
(1999) 08 AHC CK 0078
In the Allahabad High Court
Case No : Writ Petition No. 1304(M/S) of 1991

Jagdish Narain Gupta

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 31-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Notaries Rules, 1956 — Rule 7(3), 8

Citation : (1999) 08 AHC CK 0078

Hon'ble Judges : P.C.Verma, J

Final Decision : Dismissed

Judgement

P.C. Verma, J.—By means of this petition under Article 226 of the Constitution, the petitioner has challenged the Notification No. 340/VII Nyaya39924/46/90 dated 25.2.1991 by which the opposite party No. 3 Sri Syed Amirul Hasan Zafri, was appointed as Additional Notary in exercise of powers under section 3 of the Notaries Act, 1952. For appointment of an Additional Notary at Faizabad Head quarter an advertisement by the District Judge, Faizabad was made in September, 1989. In response to the said advertisement 30 applications were received by the District Judge, Faizabad including the application of the petitioner as well as the opposite party No. 3. After receipt of the applications, the District Judge, Faizabad published in the Official gazette, the names of the applicants, whose applications were received for appointment as Additional Notary and invited objections by 13.1.1990. Thereafter an enquiry was made and only five applications were found to be in order and rest of the applications were found defective. Therefore, the District Judge, made recommendations in respect of only five names, whose applications were found in order including the application of the petitioner and the respondent No. 3 The names were recommended by the District Judge in the following order:

1. Sri Vijaya Kumar Diwedi
2. Sri Vijaya Prakash Tiwari

3. Smt Saroj Singh
4. Sri J.N. Gupta (petitioner)
5. Sri Syed Amirul Hasan Zafri (O.P.No.3)

2. Along with the recommendations in respect of the five persons all the applications were sent by the District Judge, Faizabad to the State Government. The State Government after considering the recommendations of the District Judge, decided to appoint Opposite party No. 3 as Additional Notary and accordingly the impugned notification was issued. The petitioner has challenged the appointment of the opposite party No. 3 on the ground that the opposite party No. 3 was not eligible for the post because he is not a resident of the Headquarter. He gave a false information that he was a resident of Headquarter. The opposite party is the resident of village Baragaon, District Faizabad which is at a distance of 40 kms. from the District Headquarter which is evident from the voterlist of village Mustafabad in Sohawal Vidhan Sabha Assembly Constituency at si. No. 640 in 1983 list and at 557 in 1988 list. The Opp. party No. 3 also gave his permanent address in the Bar Association, Faizabad to be the village and post office Baragaon, District Faizabad. In the application opposite party No. 3 has given his local address as House Nos, 179/180, Mohalla Rath Haveli, Faizabad but there is no name of opposite party No. 3 in the voter list for the House Nos. 179 and 180. The petitioner has further challenged the appointment of the opposite party No. 3 that he is a dismissed Government servant on the charges of grave financial irregularities and corruption. The Opposite party No. 3 was removed from the post of NaibTehsildar in the year 1977. He has further challenged that while the opposite party No. 3 was appointed as OathCommissioner, a lot of complaints were made against him. He has also stated that the OathCommissioner Association, Faizabad also sent a complaint against opposite party No. 3 to the District Judge, Faizabad alleging matters of serious misconduct. The petitioner has also alleged that the opposite party No. 3 is of 65 years of age and as such he is not eligible for the appointment under the Rules. The petitioner has moved review application against the rejection of his candidature which was pending. During the pendency of the review application under subrule(3) of Rule 8 of the Notaries Act, 1952 the petitioner filed this writ petition and the Court has passed the following orders:

J.K. Mathur, J.:

By this petition the petitioner seeks to challenge appointment of opposite party No. 3 as Notary. Various grounds have been urged.

However, it has been submitted by the petitioner's learned counsel that he has filed an application for review of the order of appointment of opposite party No. 3, under Rule 8(3) of the Notaries Rule 1956, and that application is still pending with opposite party No. 1.

In view of the fact that the petitioner is following a remedy provided under the

law this court cannot be moved under Article 226 of the Constitution and a writ at this stage is not maintainable and is liable to be dismissed. However, it has been urged that an application for review has been pending with the opposite party No. 1 for the last more than three months and has not yet been decided.

The learned Standing Counsel appearing on behalf of opposite party No. 1 does not object to issue of a directive that opposite party No. 1 shall decide the application for review within a period of one month from the date on which a copy of this order is produced before opposite party No. 1.

Copy of this order be issued to petitioner's learned Counsel, within three days, on payment of usual charges. 30.7.91"

3. A short counteraffidavit on behalf of State of U.P. was filed on 12.12.1901 by the learned Chief Standing Counsel stating therein that necessary steps were taken for disposal of the application for review moved by the petitioner. Since the complaints had been made against the opposite party No. 3 Sri Syed Amirul Hasan Zafri by the petitioner, the State Government directed the District Judge, Faizabad to make an enquiry and to submit a report to the Government to enable the State Government to take a decision on the Review Application. By office order dated 24.10.1991, it has been communicated to the petitioner that the review application dated 15.2.1991 has been rejected on the basis of the enquiry report submitted by the District Judge, Faizabad. The State Government after considering the recommendation of the District Judge, Faizabad, which was got held after necessary enquiry and verification of the averments made in the complaint as well as the review application, rejected the review application.

4. At the time of hearing, the entire record was summoned. This Court perused the entire record of the District Judge, a photostat copy of which has been placed on record, The relevant portion is reproduced below:

5. The State Government rejected the review application of the petitioner on the recommendation and the enquiry report of the District Judge.

6. The opposite party No. 3 is not the resident of Headquarter for which he has placed reliance on sub rule(3) of Rule 7 of the Notaries Rules, 1956, which reads as under:

7 Recommendations of the Competent Authority.

x x x

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

(a) Whether the application ordinarily resides in the area in which he proposes to practice as a notary.

x x ?

7. From a perusal of the rule quoted above, it is clear that Rule 7 has to be taken

into account by the competent authority for recommending the names of the candidates for appointment of Notary and the competent authority shall have to take into account, due regard as to whether the applicant ordinarily resides in the area in which he proposes to practice as a notary. Thus a person ordinarily resides in the area in which he proposes to practice as a notary, does not mean that the necessarily be the resident of that area, he may temporarily reside for the purposes of practice in a house on rent.

8. From a perusal of the report on the District Judge, it is evident that the opposite party No. 3 has stated that he resides with his uncle in Mohalla Rath Haveli, Faizabad. For ordinarily residing it is not necessary that a candidate must be proved to be the resident on the basis of the Ration Card and Voter list etc. An Advocate may start practice in any area after making a temporary arrangement for his residence: However, this factor has to be taken by the Competent authority while recommending the names for appointment under Rule 7 of the Notaries Act, 1952. The appointment of a Notary is made under Rule 8 which reads as under:

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

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

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

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

9. From a perusal of Rule 8 of the Notaries Act, 1952 it is clear that the appointment of the Notaries is purely on the discretion of the State Government which is evident from the perusal of clause (a), (b) and (c) of Rule 8 of the Notaries Act, 1952.

10. The State Government, after considering the material on record, appointed Opposite party No. 3 as Additional Notary and after considering the report of the District Judge, rejected the review application of the petitioner. In my opinion the review application has rightly been rejected by the State Government and no material was found which could make the Opposite party No. 3 ineligible for appointment as an additional Notary.

11. For the reasons given above, the writ Petition fails and is dismissed. No order as to costs.