Judge, should not act as a post-office and forward the papers to the State Government. The competent authority is bound to follow the procedure laid down in Rule 7, of the Rules. When there are more than one applications then, the competent authority should have made recommendations for appointment of notary indicating the name of applicant, who is more suitable than other applicants. From the file it appears that enquiry, as provided under Rule 7(3) has not been conducted. There, is no endorsement by the District Judge regarding knowledge and experience of each applicant and their suitability for appointment. The notaries are required to perform a responsible job and they cannot be appointed in an arbitrary manner. The notary performs very important functions and his actions are having far-reaching effects. He must have sound knowledge of the laws referred in Rule 7 and in respect of Notaries Act, Oaths Act, stamp-duty, conveyance and various types of documents and local laws. A confidential enquiry in respect of honesty and integrity before the licence is issued, should be held to determine the suitability of the applicant to hold such a creditable post of responsibility and credibility. The competent authority should keep it in mind and send the recommendations for appointment of notary after receiving the applications. In the present case, the competent authority has not sent recommendations.

In the absence of any material before the State Government and without determining the question as to person who is more suitable for appointment, no appointment could be made. From going through the record, it is apparent that the appointments have been made in an arbitrary manner without following the procedure in Rule 7(3)(e) of the Rules.

In the result, the petition succeeds and the order of appointment of notaries, respondents Nos. 3 to 5, is quashed and State Government is directed to remit all the applications back to competent authority for his recommendation about more suitable applicant to be appointed as notary after determining their suitability as indicated above after following the procedure laid down under Rule 7 of the Rules.

The petition succeeds and is allowed.