
(1968) 12 AHC CK 0013
In the Allahabad High Court
Case No : Writ Petition No. 754 of 1967

Kashi Prasad Saksena

APPELLANT

Vs

State Government of U.P., Lucknow

RESPONDENT

Date of Decision : 03-12-1968

Acts Referred:

Constitution of India, 1950 — Article 226
Notaries Act, 1952 — Section 10, 5, 8(1)
Notaries Rules, 1956 — Rule 11(2), 11(9), 13, 13(2), 13(3)
Stamp Act, 1899 — Article 42

Citation : AIR 1969 All 195

Hon'ble Judges : L. Prasad, J

Bench : Single Bench

Advocate : K.S. Hajela, for the Appellant; Chief Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

L. Prasad, J.—This is a petition under Article 226 of the Constitution. The petitioner was enrolled as a Notary Public for the first time in 1959 to practise as such at Lucknow. His certificate was renewed for a period of three years with effect from 20th August, 1962. It was during this period of renewal that a complaint was made against him by another Advocate, Sri Krishan Chandra on 2nd May, 1963 to the State Government in Form 13 as required by the Notaries Rules, 1956. This complaint was referred for enquiry to the Competent Authority, namely, the District Judge, Lucknow. On the basis of the allegations made in the complaint the Competent Authority framed the following three charges:

1. That he (the petitioner) made no entry in his register regarding the three affidavits dated 25-7-1961, 24-8-1961 and 24-8-1961 of Sarju Prasad, Inder Prakash and Chandra Mohan and thus contravened Rule 11 of the Notaries Rules.
2. That none of these four affidavits were stamped with notarial stamp as required under Article 42 of the Stamp Act.

3. That none of these four affidavits was stamped with adhesive stamps in accordance with Sections 10 and 11 of the Stamp Act, though it was the duty of the Notary to see that the affidavits were duly stamped before he administered oath to the deponents, and got them verified.

The petitioner was called upon to file a written statement which he did. A true copy of the written statement is Annexure 4 to the petition. After holding an enquiry on the basis of the above mentioned charges the Competent Authority submitted his report on 18th February, 1964 to the State Government saying that the charges levelled against the respondent (the petitioner) have been brought home to him. After receipt of the said report of the Competent Authority the State Government on 11th March 1964 issued a notification purporting to be u/s 10 of the Notaries Act, 1952 read with Clause (b) of Sub-rule (12) of Rule 13 of the Notaries Rules, 1956 cancelling with effect from the date of the notification the certificate of practice granted to the petitioner and perpetually debarring him from practising as such. Aggrieved by this notification the petitioner filed a writ petition under Article 226 of the Constitution which came to be registered as Writ Petition No. 380 of 1964 (All). It was dismissed by a learned Single Judge of this Court by his order dated 7th May, 1965.

Aggrieved by the said order the petitioner preferred a special appeal which came to be decided in his favour on 6th September, 1966. The decision of that special appeal is reported in *Sri Kashi Prasad Saxena Vs. State of Uttar Pradesh*, . As a result of the decision in the special appeal the State Government issued notification dated 28th February 1967, a copy of which is Annexure 6 to the petition, cancelling the earlier notification by which the petitioner's certificate to practise as a Notary was cancelled. Soon thereafter the certificate authorising the petitioner to practise as a Notary for a period of three years with effect from 20th August, 1965 was issued and as alleged by the petitioner he actually received it on 10th March 1967. A copy of the certificate thus issued is filed as Annexure 1 to the petition. It purports to have been signed on 29th September, 1967 but the petitioner showed me the original in the course of the arguments and it appears therefrom that it was signed on 25th September, 1967. Obviously, the year 1967 as mentioned therein is a mistake for the year 1966. It is also the allegation in paragraph 17 of the petition though no doubt there also the mistake is committed in so far as it purports to say that it was signed on 25th June, 1966 whereas the fact appears to be that it was actually signed on 25th September, 1966.

Another communication dated 3rd March 1967, a copy of which is Annexure 7 to the petition, was issued to the petitioner along with which a copy of the report of the Competent Authority dated 18th February, 1964 was furnished to the petitioner and he was required to submit his explanation in his defence within 14 days of the receipt of the communication. The petitioner actually submitted his explanation on 10th April, 1967 by which time he was allowed to submit his explanation. A true copy of that explanation is Annexure 8 to the petition.

Thereafter on 30th June, 1967 the State Government issued another notification, a copy of which was issued to the petitioner and which is Annexure 9 to the petition, by which the State Government purporting to act u/s 10 of the Notaries Act, 1952 read with clause (b) of Sub-rule (12) and Sub-rule (13) of Rule 13 of the Notaries Rules, 1956 cancelled with effect from the date of publication of the notification in the Gazette the certificate of practice granted to the petitioner and ordered the removal of his name from the register of Notaries with effect from the same date. It is against this order that the present petition is directed.

2. The petitioner challenges the validity of the impugned order on various grounds including that of mala fides. The prayer in the petition is that the notification (Annexure 9) be quashed and the State Government, namely, the opposite party, be directed not to give effect to the orders contained in the impugned notification.

3. The petition is opposed by the opposite party. A counter affidavit has been filed on behalf of the opposite party.

4. I have heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the opposite party. The first and the foremost contention raised on behalf of the petitioner is that the impugned order which proceeds on the basis that the petitioner has been guilty of such professional misconduct as to render him unfit to practise as a Notary stands vitiated for the simple reason that no charge of professional misconduct was ever levelled against the petitioner. This argument proceeds on the basis that the charges framed by the Competent Authority, as enumerated above, clearly indicate that there was no charge of professional misconduct with the result that the petitioner never had any opportunity to show to the Competent Authority that, even though those charges be taken to have been proved, there would be no basis for coming to the conclusion against the petitioner that he was, therefore, guilty of professional misconduct much less guilty of such professional misconduct as would render him unfit to practise as a Notary. Likewise, it is further pointed out that even the notice calling upon the petitioner to submit his defence with reference to the report of the Competent Authority, (Annexure 7) makes no mention of the fact that the charge against the petitioner in view of the findings reached by the Competent Authority was that he was guilty of professional misconduct with the result that he had no opportunity even to show to the State Government that there could be no such charge on the basis of the charges framed and findings recorded by the Competent Authority.

As against that the contention of the learned Standing Counsel is that having regard to the language of Rule 13 of the Notaries Rules 1956 under which the enquiry was admittedly held, there is no escape from the conclusion that the enquiry was being made on the basis that there was a reasonable ground to believe that the petitioner had been guilty of professional misconduct though no doubt that belief was based on the allegations contained in the complaint lodged by Sri Krishna Chandra. Nobody has cared to place a copy of the complaint that

was actually lodged by Sri Krishna Chandra. If one is to judge the allegations in the complaint on the basis of the charges framed by the Competent Authority which I have reproduced above then the inevitable conclusion is that there was no allegation of professional misconduct against the petitioner. At this stage learned Standing Counsel has drawn my attention to the fact that the file is with him on the record of which is the complaint filed by Sri Krishna Chandra which may be perused. It is unnecessary to peruse it because it is conceded that it does not contain any express allegation of professional misconduct. Thus, it is now conceded that the allegations in the complaint of Sri Krishna do not go beyond the charges framed by the Competent Authority. Such being the position I am of opinion that the stand taken by the petitioner as mentioned above is not without substance. In the special appeal reported in Sri Kashi Prasad Saksena Vs. State of Uttar Pradesh, it is observed in paragraph 27 of the report on page 180:--

"We have seen the record of the case maintained in the U. P. Secretariat. It does not appear that the State Government ever addressed itself to the question as to whether or not on the facts proved in the case the petitioner-appellant could be adjudged guilty of professional misconduct as distinct from negligence or mere lapse and whether the professional misconduct, if any, was so gross "as, in the opinion of the Government, renders him unfit to practise as a Notary"." It is thus abundantly clear that till before the disposal of the special appeal of the petitioner the authorities did not at all advert to the relevant requirement of the rule of law in order to take action which they purported to do under the notification of 1964, since quashed (Sic) the rule of law contained in Clause (d) of Section 10 of the Notaries Act, 1952. That being so, it is difficult to accept the contention of the learned Standing Counsel that simply because the enquiry purported to proceed in accordance with rule 13 of the Rules it should be taken for granted that the petitioner was apprised of the fact that the question whether or not he was guilty of such professional misconduct as would render him unfit to practise as a Notary was being enquired into as a result of the complaint made by Sri Krishna Chandra. What is still more surprising is that even though the opposite party thought fit to resume proceedings from the stage subsequent to the submission of the report by the Competent Authority in view of the decision given in the special appeal, it still omitted to take notice of the material observations made in paragraph 27 of the report referred to above while issuing notice to the petitioner calling upon him to submit his defence with reference to the report of the Competent Authority, as is abundantly clear from a perusal of Annexure 7, which is a true copy of that notice.

Thus, on the facts of the case as appear from the record there is no escape from the conclusion that all concerned with the enquiry were totally oblivious of the fact that no enquiry under Rule 13 of the Rules could legitimately be initiated unless it could be said on the basis of the allegations contained in the complaint that those allegations, if proved, would establish professional misconduct on the part of the petitioner of such a nature as would render him unfit to practise as a

Notary. Had it been otherwise there must have been a mention of that fact, if not in the charges themselves, at any rate, at any stage subsequent thereto till the stage of the issue of notice (Annexure 7). In these circumstances I have no hesitation in coming to the conclusion that the impugned order proceeds on a basis of which the petitioner was never apprised with the result that he had no occasion either to convince the Competent Authority or thereafter the opposite party that the allegations contained in the complaint of Sri Krishna Chandra, even if found proved, would not establish professional misconduct much less professional misconduct of such a nature as to render him unfit to practise as a Notary. In that view of the matter the impugned order cannot possibly be sustained.

5. Another contention raised on behalf of the petitioner was that of the three charges, one relating to failure to affix adhesive stamp, as appears from the discussion in the body of the report of the Competent Authority, was found by the Competent Authority itself in favour of the petitioner and the other charge relating to the failure of the petitioner to have notarial stamp affixed, though found by the Competent Authority, against the petitioner, could not be sustained having regard to the provisions of the Notaries Act and Article 42 of the Stamp Act. Notwithstanding the observation in the course of discussion that it was not the duty of the petitioner to see that adhesive stamp was affixed to the affidavits, the Competent Authority at the end of the report vaguely stated that the charges leveled against the petitioner were proved. It has, however, been conceded before me by the learned Standing Counsel that the position stated by the Competent Authority in the course of the discussion in regard to the question if or not adhesive stamp should have been affixed to the affidavits is correct. It is thus obvious that of the three charges only two remained. We may, therefore, at this stage consider if or not notarial stamp is required to be affixed to the affidavits. Article 42 of the Stamp Act provides;

"Notarial Act, that is to say, any instrument, endorsement, note, attestation, certificate or entry not being a Protest (No. 50) made or signed by a Notary Public in the One Rupee execution of the duties of his office, or by any other person lawfully acting as a Notary Public".

The argument raised on behalf of the petitioner is that the view of the Competent Authority that notarial stamp was necessary in accordance with the said provision on the certificate given, by the petitioner on the affidavits to the effect that such and such person had verified the affidavit on such and such date at such and such place and at such and such hour after having been explained the contents of the affidavit is erroneous for the simple reason that such a certificate or endorsement is required to be stamped under Article 42 only when it can be taken to have been granted or made "in the execution of the duties of his office.... as a Notary Public". Learned counsel contends that there is nothing either under the Notaries Act or the rules thereunder to require the Notary Public to give such a certificate or make such an "endorsement" on an affidavit. In this

connection he has drawn my attention to various clauses of Sub-section (1) of Section 8 of the Notaries Act. He points out that whereas Clause (a) requires a Notary Public to verify, authenticate, certify or attest the execution of any instrument, its Clause (e) simply says "administer oath to, or take affidavit from, any person." Thus, the argument is that all that is required of a Notary under the provisions of the Act in relation to an affidavit is to administer oath and in so far as it is nowhere said that a certificate in token of such administration be granted, it cannot be said that a certification to that effect or an endorsement to that effect would fall within Article 42 of the Stamp Act so as to require notarial stamp. In my view the argument is not sound. After oath has been administered or an affidavit has been taken by a Notary unless that fact is certified or endorsed on the affidavit the affidavit remains a waste paper. So, in my view the language employed in Clause (e) of Section 8(1) of the Act clearly implies that an endorsement to that effect has got to be made. At any rate, since the administration of oath is a notarial act the statement of the fact that oath has been administered in the endorsement given on the affidavit subsequent to the administration of oath cannot but be taken to have been made in execution of the duties of the Notary, namely, to administer oath. I am thus unable to accept the contention that the view of the Competent Authority on the point is erroneous.

6. Another contention raised on behalf of the petitioner was that the finding of the Competent Authority regarding charge No. 1 was also erroneous in law. The argument is that when the Competent Authority found that Sub-rule (2) of Rule 11 of the Notaries Rules did not require entry of affidavits in the notarial register it chose to fall back on Sub-rule (9) of Rule 11 for recording a finding against the petitioner on charge No. 1 even though charge No. 1 never purported to be with reference to Rule 11 (9). On a perusal of Rule 11 (2) of the Notaries Rules I am satisfied that the contention that in accordance therewith no entry need be made in the notarial register in respect of affidavits is correct. As shall appear from Rule 11 (2) it concerns itself with three matters stated therein. Matters mentioned at Items 1 and 2 have nothing to do with the point in issue. What is mentioned at Item No. 3 is:

"all certificates issued by him etc., for certification, authentication, verification and attestation of the execution of the instrument and affix his signature to each entry in the said Register".

Obviously, this too refers to matters stated therein with reference to an instrument. An affidavit is not an instrument. So, what is mentioned at item No. 3 can also not be taken to apply to affidavits. This position, as appears from the report of the Competent Authority, was appreciated by the Competent Authority itself and that is why it chose to fall back on Rule 11 (9) which says:

"Every notary shall grant a receipt for the fees and charges realized by him and maintain a register showing all the fees and charges realized".

It is nobody's case that the petitioner ever failed to issue receipt for any fee or charge realized by him. What appears to be the finding in relation to charge No. 1 as given by the Competent Authority is that the petitioner failed to maintain a register showing all the fees and charges realized. It is difficult to see as to how this finding could possibly be recorded having regard to the language of charge No. 1 which has been reproduced above. The requirement in regard to maintenance of a register showing all the fees and charges realized does by no means imply the entry of the particulars of the affidavits themselves in that register. The charge was expressly in regard to failure on the part of the petitioner to enter affidavits in "Ms register". It is again difficult to follow as to what the Competent Authority means by the expression "his register". If it means notarial register, then obviously this particular charge must be taken to confine itself to what is provided in Rule 11 (2) with the result that there could be no finding on the basis of this charge with reference to Rule 11 (9).

If this expression "his register" be taken to mean the register envisaged by Rule 11 (9) then also it would appear that the language of the charge is not such as to require the petitioner to answer if or not he maintained a register showing all the fees and charges realized by him. So, in any view of the matter it appears that the finding recorded by the Competent Authority is not in consonance with the charge. In other words, on a reading of the charge and the finding together it seems that the charge is different whereas the finding is with regard to another matter not incorporated in the charge. Hence, the contention of the petitioner that the finding recorded by the Competent Authority on charge No. 1 suffers from an apparent error of law appears to be correct.

7. Yet another contention raised on behalf of the petitioner was that the opposite party acted mala fide in issuing the impugned order. According to the petitioner proof of that assertion of his is furnished by what is alleged in paragraphs 15, 16 and 17 of the petition which allegations, it may be noted, are not controverted by the opposite party. The material facts which emerge from the aforesaid allegations are that the judgment of the special appeal was delivered on 6th September, 1966 whereafter the notification cancelling the earlier notification quashed by the said judgment was issued on 28th February, 1967 and the certificate authorizing the petitioner to practise as Notary was received by him on 10th March, 1967. These facts by themselves hardly furnish any proof of mala fide. There is nothing surprising if the State Government took four months or a little more subsequent to the judgment of the special appeal for the issuing of the notification dated 28th February, 1967.

It may be that the certificate authorizing the petitioner to practise as Notary was actually signed by the Judicial Secretary on 25th September, 1966 but in view of the earlier notification which was quashed by the judgment in the special appeal and cancelled subsequently by the State Government by another notification dated 28th February, 1967, it is contended by the opposite party that the petitioner could not be given the certificate authorizing him to practise as Notary

till the notification quashed by the judgment in the special appeal had actually been cancelled by the State Government in implementation of that judgment. This contention may or may not be strictly correct but the fact remains that if the Government mala under that impression and hence delayed in the issue of the certificate signed much earlier, it cannot be legitimately inferred that in doing so the Government acted mala fide deliberately with a view to deprive the petitioner of his right to practise as a Notary soon after the judgment in the special appeal was pronounced. In my view, no case of mala fide is made out.

8. The last contention urged on behalf of the petitioner was that the impugned order even though it does not specifically say that the petitioner is perpetually debarred from practising as Notary virtually suffers from that very defect which was pointed out in the judgment of the special appeal dated 6th September, 1966. The argument is that once the certificate is cancelled without specifying the period for which it is cancelled it necessarily implies a perpetual debarment from practising as Notary. I am unable to accept the contention. Section 10(d) of the Act clearly empowers the State Government to remove the name of a Notary from the register on a finding that he has been guilty of such professional misconduct as in the opinion of the Government renders him unfit to practise as a Notary, In my view, removal of the name from the register necessarily implies cancellation of the certificate. It is wrong to contend that cancellation of the certificate per se amounts to perpetual debarment from practice.

Obviously, perpetual debarment from practice would disentitle the person so debarred from ever seeking to have his name restored on the register and to have a certificate issued to him for practising as a Notary. This is not necessarily the effect of a mere cancellation of the certificate which is a necessary consequence, as I view it, of the removal of one's name from the register. Where the name of a Notary is removed from the register and his certificate is cancelled he can at any time subsequent to that apply for the issue of a certificate and the same can be issued if the Government is satisfied that he is fit to be permitted to practise as a Notary. I accordingly repel the contention.

9. No other point was urged before me.

10. In view of the foregoing discussion it is clear that having regard to the language of the charges framed against the petitioner there was hardly any scope for the State Government to come to the conclusion that the petitioner has been guilty of professional misconduct much less that he has been guilty of such professional misconduct as renders him unfit to practise as a Notary. If the Government intended to come to such a conclusion it was its duty to say so expressly in the charge or charges levelled against the petitioner so as to afford him an opportunity to show whether or not the allegations on the basis of which it is sought to come to that conclusion even if established would lead to such a conclusion. In so far as that opportunity has been denied to the petitioner it must be held that in coming to the conclusion the opposite party has arrived at, it has violated the principles of natural justice. Hence the petition must succeed.

11. The petition is accordingly allowed with costs and the impugned order (Annexure 9) is quashed. As prayed by the learned Standing Counsel it is clarified that this order does not disentitle the State Government to proceed against the petitioner according to law if it is so intended.