

(1998) 08 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No. 3313 of 1993

K.S. Shivananna and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-08-1998

Acts Referred:

Notaries Rules, 1956 — Rule 3, 4, 5, 6 (2), 7

Citation : (1999) 2 CivCC 222 : (1999) 2 KarLJ 219

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Sri B.G. Sridharan, for the Appellant; Sri B. Papegowda, Central Government Standing Counsel, Sri N.K. Ramesh, Additional Government Advocate, Sri D.L. Suresh, Sri K.V. Shivaprasad, Sri H.R. Venkataramanaiah, Sri H. Kantaraju, Sri V. Tarakaram, Sri K.L. Manjunath, Sri L.S. Venkatakrishna, Sri S. Rangaraj, Sri B.R.K.G. Achar, Sri v. Abdul Khader, Sri Suryanarayana Rao and M/s. Hegde, Associates, for the Respondent

Judgement

1. Appointment of Notaries is regulated by the Notaries Act, 1952 and the rules framed thereunder. Rule 3 of the said rules prescribes the qualifications for appointment, whereas Rules 4 and 5 prescribe the procedure to be followed in the matter of making such appointments. Rule 7 of the rules provides that the competent authority shall after holding such enquiry as he thinks fit and after giving the applicant an opportunity of making his representation against the objections, if any revised 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 for which the same is made or that it may be rejected. Rule 7(3) is for the purpose of this writ petition relevant and may therefore be extracted in extenso.

7(1) xxx xxx xxx. (2) xxx xxx xxx. "(3) In making his recommendation under sub-rule (1), the competent authority shall have due regard to the following matters, namely.-

- (a) whether the applicant ordinarily resides in the area in which he proposes to 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 practising in the area it is necessary to appoint any additional notaries for the area;
- (c) whether, having regard to his knowledge and experience of commercial law and the nature of the objections, if any, raised in respect of his appointment as a Notary and in case of a legal practitioner also the extent of his practice, the applicant is fit to be appointed as a Notary;
- (d) whether the applicant belongs to a firm of legal practitioners, whether having regard to the number of existing notaries in that firm, it is proper and necessary to appoint any additional Notary from that firm; and
- (e) where applications from other applicants in respect of the area are pending, whether the applicant is more suitable than such other applicants".

2. It is evident from the above that while making his recommendations under sub-rule (1) to the appropriate Government, the competent authority is duty bound to keep the matters stipulated under sub-rule (3), supra, in mind. A closer look at the matters prescribed for consideration would show that the same are aimed at ensuring that only suitable persons with sufficient knowledge and experience of commercial law are appointed, and that appointments are made only if necessary having regard to the number of Notaries already functioning. The provision it is obvious is aimed at bringing objectivity to the process of selection by the competent authority and the consequent appointment by the appropriate Government. The grievance of the petitioners in this petition is primarily founded on the violation of the provisions of Rule 7(3), supra. It was argued on their behalf that the competent authority had not while making his recommendations to the appropriate Government taken into consideration any one of the matters stipulated under sub-rule (3) of Rule 7. The process of selection of those recommended for appointment was also questioned as being arbitrary having been finalised without subjecting the candidates to any written or other test necessary for evaluating their merit and suitability for an appointment. It was contended that Rule 7 of the rules would, be rendered ultra vires of the Constitution, if the process of selection was not based on a fair and non-discriminatory method adopted for evaluating the merit of the candidates.

3. Mr. Ramesh, learned Government Advocate, appearing for the respondent-State has produced the relevant record, from which it appears that as many as 133 applications had been received by the competent authority in response to a notification issued by it. The recommendation made by the competent authority however does not show that while making the selection of candidates recommended for appointment, the competent authority was conscious of the norms or the factors made relevant by Rule 7(3). The report does not indicate in respect of any one of those selected for appointment whether he ordinarily

resides in the area in which he proposes to practice as a Notary. It also does not make any reference to the commercial importance of the area in which the person recommended for appointment proposes to practice or whether having regard to the number of Notaries already practising in the area, it is necessary to appoint any additional Notary. The recommendation does not even indicate whether the competent authority applied its mind regarding the knowledge and the experience of commercial law of the candidates before recommending for appointment. Suffice it to say that the competent authority appears to have acted in ignorance of the provisions of Rule 7(3) of the Notaries Rules, 1956. Any appointment made on the basis of such a recommendation would therefore have been liable to be quashed, but for the fact that such a course at this distant point of time appears to me to be unjust and likely to cause avoidable and undue prejudice, hardship and inconvenience to those appointed as also the public for whose benefit such appointments, were made. The candidates appointed have been working for more than six years and in the absence of anything to suggest that they have not conducted themselves well or failed to discharge the duties assigned to them under the Act and the rules properly, I see no reason why their appointment should be interfered with at this stage only because of a defect in the procedure adopted by the competent authority while making his recommendations. This is especially so because the competent authority has during the pendency of this writ petition, invited applications for as many as 33 additional Notaries in the Bangalore Metropolitan Area. The petitioners who lost the race in favour of the respondents, have a fair chance of making applications in response to the fresh notification issued by the competent authority, in which event their claims for appointment shall be considered by the competent authority objectively having regard to the matters stipulated in Rule 7(3).

4. In the light of the above, it is unnecessary for me to examine whether Rule 7 is constitutionally valid, inasmuch as the same does not prescribe any written test for evaluating the inter se merit of those seeking appointments as Notaries, yet since that issue was also argued at some length, I may as well examine the same on merits.

5. It cannot be disputed that while making his recommendations, the competent authority is required to inter alia take into account the knowledge and experience of commercial law of the applicants. This implies that the competent authority shall have to determine the inter se merit of the candidates if there are more candidates, than the number of vacancies, for purposes of shortlisting those whom he would recommend for appointment. It also cannot be disputed that one of the methods that can be adopted for evaluating the merit of the candidates based on their knowledge and experience of commercial law may be a written test, but the very fact that the rules do not specifically provide for holding of any such test would not, in my opinion, render the same constitutionally invalid. It is open to the competent authority, who happens to be the Principal District and Sessions Judge of the District concerned to evaluate on the basis of an interview of the candidate concerned, his knowledge and experience of commercial law.

Any such evaluation coupled with the competent authority's assessment of the candidate's merit on the basis of his performance as a practising lawyer before him should, in my opinion, suffice. What is important is that the competent authority should while shortlisting the candidates keep in mind the merit and suitability of the candidate determined on the basis of his knowledge and experience in the commercial law. This determination can be on the basis of a written test or viva voce or both. Just because the competent authority does not subject the candidates to a written test or just because the rules do not make any such test compulsory would not render the selection process illegal or expose Rule 7 to the criticism of being constitutionally invalid. What should be the method of determining the merit and suitability of the candidates, is for the competent authority to decide and if it chooses to depend on viva voce only the selection process cannot be rendered illegal to warrant interference.

6. In the result, this writ petition fails and is hereby dismissed reserving liberty to the petitioners to apply to the competent authority for appointment as Notaries in pursuance of the notification already issued on the subject, in which event, the competent authority shall consider the applications of the petitioners in accordance with the rules keeping in view the observations made herein above.