
(2021) 10 BOM CK 0136
In the Bombay High Court
Case No : Writ Petition No.3347 Of 2020

Deelip Suryabhan Peste

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 28-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 163(1), 233(1)

Citation : (2021) 10 BOM CK 0136

Hon'ble Judges : Ravindra V. Ghuge, J;S.G. Mehare, J

Bench : Division Bench

Advocate : Deelip Suryabhan Peste, P.S. Pati, N.P. Patil Jamalpurkar

Final Decision : Partly Allowed

Judgement

S.G. Mehare, J

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.
2. The advocate/petitioner approached this Court for seeking directions to set aside the order dated 14.02.2020 passed by the Superintendent (Law), Law and Judiciary Department, Mantralaya Mumbai, in Review Application No.907-2019/Notary/E as well as direction to respondent no.1 to issue a certificate of appointment of a notary public in his favour.
3. The petitioner supports the issues raised in this petition by contending that since 2001 he has been practicing law at Chakur and Latur District Court. The Government of Maharashtra had issued a Gazette Notification dated 18.05.2016 bearing No.251 of 2016 inviting the applications from the eligible candidates for the appointment of the notary public at Chakur, Udgir, Ausa, and Shirur-Anantpal for one post each. In the said notification, it was specifically mentioned that the application should be submitted as per Notary Rules, 1956 particularly, Rule 3 and 4 in Form-2 of the Notaries Rules, 1956. The petitioner has submitted his application through District Judge/ Presiding Officer Latur on 15.06.2016. The

learned Principal District Judge, Latur issued a recommendation order on 16.06.2016 in his favour. The respondent called him for an interview vide communication dated 14.11.2017 along with other similarly situated candidates on 24.11.2017. He faced the interview and secured 25 marks. However, the selection board has recommended the name of a suitable candidate to the Government. He was not intimated the order of the decision on the recommendations made by the board. He learnt that respondent no.4, who has secured only 21 marks, has been appointed as a notary public for Chakur Taluka.

4. The petitioner is the only candidate who has complied with the notification inviting the application and sent his application through the Principal District Judge, Latur. The appointment of respondent no.3 is against the Notary Rules. He got the information under the Right to Information Act from the Office of District Court, Latur, that except him and Keshav Narayan Kardile, nobody has submitted the application for a notary public to his Office. The respondents have invited the other candidates who have not applied for notary as per rules and interviewed them. Knowing about the illegal appointment of respondent no.3, he complained under Rule 8 sub-rule 3 of Notaries Rules, 1956 with respondent no.2. Upon hearing, his complaint was rejected directing him to file a review application. Accordingly, on 15.10.2019, he filed a review application with the competent authority. Upon hearing him on the said application, his review application is rejected by the impugned order.

5. The petitioner submits that the State Government has appointed a person as a public notary for Taluka Chakur, who has secured less marks than him and had not applied through proper channels, i.e., Principal District Judge. Therefore, the impugned order is illegal and in breach of the notary rules. He is the only eligible candidate for appointing as a notary public for Taluka Chakur. Therefore, the impugned order may be quashed and set aside, and respondent no.1 be directed to appoint him as a notary public.

6. Respondent nos.1 and 2 by their affidavit in reply have come with a case that the applications were invited as pointed out by the applicant. In all, 10 applications were received for Chakur Taluka. The committee has scrutinized the applications. The committee found all 10 candidates suitable. Hence, interviews were conducted on 24.11.2017. The interview board has recommended the names of all those 10 candidates to the Government as per Rule 7-A of the Notaries Rules, 1956. The Government approved the name of respondent no.3 and accordingly appointed him. The allegations leveled by the petitioner are in general and hence were denied. The Principal District Judge, Latur, had not recommended, but only forwarded the application of the petitioner to the Competent Authority (Notary Cell) Government of Maharashtra, Mumbai. The necessary and relevant rules have been followed in letter and spirit. In the exercise of powers under Rule 8 of the Notaries Rules, 1956, the Government approved the name of respondent no.3. The rule does not mandate that the application be routed through the Principal District Judge only to appoint the

notary public. In other words, there is no bar to file or submit the application directly to the authority concerned. In the exercise of its power, the Government has appointed respondent no.3 and committed no error of law. Hence, the petition is devoid of merit.

7. The petitioner in person submits that in view of Rule 4 of the Notaries Rules, 1956, he applied for the appointment of the notary public for Chakur Taluka through Principal District Judge, Latur. In 2016, all the applications had to be routed through the District Judge or Tribunal, where the candidates were practicing. Therefore, the application filed directly to the competent authority should not have been considered. He was the only candidate who had followed the mandate of the rules. Therefore, the applications of other applicants should not have been considered by the interviewing board. It is a violation of the law since he was the only eligible candidate, who ought to have been appointed, but without assigning any reason, respondent no.3 who had secured less marks than him, has been appointed. That is the discrimination and violation of Article 14 and 16 of the Constitution of India.

8. He further argued that the Government has failed to inform any order passed by it regarding the appointment of the notary. The interviewing board has specifically recommended the name of the candidate as per merit based on the marks secured in the interview, but till this date, whom the board had recommended, is undercover. He would further argue that as per Rule 8 of the Notaries Rules, 1956, once the recommendations are made by the competent authority/interview board, the Government shall consider the recommendations and appoint the person recommended by the interview board. The Government has no discretion to appoint the person not recommended by the Interview Board. As per Rule 8 of the Notaries Rules, 1956, the Government should allow or reject the application. The reasons quoted in the impugned order are contrary to the provisions of law. The mandate of law is apparently violated by the respondents and had shown unnecessary favour to respondent no.3. Therefore, the impugned order is liable to be set aside.

9. The learned AGP for the State would argue that there is no substance in the petition. The petitioner has not challenged the appointment of respondent no.3. He has come before the Court seeking the quashing of the impugned order, which was on the sole ground that only the applications filed through the Principal District Judge should have been valid and the committee could have considered no other applications. The record indicates that the notary rules are strictly followed, and the appointment of respondent no.3 is legal and valid.

10. Shri Patil, learned Counsel for respondent no.3, has opposed the petition on various grounds. His first limb of argument is that recommendations of the interview board are absolutely not binding on the Government. It is the sole desire of the Government to appoint any one of the persons recommended by the interview board. The interview board has recommended all the candidates being suitable. The interview board has not explicitly recommended the name of

any of the applicants. The appointment of respondent no.3 is not challenged. Therefore, the relief as prayed for by the petitioner could not be granted. To bolster his arguments, he relied upon case law that will be considered in the following paragraphs.

11. The first limb of argument of the petitioner is that the competent authority should only consider the applications routed through Principal District Judge. He referred to the notification dated 18.05.2016 whereby the applications from the practicing lawyers for the appointment of the notary public for Chakur and other Talukas, were invited. As against this, the learned Counsel for respondent no. 3, has raised a serious objection that in 2016 there was no procedure to route the application only through the District Judge.

12. In the circular dated 18.05.2016, it is specifically mentioned that the applications are invited in the prescribed Form and procedure as prescribed in rule 4 and candidates eligible under rule 3 Notaries Rules, 1956 in Form-I/ Form-II.

13. Rule 4 of the Notaries Rules, 1956 (Rules 1956 for short) pertains to the application for appointment as a Notary. As per the said rule, on the notification issued by the Government in the official gazette, a person may apply for an appointment as a notary in Form-I or Form-II as applicable. The petitioner has referred to Section 4 and argued that in 2016, Rule 4 was in force. He strenuously pressed into service rule 4(1), which was in existence in 2016. The book he has referred to indicates that the applications should be routed through the Principal District Judge or Tribunal, where the applicant is practicing.

14. Rule 4 was amended firstly in 2009 and was brought into effect from 01.03.2009. The amended Rule 4(1) of 2009 reads thus:

"4 Application for appointment as a notary.

(1) A person may make an application for appointment as a notary (hereinafter called "the applicant"), through the concerned District Judge or the Presiding Officer of the Court or Tribunal where he practices as an Advocate, in the Form of memorial addressed to such officer or authority (hereinafter referred to as the "competent authority") of the appropriate Government as that Government may, by notification in the Official Gazette, designate in this behalf."

By G.S.R. 700(E) dated September 24 2009 (w.e.f.24.09.2009) sub rule 2-A was inserted, which reads thus,

"(2A) A person applying in Form II for appointment as a notary may submit the memorial direct to the Competent Authority of the appropriate government".

Subsection 3 was as follows;

"3. The memorial of a person referred to in clause (a) of rule 3 shall be signed by the applicant and shall be countersigned by the following persons:-

- (a) a Magistrate;
- (b) a Manager of a nationalised bank;
- (c) a merchant and
- (d) two prominent inhabitants of the local area within which the applicant intends to practise as a notary.

12. The above sub-rule (2A) and (3) were omitted by G.S.R. 821 (E) dated 5.11.2019 (w.e.f. 6.11.2019)

13. Before the substitution of Rule 4(1) in 2009, the said rule stood as under.

4 (1) A person may make an application for appointment as a notary (hereinafter called "the applicant") in the form of memorial addressed to such officer or authority (hereinafter referred to as the "Competent authority") of the appropriate Government as that Government may, by notification in the Official Gazette, designate in this behalf.

14. Rule 4 (1) then amended in 2019, (w.e.f. 06.11.2019) which reads thus;

"4(1) A person may make an application for appointment as a notary (hereinafter called "the applicant") online in Form I or Form II as applicable, addressed to such officer or authority (hereinafter referred to as the "competent authority") of the appropriate Government as that Government may, by notification in the Official Gazette, designate in this behalf. G After extensive research, we find that till 06.11.2019, rules 4(1), 2-A and 3 of Rules 1956, the rules substituted in 2009, were in force.

15. The circular dated 18.05.2016 by which the applications were invited by the Law and judiciary department further mention that all the eligible candidate shall send the applications in the prescribed Form either by registered post/speed post only. In the light of inviting the applications directly by post, the question is, does the notification override the prescribed procedure laid in rule 4 (1) of Rules 1956? Reading the circular dated 18.05.2016, it appears to be just an advertisement inviting the applications from the eligible candidates.

16. Rule 4(1) of the rules 1956, provided that the appropriate Government may designate the Competent Authority to whom the applications are to be addressed by notification in the Official Gazette. Rule 6 of the Rules 1956 provides for the preliminary action on the applications. The competent authority has to examine the correctness of such applications, whether any earlier application of the applicant is rejected within the six months before the application. He may, if deems fit, ascertain from any Bar Council, Bar Association, Incorporated Law Society, or other authority in the area where the applicant proposes to practice. He has also to ascertain the objection, if any, received against the applicant to appoint him/her as a Notary Public. He has to examine whether the application is submitted in time.

17. Under rule 7, the competent authority has to hold such an inquiry as he thinks fit, give the applicant an opportunity of hearing on the objections against his appointment, and report to the appropriate Government recommending that the applicant be allowed to appear before the Interview Board. Sub-rule 3 of Rule 7 speaks of while making the recommendation the competent authority shall have due regard to;

(a) whether, the applicant ordinarily resides in the area in which he propose to practice as a notary;

(b) whether, having regard to the commercial importance of the area in which the applicant proposes to practice and the number of existing notaries practicing in the area, it is necessary to appoint any additional notary for that 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 any 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 the firm of legal practitioners, whether, having regard to number of existing notaries in that firm, it is proper and necessary to appoint any additional notary from that firm; and

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

18. The above rules describe the powers and duties of the competent authority. Where the law or rules determine the powers and duties of any authority, no authority can travel beyond such powers, unless the appointing Authority is expressly conferred with any such powers. The rules are principles governing conduct or procedure within a particular area of activity. Rules have the force of law. Nothing can be done against the rules. The rules bind the concerned authority who has to follow it. Where a particular procedure is laid down in the rules, the implementing authority has to follow the procedure prescribed under such rules. Rules help guide actions towards the desired result.

19. Reading rule 4 (1) as was in existence in the year 2016, the procedure to apply for the appointment as a notary as a law practitioner, was that every such application by the legal practitioner, shall be routed through the concerned District judge or the Presiding Officer of the Court, or Tribunal where he was practicing law. Considering the powers and duties of the competent authority as discussed above and in the absence of new rule or specific power, we are of the view that, the settled principle of law, that, where the manner of doing a particular act is prescribed under the statute, the act must be done in that manner or not at all, shall be applied. The competent authority had no powers to consider the applications from the candidates from the legal practitioner directly sent by registered or speed post deviating the rules calling such application through the district judge or presiding officer of the Court or tribunal.

20. In view of the above, we find force in the argument of the petitioner that in 2016, it was the mandate of rule 4 (1) of the Rules 1956, that the applications from the candidates practicing law should be routed through the District Judge, or Presiding Officers of the Court or Tribunal only. While rejecting the review application of the petitioner, the Superintendent for the Government assigned the reason that rule 4(1) does not provide to, mandatorily, submit the application through the District Judge. She has emphasized the word "May" used in rule 4(1), and tried to interpret it as not obligatory. The authority passing the impugned order on review application of the petitioner, appears to have lost sight of sub-rule (2) and (3) of rule 4 of the Rules 1956, wherein it is provided that the memorial shall be drawn by a person referred to in clause (a) of rule 3 in accordance with Form I and by a person referred to in clause (b) and (c) of the said rule in accordance with Form II. Clause (a) of rule 3 relates to the candidates practicing law. The term "may" used in rule 4(1) of the Rules 1956 pertains to the applicant who desires to appoint him as a notary. It is not relating to the procedure, how to apply for the appointment as a notary. The applications shall be in the forms prescribed in the Rules 1956. Form-I is for the persons practicing law. Form II is for persons other than the persons practicing law. As such, the application shall be in the prescribed Form only. The authority passing the impugned order, under misconception, wrongly interpreted the rules and applied the procedure applicable to the candidates other than the applicants practicing law, to the application of the petitioner. Therefore, the authority passing the impugned order had arrived at an incorrect conclusion. For these reasons, we hold that the impugned order is erroneous.

21. The petitioner has vehemently argued that the District Judge used to recommend the names of the suitable candidates for the appointment of notary, and his recommendations were binding on the Government.

22. To counter the above argument of the petitioner, the learned counsel for respondent no.3 has vehemently argued that the recommendation of any authority is not binding on the appointing authority or the Government in this case. To bolster his arguments, he relied upon the case of Dr. Prem Lata Vs GNCT of Delhi and Ors in W.P.(C)178/2011 decided on May 3, 2011 by the Delhi High Court. This was the case concerning the appointment to the Office of the President of District Consumer Disputes Redressal Forum (District Forum), Delhi. The selection committee was constituted in accordance with Section 10(1A) of the Consumer Protection Act, 1986. The selection committee made its recommendation for filling up the vacancies in the Office of five districts. The name of the petitioner did not figure in the names of five selected candidates in the said recommendation. However, his name was mentioned as a "second person", in the event of Mr. M.C. Mehra whose name was figured at serial no.4 in the list of selected candidates, not joining. The petitioner claimed that the panel was subsequently revised, and in spite of the petitioner, being a candidate in waiting in the event of Mr. M.C. Mehra not joining, his name was placed at serial no.6 i.e. entitled to join in the event of any first five selected candidates not joining within

45 days of the offer of appointment. Respondent nos.4, 5, and 6, whose names appeared at serial nos.1, 2, and 5 respectively of the selected candidates, did not join within 45 days from the offer of appointment. Therefore, he became entitled to be appointed. He made a representation seeking his appointment, but it was not entertained.

Hence, he approached before the Delhi High Court.

23. On the basis of the above facts, the Delhi High Court referred to various case laws of the Hon'ble Apex Court. Relying on the case of Divisional Forests Officer and Ors Vs. M. Ramalinga Reddy (2007), 9 SCC 286, which lays down that selected candidates have no legal right to be appointed automatically.

24. The learned Counsel Shri Patil would further relied on the case of State of Kerala Vs. A . Lakshmikutty, (1986) 4 SCC 632. It was the case of the recommendations of respondents for the posts of District Judge. The candidates were recommended by the High Court. However, by its decision dated 30.01.1985 and 28.02.1985, the Cabinet Ministry quashed the recommendations made by the High Court. The petition for the issuance of writ of mandamus directing the Governor to act on the recommendations of the High Court was filed to fill up five posts of District Judge reserved for direct recruitment from the practicing members of the bar under Article 233(1) of the Constitution of India. The High Court of Kerala allowed the petition. The State approached the Hon'ble Supreme Court challenging the impugned order. The Cabinet Ministry has declined the recommendations for the reasons that there was non-representation of the candidates belonging to the 'Latin-Catholics and Anglo-Indians', Other Backward Classes and Scheduled Castes and Scheduled Tribes. On the backdrop of this fact, the Hon'ble Apex Court held on page 25, second part, that 'there would be no difficulty, but the High Court has gone a step further'. The issuance of writ of mandamus by the High Court directing the State Government i.e. the Governor to act on the recommendation of the High Court to fill up the 5 vacancies in the posts of District Judge meant for direct recruitment from the members of the bar under Article 233(1), was constitutionally impermissible. Although High Court was not oblivious that the 'advice' of the Council of Ministers to reject the panel of fourteen names submitted by the High Court could not be subject to judicial review and that Article 163(1) of the Constitution precludes an inquiry as to the nature of the advice given by the Council of Ministers to the Governor, still it has issued a writ in the nature of mandamus upon the basis that it is called upon to adjudge the illegality and propriety of the two decisions taken by the State Government through the instrumentality of the Council of Ministers.

25. Further, relying on the decision of this Court in the case of State of Rajasthan and Others Vs. Union of India, (1978) 1 SCR 1, it is observed that, so long as the question remains whether the Council of Ministers acted within the limits of their power or exceeded it, it can be decided by the Court. Apart from saying that the reasons given on the basis of which the Council of Ministers on February 28, 1985, reviewed their earlier decision of January 30, 1985, and decided not to

appoint respondents nos.1 and 3-6 as District Judges on the recommendation of the High Court viz due to non-representation of the candidates belonging to the 'Latin-Catholics and Anglo-Indians', Other Backward Classes and Scheduled Castes and Scheduled Tribes, were no reasons at all, and that the action of the competent authority, the State Government in rejecting the panel sent by the High Court was totally arbitrary, illegal and improper. It further observed that 'there was an overt attempt on the part of the State Government to appoint persons from outside the panel' which was constitutionally impermissible, and relied on the proposition laid down in Padfed's case that 'if the Minister gave no reasons, the Court might infer that he had no good reasons to give'. It accordingly held that the action of the State Government had no rational nexus to the object sought to be achieved i.e. implementation of the scheme of communal reservation laid down in rr.14 to 17 of the Kerala State and Subordinate Services Rules made applicable by Note beneath r.2(b) of the Kerala State Higher Judicial Services Rules.

26. The Hon'ble Apex Court accordingly set aside the order of the High Court of Kerala. The Hon'ble Apex Court, lastly, by writ in the nature of mandamus, directed the State Government to communicate its view to the High Court to elicit its opinion within six weeks and, if necessary, make a fresh effort to find suitable candidates from the communities or groups of communities passed over before taking a final decision in the matter. In consequence, the State Government's decision not to make appointments from the panel forwarded by the High Court and to re-notify the vacancies, was quashed.

27. The learned Counsel Shri Patil then relied on the case of Dr. H. Mukherjee Vs. Union of India, 1994 AIR 495, again contending that the recommendations of any committee are not binding in any nature to the Government.

28. Examining the Notaries Act and Rules, it appears that the rules are amendment from time to time. Rule 7-A of rules 1956, is inserted in 2009, whereby the interview board was constituted. Sub-rule 2 of Rule 7-A was substituted by GSR 700(E) dated 24.09.2009 (w.e.f. 24. 09.2009). The said rule reads thus:

"7A. Constitution of the Interview Board.-

(2) For the said purpose, one or more Interview Boards shall be constituted by the appropriate Government from amongst its officers dealing with legal matters, and the Chairperson of every Interview Board shall be an officer not below the rank of Joint Secretary or Law Officer of that Government.G"

[Provided that the appropriate Government may dispense with the condition of holding of interviews for which reasons are to be recorded in writing,G (this proviso clause is inserted by G.S.R. 429 (E) dated 18.04.2016 (w.e.f. 19.04.2016.)

29. Before substitution of rule 7-A(2) by G.S.R. 700 (E) dated 24.09.2009,

(w.e.f. 01.03.2009) stood as under:

"(2)"For the said purpose, a three members Interview Board shall be constituted by the appropriate Government from amongst its officer dealing with legal matters. The Chairperson of the Interview Board shall not be an officer below the rank of Joint Secretary of that Government."

30. Though Rule 7-A was inserted in 2009, the practice routing the application through the District Judge under rule 4 (1) remained intact till 06.11.2019 for the applicants, who are practicing lawyers. Before the substitution of rule 7 (1) in 2009, (w.e.f.1.3.2009), stood as under:

"7 (1) the competent authority shall, after holding such inquiry as he thinks fit and after giving 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".

28. Rule 6 was also substituted in 2009 (w.e.f. 1.3.2009). Under substituted rule 6, the competent authority was authorized to reject the application summarily, if the application is not complete in all respects or the applicant does not possess the qualifications specified in Rule 3 and also had the discretion to inquire as to the appointment of the applicant as a notary for the purpose of practice.

31. Rule 4 (1) is lastly amended by GSR 821(E) dated 5. 11.2019 (w.e.f. 06.11.2019), which reads thus:

"4. Application for appointment as a notary.-(1) A person may make an application for appointment as a notary (hereinafter called "the applicant"), online in Form I or Form II as applicable, addressed to such officer or authority (hereinafter referred to as the "competent authority") of the appropriate Government as that Government may, by notification in the Official Gazette, designate in this behalf

(2) The memorial shall be drawn by a person referred to in clause (a) of rule 3 in accordance with Form I and by a person referred to in clauses (b) and (c) of the said rule in accordance with Form II."

32. Reading the substitution made in the relevant rules as discussed above, rule 6(1) was substituted, and rule 7-A was inserted on 24.02.2009, rule 4(1) remained intact till the substitution of 2019. The case before us is in relation to the advertisement by the State of Maharashtra dated 18.05.2016 and, therefore, covered under R.4(1) as it stood prior to 06.11.2019.

33. In the light of the insertion and substitution of rules as discussed above, it should be examined who was the competent authority and whether the District Judge was to recommend the names of applicants (practicing law) to the appropriate Government. Rule 4(1) of Rules 1956 provides that the appropriate

Government may designate the competent authority, by notification in the Official Gazette. It is in the domain of the Government to designate the competent authority. On appointing such person as a competent authority, he must discharge the functions contemplated in rules 6 and 7. However, by substitution of 2009 in rule 7 (1) of rules 1956, the competent authority is empowered to recommend that the applicant may be allowed to appear before the Interview Board.

34. The paper book page no. 13 reveals that the Learned Principal District Judge Latur had forwarded the application of the petitioner to the Competent Authority, Ministry of Law and Justice, Department of Legal Affairs (Notary Cell), Branch, 5th floor, Mantralaya Mumbai. The circular dated 18th, May 2016, an advertisement, mentions that the applications were invited through the competent authority. It clears that in 2016, the learned Principal District Judge Latur was not designated as a competent authority. He had to route the applications to the competent authority. Hence we hold that question of recommendation by the learned Principal District Judge Latur does not arise. We also discard the argument of the petitioner that the recommendation of competent authority is binding on the Government for the other reason that since 2009, the competent authority has a limited role of examining the applications and recommending that the applicant may be allowed to appear before the Interview Board.

35. In 2016, rule 4(1) was clear that the applications from the legal practitioners categories shall be routed through the District Judge, or the Court or Tribunal where the applicant practices law. The applicant has routed his application through the learned Principal District Judge, Latur. It is not in dispute that respondent no.3 had not routed his application through the learned Principal District Judge Latur. In the above backdrop, the petitioner argues that the application of respondent no. 3, ought to have been rejected by the competent authority, and the Interview Board should not have recommended him to the Government.

36. It is not in dispute that the competent authority had received ten applications in all. All the candidates were invited for interview on 24. 11 2017. All of them participated in the interviews. The minutes of the said interviews are placed on page number 57 of the paper book. It is mentioned therein that 10 applications were scrutinized by the Scrutiny Committee constituted for the purpose. Instead of examining the applications and holding inquiry as prescribed under rules 6 and 7 of Rules 1956, an unprecedented Scrutiny Committee was constituted by the competent authority. There is nothing placed on record by the Government to show that the Scrutiny Committee was constituted under a specific provision. It also does not reflect that the competent authority had recommended the names of eligible candidates suitable for the interviews. It appears that a foreign procedure is followed against the rules prescribed by the Government.

37. It further reveals that the Legal Adviser-cum-Joint Secretary was also a

member of Interview Board and Competent Authority. On perusal of the rules, particularly rules 6 and 7, it appears that the role of the Competent Authority is to examine the applications and recommend the candidates to be allowed to appear before the Interview Board. Considering the rules mentioned above and the distinct and independent duties, functions, and, roles of the competent authority and Chairperson of the Interview Board, we are of the view that the Competent Authority shall not be part of the Interview Board. Besides, the interview was taken without disclosing it in the advertisement, the various heads and the manner of allocation of marks. Abruptly the Interview Board conducted the interviews and determined 10 marks for General Awareness, 05 marks for Experience of Practice, and 10 marks to Knowledge of Law and gave 2 marks to the candidates having experience of 7-10 years, 3, marks to experience of 10 to 20 years and 4 marks to the experience above 20 years. These marks were added to the marks earned in interviews. Such an interview was a surprise to the candidates. In this regard, a statement is made by the Solicitor-cum Deputy Secretary in his additional affidavit in paragraph no. (vi) that each member of the Interview Board allots marks out of 25 and thus the consolidated marks given by all the three members of the panel are out of 75 marks. This is done without disclosing such procedure in the advertisement. The marks determined for experience were also not disclosed in the advertisement. The minimum benchmark was also not disclosed in the advertisement. The Interview Board does all this exercise without disclosing or making it public in the advertisement.

38. Rule 8 is about the appointment of notaries. It provides that on recommendations of the Interview Board, the appropriate Government shall consider the recommendations and shall, (a) allow the application in respect of the whole 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 the Government thinks fit regarding the persons by whom the whole or any part of the cost of the application including the cost of hearing, if any, shall be borne.

39. The question that the recommendations of either the competent authority or the Interview Board is mandatory or directory, is hotly debated by the contesting parties. We have already answered the role of competent authority above. So far as the word "shall" used in rule 8 of the Rules 1956 is concerned, it is to answer whether the recommendations made by the Interview Board are mandatory to the Government. In the case of *Sainik Motors v State of Rajasthan* AIR 1961 SC 1480, the Hon'ble Apex Court laid down the law that "The word 'shall' is ordinarily mandatory but it is sometimes not so interpreted if the context or the intention otherwise demands." In *State of U.P and Ors v Babu Ram Upadhyay* (1961) 2 SCR 679, the Hon'ble Apex court laid down the law, that " When a Statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully ascertaining the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, inter alia the nature and statute, and the consequences

which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstances, contingency of the non-compliance with the provisions, the fact the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated".

40. So far as the process of the appointment on any public service post based on the recommendations of selection committee or board is concerned, the Hon'ble Apex Court in *R.S. Mittal v Union of India* 1995 supp (2) 230 held that "though there is no vested right to be appointed to the post for which a candidate has been selected but the appointing authority cannot ignore the panel or decline to make the appointment and when a person has been selected then ordinarily there is no justification to ignore him for appointment unless there is a justifiable reason to decline to appoint a person who is on the selection panel."

41. To interpret whether the word 'shall' found in rule 8, is mandatory or directory, in view of the law laid down by the Hon'ble Apex Court in *Sainik Motors and Babu Ram Upadhaya* (supra), the context in which it is used and the intention of the notaries act, is to be seen. The preamble of the Notaries Act, 1952, is "An Act to regulate the profession of notaries." The object of its bill was to empower the Central and State Government to appoint notaries, not only for the limited purposes of the Negotiable Instruments Act, but generally for all recognized notarial purposes, and to regulate the profession of notaries.

42. Section 3 of the said Act empowers the Central or State Government to appoint the notaries. The appropriate Government 'may' appoint the notaries qualified as per rule 3 of the Rules 1956. The rules 1956 are made under the powers of the Central Government under section 15 of the Act. Rule 7 of the Rules 1956, reflects that the appointment of the notaries is made having regard to commercial importance of the area. The knowledge and experience of commercial law is another factor to be considered by the competent authority while making the recommendations to the Government. Rule 8 further provides that the notaries may be appointed in respect of the whole area or any part of the area to which the application relates. The commercial activities in a particular area and the need of the notaries is, as appears from Rules 1956 and the Act, a primary factor.

43. Rule 13 empowers the appropriate Government to make an inquiry against the notaries into his misconduct. In an inquiry, if the acts and omissions complained of against the notaries are proved, the Government may cancel his certificate of practice and perpetually debar him from practicing notary, or suspend his certificate of practice, or warn him. These rules are explicit that the Notaries are under the control of the appropriate Government.

44. Section 5 of the Act provides that the name of the notary shall be entered in the certificate authorizing him to practice is for five years and after every five

years it shall be renewed, on payment of fees. Section 9 bars the practice without the certificate. Section 12 provides for falsely representing to be a notary and if the notary does any act in contravention of section 9, it is cognizable offence. The transaction of business by a notary is governed under rule 11.

45. Reading the above provisions and rules, it is in no manner of doubt, the appointment of notary is not a mere formality. It is a service for the public to be performed with good character, integrity, ability, and competence. The person desirous to be appointed as notary has to go through two tests. Firstly, by satisfying his application is complete in all respect. He must be a resident of the area for which he applied. He must be qualified as prescribed in rule 3. His previous application shall not be rejected six months before the application. He has to face objection if any raised on his appointment. Secondly, he must possess the knowledge and experience of commercial laws. He must be recommended by competent authority to appear before Interview Board, and, then Interview Board shall further recommend his name to the appropriate Government to register him in the Notary Register.

46. Reading the provisions of the Act and Rules made thereunder, we have no hesitation in holding that the appropriate Govt has the power to examine the recommendations made by the Interview Board. If it finds a justifiable reason, it may reject it. Further, having regard to the object of the Act and the purpose of the appointment of a person which is need-based, we are of the view that the word 'shall' used in rule 8 of the rules 1958 is directory.

47. The bone of contention of the petitioner is that, in utter violation of the prescribed rules, the State Government appointed the candidate who has not routed the application through the District Judge and secured less mark than him in the interview before Interview Board. Hence the appointment process adopted by the State Government violates the article 14 of the constitution of India.

48. It is an admitted fact that the applicant and one Keshav Narayan Kardile have routed the application through the learned Principal District Judge, Latur. We have already answered that such practice of routing the applications through the District Judge was prevailing in the year 2016. The consolidated mark sheet placed at page no. 58 of the paper book proves that the respondent no. 3, has secured less marks than the applicant. The minutes of the interview held on 24.11.2017 make it clear that the Interview Board recommended the name of the candidates as per their merit based on the marks secured in the interview. The consolidated mark sheet reveals that 36 marks were the highest score secured by Trimbak Antaram Rajwansh. However, his application was not routed through the District Judge. The minutes of the Interview board do not mention the name of the person recommended, but it indicates that the person who secured the highest marks was recommended.

49. The petitioner fervently argued that the Government did not even show courtesy to inform him the order passed under sub-rule 1 of rule 8. He had to

resort to the Right to Information Act. It is a fact that the appropriate Government, though duty-bound under sub-rule 2 of rule 8, to inform the applicant every order passed under sub-rule 1 of rule 8 has not been informed to the applicant. The petitioner had to complain to the Government about the illegal appointment of a notary. Then the Government by, letter dated 31.07.2019, informed him that he may prefer a review application as contemplated under sub-rule 3 of rule 8. Then he preferred the same, and the impugned order is passed. The review application is rejected on the sole ground that it is not mandatory to route the applications through the District Judge only. No reasons are assigned on his grievance why the order passed in sub-rule 1 of rule 8 as mandated under sub-rule 3, is not communicated to him. It is also not justified why the person who secured less mark is appointed.

50. The Rules are hand-maid to the provisions under such Act. They assist the law. They are in place to make the parent act work effectively, avoid confusion and guide the authority to arrive at a proper decision. Hence, where the judgment/decision has to be taken under the rules prescribed, no authority or, the Government can travel beyond such rules. Where the rules are framed, they shall be adhered to. Rules 1956 laid the comprehensive procedure for appointing the notary. Therefore, the appropriate Government cannot deviate from the procedure laid down in the said rules.

51. In the case at hand, respondents nos.1 and 2 have merely explained that while appointing the notary they have followed rules 7-A and 8. However, no reasons were assigned as to why the candidate who has secured the highest marks, is not considered or what was the special ground to appoint respondent no.3 who secured second lowest marks, even less marks than the petitioner. In the absence of any justifiable reason, we find that the Government arbitrarily appointed respondent no.3 in contravention of the established rules and procedure. The Government has exercised its powers arbitrarily. The doctrine of fair and impartial decision is also not followed by the Government.

52. In view of the above, we hold that the State Government has not strictly followed the Notaries Rules 1956 while appointing the notary. It has deviated from the mandatory rules as applicable upto 5. 11.2019. The appointment of respondent no.3 is without justifiable reason while deviating from the recommendations made by Interview Board. The Government failed in discharging its legal obligation to inform the orders passed on the recommendations made by the Interview Board.

53. For the above reasons, we partly allow the petition and set aside the impugned order dated 14th July, 2020 and the appointment of respondent no. 3, as a notary for Chakur District Latur.

54. Since, we have arrived at a conclusion that it was imperative for the applicants to file their applications through the District Judge, only 2 applications are liable to be reconsidered. Therefore, we direct respondent nos. 1 and 2 to

reconsider the above two applications on the basis of Notaries Rules in existence in the year 2016.

55. The respondent nos. 1 and 2 shall take its decision on the material available with it by strictly following the Notaries Rules, 1956 within three months from today by giving the applicant a hearing, under a written notice, and inform its decision as prescribed in sub-rule 3 of rule 8 of the Notaries Rules, 1958.

56. The respondent no.1 is directed to remove the name of respondent no.3 Purushottam Vaijnath Shete from a register of notaries, maintained under Section 4 of the Notaries Act and cancel his certificate of practice as Notary forthwith, after the decision is taken by respondent nos.1 and 2 as directed above.

57. Rule is made partly absolute in the above terms.