

(2017) 03 GUJ CK 0006
In the Gujarat High Court

Case No : Special Civil Application No. 8734 of 2014

Hardasbhai Nathabhai Mahida

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

Notaries Rules, 1956 — Rule 13(12), Rule 13(6)

Citation : (2017) AIR(Gujarat) 72

Hon'ble Judges : C.L. Soni, J.

Bench : Single Bench

Advocate : Mr. Shalin Mehta, Senior Advocate with Mr. Viren G. Dave, Advocate, for the Petitioner; Mr. Swapneshwar Gautam, AGP, for the Respondent No. 1; Mr. Saurabh M. Patel, Advocate, for the Respondent No. 3; Rule Served, for the Respondent No. 2

Final Decision : Disposed off

Judgement

C.L. Soni, J. (Oral)—By the present petition under Articles 226 and 227 of the Constitution, the petitioner has challenged the order dated 05.06.2014 passed by respondent no.2 cancelling the certificate of the petitioner to practise as Notary and debarring him from practicing as Notary.

2. It appears that in connection with the complaint filed by one Shri Bhikhabhai Jinabhai Makwana - respondent no.3 in Form No.13 under the Notary Act, 1952 ("the Act"), the petitioner was issued notice dated 18.04.2013 calling upon him to explain on false affidavit made on 30.12.2009 as the complainant stated that he had not made any affirmation before the Notary, nor purchased any stamp nor even signed on affidavit and that he had also not signed in the register of the Notary nor even done any kabulatnama before the Notary. The petitioner submitted his reply dated 07.05.2013 to the said notice. It also appears that the complainant lodged the FIR being C.R. No.I-22/2011 on 26.07.2011 with Maliya-Hatina Police Station, Junagadh for the offences under Sections 177, 181, 198, 199, 200, 404, 406, 418, 424, 465, 468, 471, 474, 114 and 120(B) of the Indian

Penal Code against Jayantibhai Ukabhai Makwana and Amarben Ukabhai Makwana alleging making of false affidavits to get the entries certified in the revenue record.

3. As observed in the impugned order at Annexure - G, inquiry into allegations was handed over to the competent authority as per Rule 13(6) of the Notaries Rules, 1956 ("the Rules") and, thereafter, the impugned order came to be passed.

4. Learned senior advocate Mr. Shalin Mehta appearing with learned advocate Mr. Viren G. Dave for the petitioner submitted that on different grounds including that of breach of principles of natural justice, the impugned order would not stand scrutiny of law. Mr. Mehta submitted that on the charge of professional misconduct, the petitioner is permanently debarred from practicing as a Notary on the basis of so-called inquiry without giving the copy of report of the inquiry to the petitioner. He submitted that for a professional, the impugned order shall have serious impact on his reputation in the society and, therefore, though Rules do not provide for giving the copy of the report, but impugned order passed without making the petitioner aware about the conclusion in inquiry and without giving opportunity to represent against the report has seriously prejudiced the right of petitioner and, therefore, to fully comply with the principles of natural justice, requirement to supply copy of the report and to afford opportunity to represent against the report and to give hearing before making final order is required to be read in the Rules. He submitted that even considering the nature of the allegations alleged to have been proved, debarring the petitioner to practise was not called for.

5. Learned Assistant Government Pleader Mr. Swapneshwar Gautam for respondent no.1 submitted that the Rules only postulate right of defence to the Notary in the inquiry. He submitted that nowhere it is provided in the Rules that before making the final order, the Notary is to be given a copy of the report. He submitted that when the statutory Rules do not provide for giving of the report, the petitioner could not be made entitled to get a copy of the report. He submitted that if requirement of giving copy of report is read into the Rules, it would amount to re-writing of the Rules. He submitted that the petitioner was given sufficient opportunity to represent his case before the inquiry officer, having availed full opportunity during the inquiry, he can not be permitted to make grievance that he had no opportunity to know what is considered in report. He, therefore, submitted that the petitioner could not be said to have been prejudiced in any manner for not giving him inquiry report before passing the impugned order.

6. Learned advocate Mr. Saurabh M. Patel for respondent no.3 submitted that the petitioner as a Notary has indulged into unethical practise and for his misconduct of getting false affidavit prepared, respondent no.3 has suffered qua his rights in the property. He submitted that when the petitioner was given full opportunity to explain against the allegations made in the complaint of respondent no.3 and when during the inquiry, he was also given full opportunity to defend himself,

non-giving of the copy of the report to him would not render the impugned order illegal on the ground of breach of principles of natural justice. He submitted that the legislature in his wisdom has not made any provision for giving copy of the report of the competent authority to the Notary before making final order. He submitted that when the petitioner had full opportunity during the inquiry to represent his case, the impugned order passed against the petitioner could not be said to have been passed in violation of the principles of natural justice.

7. Having heard learned advocates for both the sides, it appears that against the allegations as regards professional misconduct, the petitioner rendered his explanation in his reply dated 07.05.2013. As part of his reply, the petitioner has stated that in connection with the dispute of the land, the complainant had filed civil suit and, thereafter, the FIR was lodged where the petitioner was not arraigned as accused. However, he was called by the police and his statement was recorded and, thereafter, the charge-sheet came to be filed.

8. Rule 13 of the Rules reads as under:

13. Inquiry into the allegations of professional or other misconduct of a notary

(1) An inquiry into the misconduct of a notary may be initiated either suo motu by the appropriate government or on a complaint received in Form XIII.

(2) Every such complaint shall contain the following particulars, namely-

(a) the acts and omissions which, if proved, would render the person complained against unfit to be a notary;

(b) the oral or documentary evidence relied upon in support of the allegations made in the complaint.

(3) The appropriate government, shall return a complaint which is not in the proper form or which does not contain the aforesaid particulars to the complainant for representation after compliance with such objections and within such time as the appropriate government may specify:

Provided that if the subject matter in a complaint is, in the opinion of the said government substantially the same as or covered by, any previous complaint and if there is no additional ground, the said government shall file the said complaint without any further action and inform the complainant accordingly.

(4) Within sixty days ordinarily of the receipt of complaint, the appropriate government shall send a copy thereof to the notary at his address as entered in the Register of Notaries.

(4A) Where an inquiry is initiated, suo motu by the appropriate government, the appropriate government shall send to the notary a statement specifying the charge or charges against him, together with particulars of the oral or documentary evidence relied upon in support of such charge or charges.

(5) A notary against whom an inquiry has been initiated may, within fourteen

days of the service on him of a copy of the complaint under sub rule (4) or of the statement of the charges under sub-rule (4A), as the case may be, or within such time as may be extended by the appropriate government, forward to that government a written statement in his defence verified in the same manner as a pleading in a civil court.

(6) If on a perusal of the written statement, if any, of the notary concerned and other relevant documents and papers, the appropriate government considers that there is a prima facie case against such notary, the appropriate government shall cause an inquiry to be made in the matter by the competent authority. If the appropriate government is of the opinion that there is no prima facie case against the notary concerned, the complaint or charge shall be filed and the complainant and the notary concerned shall be informed accordingly.

[(7) Every notice issued to a notary under this rule shall be sent to him by registered post. If any such notice is returned unserved with an endorsement indicating that the addressee has refused to accept the notice or the notice is not returned unserved within a period of thirty days from the date of its dispatch, the notice shall be deemed to have been duly served upon the notary.]

(8) It shall be the duty of the appropriate government to place before the competent authority all facts brought to its knowledge which are relevant for the purpose of an inquiry by the competent authority.

(9) A notary who is proceeded against shall have right to defend himself before the competent authority either in person or through a legal practitioner or any other notary.

(10) Except as otherwise provided in these rules, the competent authority shall have the power to regulate his procedure relating to the inquiry in such manner as he considers necessary and during the course of inquiry, may examine witnesses and receive any other oral or documentary evidence.

(11) The competent authority shall submit his report to the government entrusting him with the inquiry.

(12) (a) The appropriate government shall consider the report of the competent authority, and if in its opinion a further inquiry is necessary may cause such further inquiry to be made and a further report submitted by the competent authority.

(b) If, after considering the report of the competent authority, the appropriate government is of the opinion that action should be taken against the notary the appropriate government may make an order-

(i) cancelling the certificate of practise and perpetually debarring the notary from practise; or

(ii) suspending him from practise for a specified period; or

(iii) letting him off with a warning, according to the nature and gravity of the misconduct of the notary proved.

(13) Notification of removal - The removal of the name of any notary from the register of notaries from practise, as the case may be, shall be notified in official Gazette and shall also be communicated in writing to the notary concerned.

9. As per sub rule (9) of Rule 13, a Notary who is proceeded against shall have right to defend himself before the competent authority. As per sub rule (10) of Rule 13, the competent authority shall have the power to regulate his procedure relating to the inquiry in such manner as he considers necessary and during the course of inquiry, may examine witnesses and receive any other oral or documentary evidence. It would be then the competent authority shall submit his report to the government as required by sub rule (11) of Rule 13. Sub Rule (12) of Rule 13 provides that the appropriate government shall consider the report of the competent authority and if it finds that a further inquiry is necessary, it may cause such further inquiry to be made and then further report shall be considered by the government. As further provided therein, if, after considering the report of the competent authority, the government is of the opinion that action should be taken against the Notary, the government may make an order either to cancel the certificate of practise and perpetually debar the Notary from practise or suspend him from practise for a specified period or letting him off with a warning, according to the nature and gravity of the misconduct of the Notary proved. Thus, in the Rules a Notary is given right to defend himself before the competent authority during inquiry. But on conclusion of inquiry, the Notary is not made entitled to have the copy of the report and to make any representation against the report or not given right of hearing before the appropriate government makes any of the orders contemplated in sub rule (12) (b) on consideration of the report.

10. In case of *Sri Kashi Prasad Saksena v. State of Uttar Pradesh*, reported in AIR 1967 Allahabad 173, relied on by learned senior advocate Mr.Mehta, the Allahabad High Court examined the issue concerning principles of natural justice for non-supply of the report of the competent authority in the context of the above Rule 13. The Allahabad High Court has held and observed in paragraph nos.14, 15, 16, 17 and 22 as under:

14. The duties assigned to him are of a professional nature. His essential function is to bestow an impress of authenticity upon certain acts performed by him under the Act at the request of individual members of the general public who requisition, his services and re-compensate him by paying him the prescribed fee which flows into his pocket and not in the coffers of the Government. His duties do not relate to activities which fall directly within the spheres of the Union or the State. All these conclusions follow from Section 8 of the Act, which deals with the functions of a Notary and reads :

"(1) A notary may do all or any of the following acts by virtue of his office,

namely:-

- (a) verify, authenticate, certify or attest the execution of any instrument :
- (b) present any promissory note, hundi or bill of exchange for acceptance or payment or demand better security :
- (c) note or protest the dishonour by non-acceptance or non-payment of any promissory note, hundi or bill of exchange or protest for better security or prepare acts of honour under the Negotiable Instruments Act, 1881, or serve notice of such note or protest;
- (d) note and draw up ship's protest, boat's protest or protest relating to demurrage and other commercial matter;
- (e) administer oath to, or take affidavit from, any person;
- (f) prepare bottomry and respondent-ia bonds, charter parties and other mercantile documents;
- (g) prepare, attest or authenticate any instrument intended to take effect in any country or place outside India in such form and language as may conform to the law of the place where such deed is intended to operate;
- (h) translate, and verify the translation of any document from one language into another;
- (i) any other act which may be prescribed.

(2) No act specified in sub-section (1) shall be deemed to be a notarial act except when it is done by a notary under his signature and official seal."

15. The appointment is made under the Act. The preamble of the Act reads :

"An Act to regulate the profession of notaries."

This shows that a notary carries on a profession and is not in the employment of any one including the State Government. Even though the preamble cannot be used to defeat the enacting clauses of a Statute, it has been treated to be a key for the interpretation of the Statute (See *In re, Kerala Education Bill, 1957*, AIR 1958 SC 956 and *Biswambhar Singh v. State of Orissa*. AIR 1954 SC 139).

16. Section 10 of the Act provides for the name of a notary being removed from the register of Notaries on the ground of professional misconduct and Section 15 of the Act empowers the Central Government to frame rules inter alia for making enquiries into the allegations of professional misconduct against a Notary. How can there be a professional misconduct if a Notary is not carrying on a profession, but is in service. Therefore, sections 10 and 15 of the Act also, like the preamble show that a Notary carries on a profession and is not in the service or employment of anyone. Sections 5, 9, 11 and 12 speak of the vocation of a Notary as "practise". The relevant words in Section 5 are "every notary who

intends to practise". Those in Section 9 are "no person shall practise as a notary or do any notarial act". In Section 11 the words are "any reference to a notary public in any other law shall be construed as a reference to a notary entitled to practise under this Act", while in Section 12 of the Act the words are "practises as a notary".

From what we have said above it is clear that a Notary practises a profession and is not in service. Section 5 of the Act requires that every Notary who intends to practise as such has to pay the prescribed fee. The Notary becomes "entitled (a) to have his name entered in the register" of Notaries and (b) "to a certificate authorizing him to practise for a period of three years" only after he has paid the prescribed fee. He has also to pay a fee for getting his certificate renewed. The payment of fee is inconsistent with the holding of a post under the Government. It is consistent only with the carrying of a profession, the fee being in the nature of a licence fee for it is the fee for obtaining the certificate to practise. It is conceded that even when the Government, in the capacity of a litigant or in connection with its non-sovereign functions, requisitions the services of a Notary, it has to pay a fee to him like any member of the general public. The payment of fees by the Government to the Notary is inconsistent with its being the employer of the Notary.

17. For the reasons mentioned above we are satisfied that the petitioner-appellant in the capacity of a Notary was only practising a profession and was not in the employment of the U. P. Government. He was, therefore, not holding a civil post under the State of U. P. and for that reason was not entitled to the protection of Article 311 (2) of the Constitution of India. Mr. Hajela, who has appeared for the petitioner-appellant, has placed reliance upon *State of Uttar Pradesh v. Audh Narain Singh*, AIR 1965 SC 360. This case related to Tahsildars appointed in a Government treasury in U. P. In that case admittedly the Tahsildars were in service and the only question was whether they were in the service of the State Government or in that of the Treasurer, who was appointed by the Government. In the present case the question is a very different one. the same being whether the petitioner-appellant was carrying on a profession or was in service under the State of U. P. We have recorded our reasons for coming to the conclusion that he was carrying on a profession and was not in the service of anybody including the State of U. P. This case, therefore, cannot be of any help to the learned counsel for the petitioner-appellant.

22. Mr. Hajela also submits that inasmuch as the petitioner-appellant in spite of his request was not furnished with a copy of the report of the competent authority, there has been a failure of the principles of natural justice. There is no dispute about the fact that in spite of the request of the petitioner-appellant no copy of the enquiry report was furnished to him. Rule 13 (12) (a) and (b) of the Act clearly require the report of the competent authority to be considered before taking action against a Notary. Inasmuch as in the present case the petitioner-appellant was neither shown the report of the competent authority nor was

furnished a copy of the same, he had no occasion to know as to what findings had been recorded against him by the competent authority. It has been contended by the learned Senior Standing Counsel that inasmuch as the law does not require any opportunity being given to a Notary after the competent authority has submitted its report and before action is taken by the appropriate Government, the petitioner appellant did not suffer in any manner by a copy of the enquiry report not being furnished to him.

The proceedings against a Notary under Section 10 of the Act read with R. 13 of the rules are of a serious and penal nature. Not only a Notary is liable to be removed in those proceedings, he might also be adjudged guilty of serious charges of misconduct. In fact, any decision taken in those proceedings might adversely affect his reputation and future prospects. The enquiry, therefore, must be a fair one and a Notary must have full opportunity of knowing the material on the basis of which action may be taken against him. The appropriate Government while exercising powers under Section 10 of the Act read with R. 13 exercises quasi-judicial and not merely administrative powers. Inasmuch as the copy of the report of the competent authority had not been furnished to the petitioner-appellant, he did not know as to what had been held against him and inasmuch as the State Government acted on the basis of that report, the proceedings before the State Government cannot be said to have been fair. It is true that rules of natural justice vary with the varying constitutions of the Statutory bodies and the rules prescribed by the Act under which they function, but it is well settled that whether or not any rules of natural justice had been contravened should be decided in the light of the statutory rules and provisions. (See Nagendra Nath v. Commissioner of Hills Division, AIR 1958 SC 398.

In the present case we have already shown earlier that it is the report of the competent authority which is to be considered by the appropriate Government and it is that report which provides the basis for action against a Notary. The circumstances that a copy of that report, though asked for, was not given to the petitioner-appellant nor was the report shown to him leads to the conclusion that there was an infringement of the principles of natural justice. It is true that neither Section 10 nor R. 13 provide a right of hearing, but it is implicit in the nature of the proceedings that a Notary whose conduct has been enquired into by the competent authority should be permitted to meet the report of the enquiry officer before it is acted upon by the appropriate Government.

11. In the case of Institute of Chartered Accountants of India v. L. K. Ratna and others reported in (1986) 4 SCC 537, the Hon"ble Supreme Court, while examining the fundamental questions as regards the conduct and procedure of the disciplinary proceedings taken under the Chartered Accountants Act, 1949, has held and observed in paragraph nos.12 to 20 as under:

12. Now when it enters upon the task of finding whether the member is guilty of misconduct, the Council considers the report submitted by the Disciplinary Committee. The report constitutes the material to be considered by the Council.

The Council will take into regard the allegations against the member, his case in defence, the recorded evidence and the conclusions expressed by the Disciplinary Committee. Although the member has participated in the inquiry, he has had no opportunity to demonstrate the fallibility of the conclusions of the Disciplinary Committee. It is material which falls within the domain of consideration by the Council. It should also be open to the member, we think, to point out to the Council any error in the procedure adopted by the Disciplinary Committee which could have resulted in vitiating the inquiry. Section 21(8) arms the Council with power to record oral and documentary evidence, and it is precisely to take account of that eventuality and to repair the error that this power seems to have been conferred. It cannot, therefore, be denied that even though the member has participated in the inquiry before the Disciplinary Committee, there is a range of consideration by the Council on which he has not been heard. He is clearly entitled to an opportunity of hearing before the Council finds him guilty of misconduct.

13. At this point it is necessary to advert to the fundamental character of the power conferred on the Council. The Council is empowered to find a members guilty of misconduct. The penalty which follows is so harsh that it may result in his removal from the Register of Members for a substantial number of years. The removal of his name from the Register deprives him of the right to a certificate of practise. As is clear from section 6(1) of the Act, he cannot practise without such certificate. In the circumstances there is every reason to presume in favour of an opportunity to the member of being heard by the Council before it proceeds to pronounce upon his guilt. As we have seen, the finding by the Council operates with finality in the proceeding, and it constitutes the foundation for the penalty imposed by the Council on him. We consider it significant that the power to find and record whether a member is guilty of misconduct has been specifically entrusted by the Act to the entire Council itself and not to a few of its members who constitute the Disciplinary Committee. It is the character and complexion of the proceeding considered in conjunction with the structure of power constituted by the Act which leads us to the conclusion that the member is entitled to a hearing by the Council before it can find him guilty. Upon the approach which has found favour with us, we find no relevance in *James Edward Jeffs and others v. New Zealand Dairy Production and Marketing Board and others*, [1967] 1 AC 551 cited on behalf of the appellant. The Court made observations there of a general nature and indicated the circumstances when evidence could be recorded and submissions of the parties heard by a person other than the decision making authority. Those observations can have no play in a power structure such as the one before us.

14. Our attention has been invited to the difference between the terms in which section 21(3) and section 21(4) have been enacted and, it is pointed out, that while in section 21(4) Parliament has indicated that an opportunity of being heard should be accorded to the member, nowhere in section 21(3) do we find such requirement. There is no doubt that there is that difference between the

two provisions. But, to our mind, that does not affect the question. The textual difference is not decisive. It is the substance of the matter, the character of the allegations, the far-reaching consequences of a finding against the member, the vesting of responsibility in the governing body itself, all these and kindred considerations enter into the decision of the question whether the law implies a hearing to the member at that stage.

15. Learned counsel for the appellant relies on *Chandra Bhavan Boarding and Lodging, Bangalore v. The State of Mysore and Anr.*, [1970] 2 SCR 600, where this Court found that the procedure adopted by the Government in fixing a minimum wage under section 5(1) of the Minimum Wages Act, 1948 was not vitiated merely on the ground that the Government had failed to constitute a committee under section 5(1) (a) of that Act. Reference was also made to *K.L. Tripathi v. State Bank of India and Others*, [1984] 1 SCC 43 where the petitioner complained of a breach of the principles of natural justice on the ground that he was not given an opportunity to rebut the material gathered in his absence. Neither case is of assistance to the appellant. In the former, the Court found that reasonable opportunity had been given to all the concerned parties to represent their case before the Government made the impugned order. In the latter, the Court held that no real prejudice had been suffered by the complainant in the circumstances of the case.

16. It is next pointed out on behalf of the appellant that while Regulation 15 requires the Council, when it proceeds to act under section 21(4), to furnish to the member a copy of the report of the Disciplinary Committee, no such requirement is incorporated in Regulation 14 which prescribes what the Council will do when it receives the report of the Disciplinary Committee. That, it is said, envisages that the member has no right to make a representation before the Council against the report of the Disciplinary Committee. The contention can be disposed of shortly. There is nothing in Regulation 14 which excludes the operation of the principle of natural justice entitling the member to be heard by the Council when it proceeds to render its finding. The principles of natural justice must be read into the unoccupied interstices of the statute unless there is a clear mandate to the contrary.

17. It is then urged by learned counsel for the appellant that the provision of an appeal under section 22-A of the Act is a complete safeguard against any insufficiency in the original proceeding before the Council, and it is not mandatory that the member should be heard by the Council before it proceeds to record its finding. Section 22-A of the Act entitles a member to prefer an appeal to the High Court against an order of the Council imposing a penalty under section 21(4) of the Act. It is pointed out that no limitation has been imposed on the scope of the appeal, and that an appellant is entitled to urge before the High Court every ground which was available to him before the Council. Any insufficiency, it is said, can be cured by resort to such appeal. Learned counsel apparently has in mind the view taken in some cases that an appeal provides an

adequate remedy for a defect in procedure during the original proceeding. Some of those cases are mentioned in Sir William Wades erudite and classic work on "Administrative Law" But as that learned author observes, "in principle there ought to be an observance of natural justice equally at both stages", and

"if natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing: instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial."

And he makes reference to the observations of Megarry J. in *Leary v. National Union of Vehicle Builders*, [1971] 1 Ch. 34. Treating with another aspect of the point, that learned Judge said:

"If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body, this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing *de novo*, the member is being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is satisfied by a process whereby an unfair trial, though not resulting in a valid expulsion, will nevertheless have the effect of depriving the member of his right of appeal when a valid decision to expel him is subsequently made. Such a deprivation would be a powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body."

The view taken by Megarry, J. was followed by the Ontario High Court in Canada in *Re Cardinal and Board of Commissioners of Police of City of Cornwall*, [1974] 42 D.L.R. (3d) 323. The Supreme Court of New Zealand was similarly inclined in *Wislang v. Medical Practitioners Disciplinary Committee*, [1974] 1 N.Z.L.R. 29 and so was the Court of Appeal of New Zealand in *Reid v. Rowley*, [1977] 2 N.Z.L.R. 472.

18. But perhaps another way of looking at the matter lies in examining the consequences of the initial order as soon as it is passed. There are cases where an order may cause serious injury as soon as it is made, an injury not capable of being entirely erased when the error is corrected on subsequent appeal. For instance, as in the present case, where a member of a highly respected and publicly trusted profession is found guilty of misconduct and suffers penalty, the damage to his professional reputation can be immediate and far-reaching. "Not all the King's horses and all the King's men" can ever salvage the situation completely, notwithstanding the widest scope provided to an appeal. To many a man, his professional reputation is his most valuable possession. It affects his

standing and dignity among his fellow members in the profession, and guarantees the esteem of his clientele. It is often the carefully garnered fruit of a long period of scrupulous, conscientious and diligent industry. It is the portrait of his professional honour. In a world said to be notorious for its blase attitude towards the noble values of an earlier generation, a man's professional reputation is still his most sensitive pride. In such a case, after the blow suffered by the initial decision, it is difficult to contemplate complete restitution through an appellate decision. Such a case is unlike an action for money or recovery of property, where the execution of the trial decree may be stayed pending appeal, or a successful appeal may result in refund of the money or restitution of the property, with appropriate compensation by way of interest or mesne profits for the period of deprivation. And, therefore, it seems to us, there is manifest need to ensure that there is no breach of fundamental procedure in the original proceeding, and to avoid treating an appeal as an overall substitute for the original proceeding.

19. Upon the aforesaid considerations, we are of definite opinion that a member accused of misconduct is entitled to a hearing by the Council when, on receipt of the report of the Disciplinary Committee, it proceeds to find whether he is or is not guilty. The High Court is, therefore, right in the view on this point.

20. Accordingly, the respective findings of the Council that Ratna, Behl and Bhoopatkar are guilty of misconduct are vitiated and must be quashed. Consequently, the penalty imposed on each of them is also liable to be quashed.

12. In the case of Basudeo Tiwary v. Sido Kanhu University and others, reported in (1998) 8 SCC 194, the Hon"ble Supreme Court has held and observed in paragraph no.10 as under:

10. In order to impose procedural safeguards, this Court has read the requirement of natural justice in many situations when the statute is silent on this point. The approach of this Court in this regard is that omission to impose the hearing requirement in the statute under which the impugned action is being taken does not exclude hearing - it may be implied from the nature of the power - particularly when the right of a party is affected adversely. The justification for reading such a requirement is that the court merely supplies omission of the legislature (vide Mohinder Singh Gill v. Chief Election Commr., AIR 1978 SC 851) and except in the case of direct legislative negation or implied exclusion (vide S. L. Kapoor v. Jagmohan).

13. In the case of Prakash Ratan Sinha v. State of Bihar and others, reported in (2009) 14 SCC 690, the Hon"ble Supreme Court has held and observed in paragraph nos.13 and 14 as under:

13. The law in this regard has been settled by several decisions of this Court. The principle that emerge from the decisions of this Court is that, if there is a power to decide and decide detrimentally to the prejudice of a person, duty to act judicially is implicit in exercise of such a power and that the rule of natural

justice operates in areas not covered by any law validly made.

14. Corollary principles emanating from these cases are as to what particular rule of natural justice should apply to a given case must depend to an extent on the facts and circumstances of that case and that it is only where there is nothing in the statute to actually prohibit the giving of an opportunity of being heard and on the other hand, the nature of the statutory duty imposed on the decision maker itself implies an obligation to hear before deciding. These cases have also observed, whenever an action of public body results in civil consequences for the person against whom the action is directed, the duty to act fairly can be presumed and in such a case, the administrative authority must give a proper opportunity of hearing to the affected person.

14. In light of the above principles enunciated by the Hon'ble Supreme Court in different decisions, what is provided in Rule 13 (12) of the Rules is to be adhered, it would defy a fair procedure of giving an opportunity to the Notary to represent against the flaw in conclusion reached against him in the report and also to represent not to take any penal against him. Final actions to be taken under Sub rule (12) include taking of lenient action against the Notary or letting Notary off with a warning according to the nature and gravity of misconduct of the Notary proved. When powers to take lenient action or letting the Notary off with a warning are available with the government, the Notary proceeded against will be well within his right to urge to either impose lenient penalty or let him off with a warning on the ground that the nature and gravity of the misconduct were not so grave. But, if he is not given the copy of the report of the inquiry he would be deprived of opportunity to represent not only against the conclusion reached in the report but also against the proposed actions. Therefore, as a part of fairness in procedure, if requirement of giving the report of inquiry of the competent authority to the Notary, permitting the Notary to make representation against the report and also giving of hearing before taking final decision on the report are read in the Rules, the same shall be in consonance with the principles of natural justice. The Court finds it necessary to read such requirements in Rules as the penalty will entail damage to professional reputation and there is no contrary mandate in the Rules to exclude giving of hearing before the penal action is taken on report. The Court therefore finds that reading of such requirement of giving copy of the report of the competent authority, giving an opportunity of making representation against such report and also affording of hearing to the Notary before taking any final decision based on the report under sub rule (12) of Rule 13 of the Rules will better serve the principles of natural justice.

15. The Court finds that the impugned order though records that inquiry was handed over to the competent authority under Rule 13(6) of the Rules, however, what happened to inquiry or whether the inquiry was concluded and the report was submitted is not stated. What is recorded is that by making affidavits in the names of the complainant and his sisters without their presence before the

petitioner - Notary, the petitioner committed misconduct in discharge of his professional duty. On reading the impugned order, it does not become clear that the impugned order is made by considering the report of the inquiry. Be that as it may, it is not disputed by respondent nos.1 and 2 that the petitioner was neither given the copy of the inquiry report nor was afforded any opportunity to make representation against the report nor was granted any hearing before taking the impugned decision. The Court, therefore, finds that the impugned order is made in breach of principles of natural justice.

16. In the result, the petition is allowed. The impugned order dated 05.06.2014 at Annexure-G passed by respondent no.2 is quashed and set aside. It is, however, left open to the State Government to take the proceedings against the petitioner from the stage of serving copy of the report of the of the competent authority and follow procedure as discussed in this judgment before making final order under sub rule (12)(b) of Rule 13 of the Rules. Rule is made absolute to the aforesaid extent.