



Salgaonkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2743 OF 2021
WITH
INTERIM APPLICATION (L) NO.14319 OF 2021

Lalit Kapurchand Doshi

.. Petitioner

Versus

The Union of India & Ors.

.. Respondents

...

Mr.Akshay Patil with Ms.Devika Madekar, Mr.Jarin Doshi and Mr.Krushna Wankhede i/b Malvi Ranchoddas & Co. for the Petitioner.

Mr.A.S.Khandeparkar, Senior Advocate with Smt.Savita Ganoo and Mr.D.P.Singh, Advocate for the Respondent Nos.1 and 2.

Mr.Rohaam Cama with Ms.Sapna Rachure for the Respondent Nos.3(a) to (d).

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.

DATE : 04th AUGUST, 2026

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JUDGMENT (PER BHARATI DANGRE, J.)

1. The Petitioner, appointed as a Notary Public by the Ministry of Law & Justice, Department of Legal Affairs, New Delhi on 27/01/2004, is aggrieved by the impugned order dated 22/10/2021 issued by the Ministry of Law & Justice, Department of Legal Affairs (Notary Cell), by which his name (Registration No.2528) is removed from the Notary Register and his certificate of practice is cancelled.



2. We have heard learned counsel Mr.Akshay Patil for the Petitioner, learned counsel Mr.Rohaam Cama for the Respondent No.3/Complainant at whose instance the process was initiated against the Petitioner and learned senior counsel Mr.A.S.Khandeparkar for the Respondent Nos.1 and 2.

By consent of parties, we deem it appropriate to issue 'Rule', which is made returnable forthwith.

3. According to the counsel for the Petitioner, Petitioner-Lalit Kapurchand Doshi is a practicing Advocate and a Notary Public appointed by the Central Government of India since 2004 and the Notary Certificate is placed on record at Exhibit B of the Petition.

Upon a complaint being filed by one Mr.Hubert J. Fonseca, levelling serious accusations, on 01/09/2016, a notice was issued to him by one Mrs.Poonam Suri, Deputy Legal Advisor & Competent Authority (**DLA & CA**), stating that a complaint was received levelling serious allegations against him, the contents of which were self explanatory. It was stated that since the allegations made, *prima facie*, constituted professional misconduct and attracted action under the provisions of The Notaries Act, 1952 (for short, "**Act of 1952**") and the Rules made thereunder, an opportunity was offered, to submit an explanation/comments on the allegations within a period of 14 days, failing which, it will be presumed that there is nothing to say and the matter shall be proceeded with.

Alongwith the said notice, a copy of the complaint was annexed.



This was followed by an order dated 15/12/2016 passed by the same Authority, recording that no satisfactory explanation was offered by him and on consideration of the entire facts and material, a conclusion was drawn, that he had failed to perform the notarial acts in a manner, as provided under the Notaries Rules and had performed notarial functions in a routine manner, without application of mind and a case of professional misconduct was made out. It also stated that the appropriate Government also found him unfit to continue as Notary and his certificate of practice as Notary was cancelled and his name was removed from the Register of Notaries.

4. Being aggrieved by the aforesaid order, the Petitioner approached this Court by filing Writ Petition No.107 of 2017 and the Division Bench, by Judgment dated 03/04/2017, set aside the impugned order, since it was passed in complete breach of statutory provisions as set out in Rule 13 and while making the writ petition absolute, it was clarified that the Respondents are free to initiate fresh action against the Petitioner by following the mandate of Rule 13 of The Notaries Rules, 1956 (for short, **“Rules of 1956”**).

5. Availing the aforesaid liberty, on 15/10/2018, another opportunity was afforded to the Petitioner to offer his comments/explanation on the complaints dated 14/06/2018 and 22/09/2018 made against him by Smt.Savita Burges. This prompted the Petitioner to file his written statement before the Competent Authority, Ministry of Law & Justice, Department



of Legal Affairs, where he offered explanation, denying the accusations levelled against him.

On 08/01/2018, the Petitioner was served with a notice directing him to appear for personal hearing on 07/02/2019 before the DLA & CA, Mrs.Poonam Suri .

His statement was recorded on 07/02/2019 by Mrs.Poonam Suri and on 27/02/2019, he was directed to furnish the copy of the Notarial Register, so as to enable the DLA & CA to settle the pending complaint against him.

6. On conclusion of the proceedings before the Competent Authority, when the Petitioner furnished written submissions in the wake of the notice received by him on 02/07/2021 and this time through one Shri T.K.Malik, DLA & CA, the proceedings culminated into issuance of the impugned order on 22/10/2021, when the name of the Petitioner is removed from the Notarial Register and his certificate of practice is cancelled.

7. This order, being the subject matter of challenge, learned counsel Mr.Akshay Patil, at the outset, would submit that the grounds raised in the Petition deserve appreciation on two counts; first being the jurisdiction issue i.e. whether the order has been passed by the Authority competent to exercise the powers under the Act of 1952 and whether the process, as prescribed under the Rules of 1956, has been adhered to and secondly, on the merits of the matter.

According to him, if the Court is satisfied on the first issue, it need not go into the second issue and he has canvassed his submissions on the jurisdictional issue.



By inviting our attention to Act of 1952, which is an Act to regulate the profession of Notaries, he would submit that under Section 3 of the Act, the power to appoint a Notary vest in the Central Government and the State Government and Section 4 prescribes that the Government shall maintain a Register of the Notaries.

Section 10 is the power of the Government, who has appointed the Notary, to remove his name from the Register maintained under Section 4 in the contingencies set out therein, which include clause (d), which reads thus:-

“(d) Has been found, upon inquiry in the prescribed manner, to be guilty of such professional or other misconduct as, in the opinion of the Government, renders him unfit to practise as a Notary.”

Apart from this statute, Mr.Patil would invite our attention to the Rules of 1956, framed by the Central Government in exercise of the power conferred by Section 15 of the Act of 1952 and he would press into service Rule 13, captioned as, ***‘Inquiry into the allegations of professional or other misconduct of a Notary’***.

Reading of the same, according to Mr.Patil, would lead to an inference that 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.

On receipt of the complaint, within 60 days ordinarily, the appropriate Government shall send the copy thereof to the Notary, at his address entered into the Register of Notaries and when the inquiry is initiated *suo motu*, a statement specifying a charge or charges against him, together with the particulars of oral or documentary evidence relied upon in support thereof, shall be forwarded.



Thereafter, on being given an opportunity, to respond to the same, if the appropriate Government consider that there is a *prima facie* case against him, then it shall cause an inquiry to be made in the matter by the Competent Authority, but if no *prima facie* case is made out, then the complaint or charge shall be filed and the Notary shall be informed.

What is of most significance is the later part of Rule 13, which prescribe that the Competent Authority, who is to conduct the inquiry, is authorised to regulate his procedure and during the course of inquiry, he may examine the witnesses and receive such other oral or documentary evidence, and thereafter, submit his report to the Government, who has entrusted him the inquiry.

Thereafter, as per Rule 13(12)(a), the appropriate Government shall consider the report and if it is of the opinion that further inquiry is necessary, it shall cause such an inquiry to be made. But if on consideration of the report of the Competent Authority, if the appropriate Government is of the opinion that an action should be taken against the Notary, appropriate Government make an order, either cancelling the certificate of practice and perpetually debarring the Notary or suspending him from practice for a specified period or letting him off with a warning, considering the gravity of the misconduct.

8. It is in light of the aforesaid scheme, which is highlighted in Rule 13, Mr.Patil would submit that this process has not been followed and his emphasis is on the fact that Rule 13 contemplate two authorities; namely, “appropriate Government” and “Competent Authority”.



He would lay his emphasis on Rule 4, which has set out as to who shall be the “Competent Authority” and he has also placed before us the Notification issued by the Ministry of Law & Justice Department, designating its officers in the Department of Legal Affairs, as the “Competent Authority” for the purposes of the Rules, in relation to the Notaries, to be appointed by the Central Government.

It is, therefore, the submission of Mr.Patil that an inquiry into the misconduct of the Notary is the prerogative of the Appropriate Government, which may initiate it either *suo motu* or take cognizance of the complaint received in that regard and once the cognizance of the complaint is taken, it is for the appropriate Government to forward the complaint or details of the charge/charges, which are levelled against the Notary and receive the response to the said accusations.

At this stage, if the appropriate Government is satisfied about existence of the case against the Notary, it shall cause an inquiry to be made in the matter by the “Competent Authority”. According to Mr.Patil, “Competent Authority” acts as an Inquiry Officer, who has the liberty to charter the course of action for the proceedings, but upon conclusion of the inquiry, he shall forward a report to the Government and it is the “appropriate Government”, which is the final authority for taking an action against the Notary and the action may result in cancellation of certificate of practice, or suspension or letting the Notary off with the warning depending upon the gravity of the misconduct.

9. Inviting our attention to the facts, according to Mr.Patil, though the Division Bench of this Court, while setting aside the



order dated 20/22 October, 2021, in Writ Petition No.107 of 2017, clearly observed that there is no compliance of the procedure formulated under Rule 13 and set aside the impugned order on that count and permitted initiation of fresh action against the Petitioner, by scrupulously following the mandate of Rule 13 of the Rules of 1956, the Respondents have once again failed to adhere to the procedure as prescribed under Rule 13. It is his specific submission that the impugned order dated 22/10/2021 is an order passed by the Deputy Legal Advisor & Competent Authority, Shri T.K.Malik, who is designated as a 'Competent Authority' by the Notification issued by the Ministry of Law & Justice (Department of Legal Affairs) dated 03/09/2019. Mr.Patil would insist that the Deputy Legal Advisor & Competent Authority is only a delegate of the Ministry of Law & Justice and *per se* is not an "appropriate Government".

It is also his submission that though the impugned order record that the same has been issued with the approval of the Hon'ble Minister for Law and Justice, this do not partake the compliance of sub-rule (12)(a) of Rule 13, as it is the appropriate Government, which is to consider the report of the Competent Authority and then take an appropriate action against the Notary, by making an order.

It is his attempt to demonstrate that the whole process against the Petitioner, right from the issuance of show-cause notice by the Competent Authority, seeking explanation qua the accusations and culminating into the impugned order of 20/22 October, 2021 is contrary to the procedure prescribed in Rule 13. According to Mr.Patil, since this aspect goes to root of



the matter, the Court should examine it before touching the merits of the case of the Petitioner.

10. In response to the said argument, learned senior counsel Mr.Khandeparkar, would rely upon the affidavit-in-reply filed by Respondent Nos.1 and 2 and it is worth to note that this is a reply filed by the Deputy Legal Advisor & Competent Authority, Shri T. K. Malik himself, who has adopted a stand as below:-

"7. It is most respectfully submitted that the Respondents in all fairness approached to this Hon'ble Court by filing Interim Application No.14319 of 2021 to modify the Order dated 22.03.2021 to the extent that "the final order be passed by the Respondent No. 1- Law Secretary, Union of India within a period of six weeks from today." By the said Order dated 22.03.2021, this Hon'ble Court had, with respect, inadvertently directed the Law Secretary to pass final order. The directions to the Law Secretary to pass final order could not be complied with, as the Competent Authority to pass the final Order is Deputy Legal Advisor i.e. Respondent No. 2 as per the provisions of the Notary Act, 1952 and rules framed thereunder, after seeking approval of the Appropriate Government i.e., the Hon'ble Minister for Law and Justice. This is now complied with, in the said case. The relevant Notification regarding the Competent Authority is marked and exhibited as Exhibit- "C" hereto. In the given facts and circumstances, it is humbly prayed that this Hon'ble Court be pleased to tag the Interim Application No. 13419 of 2021 for Review along with the present Petition. The Authority passing the earlier Order dated 15" December, 2016, superannuated after which the Impugned Order in this Petition was passed after hearing both sides in accordance with law, following principles of natural justice."

11. Learned senior counsel Mr.Khandeparkar would rely upon the Noting in the file, to demonstrate that upon a conclusion being drawn in the inquiry proceedings, the same was forwarded to the Minister of Law and Justice and with his approval, the final impugned order is issued on 22/10/2021. The learned senior counsel would also submit that the impugned order is passed by the Competent Authority, with



the approval of the Government, as the Competent Authority has forwarded his report to the Minister of Law and Justice, and there was consultation with the appropriate Government and the order cannot be faulted with.

12. The learned counsel Mr.Cama, representing the Complainant, by relying upon his affidavit has also reiterated the submissions advanced before us by the learned senior counsel Mr.Khandeparkar and it is his specific contention that at no point of time during the course of proceedings, the Petitioner ever raised any objection to the jurisdictional aspect. He would also invite our attention to the nature of accusations, which were inquired by the Competent Authority and he would submit that the accusations are of serious nature, as it was alleged that the Notary had fabricated the documents and the Court should take into consideration its gravity.

Mr.Cama would submit that the Petitioner himself approached this Court, seeking expeditious disposal of his proceedings, which were pending before the Competent Authority, but he never raised any issue before the Competent Authority about its jurisdiction.

To be fair to the jurisdiction exercised by the Competent Authority, Mr.Cama would submit that when Mr.Malik was designated as Competent Authority pursuant to the superannuation of Mrs.Poonam Suri, he initiated the process afresh and on 10/08/2020, notices for conducting fresh inquiry were served on the parties and they were permitted to make additional submissions and even personal hearing was afforded.



13. All the while, insistence of Mr.Cama as well as learned senior counsel Mr.Khandeparkar is on the communication being addressed under the heading of “Ministry of Law & Justice, Department of Legal Affairs (Notary Cell) and relying upon the same, what is urged before us is that the impugned order which is tiled as “F.No.11016/36/2016/NC, Ministry of Law & Justice, Department of Legal Affairs (Notary Cell)” is sufficient indication of the fact that the order is issued by the Ministry of Law & Justice i.e. by the appropriate Government and what is indirectly suggested to us, is that though the order is signed by the Deputy Legal Advisor & CA, Shri T.K.Malik, it is in fact an order passed by the Appropriate Government.

The aforesaid submissions advanced before us no way appeal to us, as according to us, it is contrary to the scheme of the Statute and the Rules and we must note that the concerted efforts of the respective counsel to demonstrate that the impugned order is perfectly within the jurisdiction of the ‘appropriate Government’ and calls for no interference, do not appeal to us and the reasons for reaching this conclusion are to be found in the following paragraphs.

14. A perusal of The Notaries Act, 1952 would reveal that it is the Central Government, who can appoint Notaries for the whole or any part of India and the State Government is empowered to appoint any legal practitioners or other persons, as Notary for the whole or any part of the State, subject to the legal practitioners possessing such qualification as is prescribed.

The Central Government and the State Government are under an obligation to maintain the Register of Notaries in the



form prescribed, with all the necessary details which are prescribed.

Since the power to appoint the Notary vest with the Central Government/State Government, under Section 10 it is the Government appointing the Notary, who is competent to remove from the Register, the name of the Notary, if there is a request to that effect or there is a failure to make the payment of prescribed fee or if he is an undischarged insolvent or upon an inquiry in the prescribed manner, he has been found to be guilty of such professional or other misconduct as in the opinion of the Government, renders him unfit to practise as a Notary.

15. The Notaries Rules, 1956 framed by the Central Government, in exercise of the power conferred under Section 15 of The Notaries Act, 1952, has prescribed the qualification for appointment of Notaries and Rule 4 deals with the application for appointment.

The said Rule contemplate that an application shall be addressed to such officer or authority (referred to as Competent Authority) of the appropriate Government as that Government may, by Notification in the Official Gazette, designate in this behalf.

From the reading of Rule 4, it is evidently clear that the Competent Authority is such an Officer or Authority, who is so designated either by the Central Government or the State Government.

While considering the application, seeking appointment as 'Notary', which is preferred, it is this Competent Authority,



who shall examine the application and ascertain whether the Applicant qualifies to be appointed as a Notary and after holding such inquiry, as he thinks fit and after giving the applicant an opportunity of making his representation against the objections, if any, received within the time fixed under sub-rule(2) of Rule 6, he shall make a report to the appropriate Government recommending that the applicant may be allowed to appear before the Interview Board.

It is only upon the recommendation being made by the Competent Authority, the applicant may be asked to appear before the Interview Board to judge his competency for being appointed as Notary and upon the Interview Board making its recommendation to the appropriate Government, it is the appropriate Government, which shall appoint the Applicant as a Notary and direct his name to be entered in the Register of Notaries maintained by the Government under Section 4 of the Act and issue to him a certificate on payment of the prescribed fee, authorising him to practise in the area to which the applicant relates or in such part thereof as the appropriate Government specify in the certificate, as a Notary for a period of five years from the date on which the certificate is issued.

16. From the aforesaid Rule, concerning the appointment of the Notary by the appropriate Government, it can be seen that the “Competent Authority” is distinct from the “appropriate Government” and though the procedure for appointment of Notary commencing from the application to be made and preliminary action on the application is the function of the Competent Authority, the appointment of a Notary is



ultimately by the appropriate Government, who shall direct the name of the applicant to be entered in the Register of Notaries maintained by the Government under Section 4 and a certificate be issued in his favour.

17. In the similar manner, Rule 13 of The Notaries Rules, 1956, which has prescribed the procedure for conduct of inquiry into the allegations of professional or other misconduct of the Notary, contemplate a two fold procedure; one involving the Competent Authority, but it is necessary to note that the role of the Competent Authority is distinct from the appropriate Government and this could be clearly discerned from Rule 13, which form the fulcrum of the submissions advanced before us. Rule 13 is reproduced as below :-

“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 the 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 times as appropriate Government may specify;

Provided that if the subject-matter in the 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.



(4-A) 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 (4-A) 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 consider 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 despatch, 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 practice and perpetually debarring the notary from practice; or

(ii) suspending him from practice 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 practice, as the case may be, shall be notified in Official Gazette and shall also be communicated in writing to the notary concerned.”

18. A careful reading of the aforesaid provision would reveal that an inquiry into the misconduct of a Notary can be initiated by two modes, namely, either *suo motu* by the appropriate Government (i.e. the Central Government or the State Government) or on a complaint received.

On ensuring that the complaint contains the necessary particulars, within 60 days from the receipt of the complaint, a copy thereof shall be sent to the Notary calling for his response dealing with the complaint. However, when the inquiry is initiated *suo motu* the appropriate Government shall send a statement specifying the charge or charges against him together with all accompanying evidence and it is open for the Notary to file his response in form of a written statement in his defence, verifying it in the same manner, as the pleadings in the Civil Court.

The next stage in the process comes when the appropriate Government, on consideration of complaint and by juxtaposing it against the written statement, if any received, find that there is a *prima facie* case, then it shall cause an inquiry to be made by the “Competent Authority”, but if no *prima facie* case is made out then the complaint shall be filed.



At this stage, steps in the Competent Authority, who is an Officer or an Authority, designated by the Central Government or the State Government, by Notification in the Official Gazette.

While the task of conducting the inquiry is assigned to the Competent Authority, the appropriate Government shall bring all the facts which were brought to its knowledge and which are relevant for the purpose of inquiry. It is the Competent Authority, who is then empowered to regulate its procedure, relating to the inquiry in the manner as it deems necessary.

Then comes a stage, when the Competent Authority shall submit a report of inquiry to the Government, who shall consider the same and if the appropriate Government is of the view that further inquiry is necessary, it may cause such inquiry to be conducted. However, if the appropriate Government is of the opinion that an action should be taken against the Notary on receipt of the report from the Competent Authority, then it shall make an order, either cancelling the certificate of practice and perpetually debarring the Notary from practice or suspending him from practice for a specified period or letting him off with a warning. The nature of action to be taken by the appropriate Government is dependent upon the gravity of the misconduct of the Notary proved.

Upon such an action being taken, the name of the Notary shall be removed from the Register of Notaries and the same shall be notified in the Official Gazette and also communicated in writing to the Notary.

19. In the whole scheme of the Rules, we find that the Competent Authority is an Officer or an Authority which is



designated as a 'Competent Authority' by the appropriate Government by Notification in the Official Gazette and from the reading of the scheme of appointment of Notary as well as inquiry into the allegations of professional or other misconduct of a Notary, we find that the role to be played by the Competent Authority is distinct from the one, which is played by the Appropriate Government.

In case of appointment of a Notary, the preliminary action on the application is taken by the Competent Authority as it is the Authority, empowered to examine the application to ascertain the fitness of the applicant and on holding such an inquiry, a recommendation shall be made in the order that the applicant shall be made to face the Interview Board and thereafter the Interview Board shall forward its recommendation to the appropriate Government, who shall issue an order of appointment and direct the name of the successful candidate to be included in the Register of Notaries.

Similarly, when it comes to the process of initiating an inquiry into the professional or other misconduct of a notary, the process shall be initiated by the appropriate Government, either *suo motu* or upon a complaint and a notice shall be issued to the Notary, affording him an opportunity to deal with the charge or the complaint against him and upon receipt of the statement of defence, if the appropriate Government is of the view that a *prima facie* case is made out, an inquiry shall be conducted by the 'Competent Authority'. The report of the Competent Authority is then placed before the appropriate Government for a decision to be taken, and it is the discretion of the appropriate Government to exercise either of the choice



available to it under Rule 13(12)(a)(b) sub-clause (i)(ii) and (iii).

20. Though with great persistence, Mr.Cama and Mr.Khandeparkar have attempted to urge before us that the action that is initiated for inquiring into the misconduct of the Petitioner is by the Central Government itself, we do not subscribe to their argument, as we find that merely because the show-cause notice is issued with the inscription of the 'Government of India, Ministry of Law & Justice, Department of Legal Affairs' do not attribute the act to the Central Government, as we find that the signatory to the show-cause notice is Deputy Legal Advisor & CA and this is to be so found, even when the show-cause notice was issued on 01/09/2016, when Mrs.Poonam Suri was the DLA & CA. The show-cause notice refer to a complaint made by Mr.Hubert Fonseca and the DLA & CA sought an explanation/comments on the allegations in the complaint within a period of 14 days.

So far as so good, the first impugned order issued on 15/12/2016 was also under the signature of Mrs.Poonam Suri, on the letterhead of Ministry of Law & Justice and it read thus :-

"The undersigned is directed to refer to above cited subject and to state that the Central Government has considered your case based upon the material available on record and is not satisfied with the explanation given by you. After perusal and considering the entire facts and material, the appropriate Government is of the view that the complainant has rightly pointed out that the Leave & Licence Agreement has been made on the Stamp Paper purchased in the name of the complainant and the licensee whereas Agreement for Sale has been prepared on the Stamp Paper of Rs.100/-purchased in the name of Smart Deep Concept, Bandra West, Mumbai to which no connection is found. You have also admitted your mistake of making entry as 2043-A on 01.04.2015. This proves that you have failed to



perform your notarial acts in a proper manner as provided under the Notaries Rules and you have also performed notarial functions in a routine manner and without application of mind, hence, there is a prima facie case of professional misconduct against you. The appropriate Government has found you unfit to continue as a Notary and as such your Certificate of practice as Notary stands cancelled. Accordingly, your name is being removed from the Register of Notaries. You are directed to surrender original Certificate of Practice having registration No.2528 immediately to this department."

21. Worth it to note that when the Petitioner approached this Court by filing Writ Petition No.107 of 2017, by raising a ground that the procedure contemplated in Rule 13 is not adhered to, the Division Bench specifically observed thus :-

"18. As can be seen from Rule 13(1), an inquiry into the Misconduct of the Notary may be initiated either suo motu by the appropriate Government or on a complaint received in Form XIII. The appropriate Government has been defined in Rule 2(a) to mean in relation to a Notary appointed by the Central Government, the Central Government and in relation to a Notary appointed by the State Government, the State Government. It is not in dispute before us that in the facts of the present case, the appropriate Government is the Central Government. Thereafter sub-rule (2) of Rule 13 sets out what the complaint shall contain. Thereafter, Rule 13(4) stipulates that within sixty days of the receipt of complaint, the appropriate Government shall send a copy thereof to the Notary who shall then within 14 days of service on him of the complaint, forward to that Government a written statement in his defence verified in the same manner as the pleadings in the Civil Court. Thereafter, sub-rule (6) of Rule 13 provides that 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 made out against such Notary, then it shall cause an inquiry to be made in the matter by the Competent Authority. Naturally, if no prima facie case is made out, then the complaint is simply fled and the complainant and the Notary concerned are informed accordingly. If a prima facie case is made out as contemplated under Rule 13(6), then it is 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 inquiry by the Competent Authority. This provision can be found in Rule 13(8). Thereafter, Rule 13(9) stipulates that 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. What Rule 13(9) therefore contemplates is that once the Competent Authority is holding an



inquiry pursuant to Rule 13(6), a personal hearing ought to be given to the Notary either in person or through a legal practitioner or any other Notary. Once this inquiry is complete, the Competent Authority shall submit its report to the Government entrusting him with the inquiry [Rule 13(11)]. Thereafter, Rule 13(12) contemplates that the appropriate Government would consider the report of the Competent Authority and may even cause a further inquiry to be made and a further report to be submitted. On the other hand, after considering the report of the Competent Authority, the appropriate Government may make an order cancelling the Certificate of Practice and perpetually debar the Notary from practice; or suspending him from practice for a specified period; or letting him off with a warning, depending on the nature and gravity of the misconduct proved. Thereafter, Rule 13(13) provides for removal of the Notary from the Register of Notaries and the procedure to be followed for that purpose.

19. What we find in the Scheme of Rule 13 is that there are two stages. In the first stage, once the complaint is received by the appropriate Government, it forwards that complaint to the Notary and calls upon him to file a written statement in his defence to the charges levelled against him in the complaint. If on a perusal of this written statement as well other relevant documents and papers, the appropriate Government is of the view that a prima facie case is made out, then it causes an inquiry to be made in the matter by the Competent Authority. This is the first stage. Thereafter, in the second stage, the appropriate Government places before the Competent authority all the facts which are relevant for the purpose of the inquiry. Once that is done, the Competent Authority hears the Notary either in person or through a legal practitioner or any other Notary. After this process is complete, the Competent Authority submits its report to the appropriate Government and thereupon a decision is taken by the appropriate Government on what action it should take in terms of Rule 13(12). This is the second stage.

20. In the facts of the present case, we find that the impugned order has been passed in complete breach of the statutory provisions as set out in Rule 13. In the facts of the present case, once a complaint was received by the Respondents against the Petitioner, the Respondent No.2 by its letter dated 1st September 2016 called upon the Petitioner to submit its statement of defence. This was done by the Petitioner by his letter dated 16th September 2016. Thereafter and without following procedure as set out in Rules 13(6) to 13(12), the impugned order was passed. It is not in dispute before us that no inquiry was caused to be made as contemplated under Rule 13(6) and neither was the Petitioner given a right to defend himself before the Competent Authority either in person or through a legal practitioner or any other Notary. We therefore find that there has been a clear breach of the statutory provisions of Rule 13 whilst passing the impugned order dated 15th December, 2016. In these circumstances, we have no hesitation in



holding that the impugned order cannot be sustained and has to go.”

22. In the wake of the aforesaid discussion, the impugned order dated 15/12/2016 was quashed and set aside, though the Respondents were granted liberty to initiate fresh action against the Petitioner, but it was clearly expressed that this shall be so done by scrupulously following the mandate of Rule 13 of The Notaries Rules, 1956.

23. The aforesaid order resulted into an issuance of a show-cause notice on 15/10/2018, once again by Mrs.Poonam Suri, DLA & CA and we find several documents being annexed as part of the Petition, when Mrs.Poonam Suri asked the Petitioner to produce documents as well as asked him to remain present and even recorded the Petitioner's statement during the course of proceedings. However, during the conduct of the proceedings, since she superannuated, the Central Government through Ministry of Law & Justice, issued a Notification on 03/09/2019 designating Shri T.K.Malik and Shri Pravin Srivastava in the Department of Legal Affairs, Ministry of Law & Justice as “Competent Authority” for the purposes of The Notaries Rules, 1956 in relation to the Notaries to be appointed by the Central Government. Thus, Shri T. K.Malik substituted Mrs.Poona Suri and pursuant to his designation, on 10/08/2020, he issued notices for conducting fresh inquiry, as if the inquiry was conducted by Mrs.Poonam Suri and she has superannuated, the final order could not have been passed by the new incumbent, and therefore, the inquiry was conducted afresh.



Pursuant to the new officer, being appointed as Competent Authority, the Petitioner continued to correspond with the Competent Authority and even forwarded some questionnaire to be answered by the Complainant.

It is evidently clear from the aforesaid that since the Competent Authority conducting the inquiry was now Shri T.K.Malik, the Petitioner rightly corresponded with him, as the inquiry was being conducted by him as a 'Competent Authority'. The contention of Mr.Cama that the Petitioner participated in the inquiry, but did not raise any objection, is of no consequence, as we find that the inquiry to be conducted by the Competent Authority is the proper course, but the difficulty arose when the Competent Authority forwarded its report and sought approval from the Minister of Law & Justice and as per Mr.Khandeparkar, on obtaining the approval, the impugned order was issued on 22/10/2021.

24. It is worth to note that once again the impugned order is signed by Shri T.K.Malik, DLA & CA, and it is by this order, the name of the Petitioner is removed from the Notary Register and his certificate of practice is cancelled.

We find the procedure adopted to be strange, as according to Rule 13(11), the Competent Authority upon completion of the inquiry, is to submit his report to the Government, who has entrusted him with the inquiry. If the Central Government has authorised the Competent Authority to conduct an inquiry, as he/she is designated as "Competent Authority" for the purposes of The Notaries Rules, 1956, then the report ought to have been submitted to the Central Government. Submission of the report to the Minister of Law &



Justice, in our opinion, is not equivalent to submission of the report to the Government, as the 'Government' is a different concept than of the 'Minister' of a particular Department. In the wake of the conduct of business rules, the functions of the Government are diversified into the various Departments, with its Administrative Head being the Secretary and in some cases, a Minister, is put in charge of the Department, but he is definitely distinct from the Department of the State Government and by no stretch of imagination, he can be equated with State Government. Therefore, a forceful submission of Mr.Khandeparkar and Mr.Cama that the approval of the Minister of Law & Justice is secured before the impugned order is issued, in our view, does not make their case better. Apart from this, by virtue of Rule 13(12)(a), it is for the Appropriate Government to consider the report of the Competent Authority and it is the opinion of the appropriate Government to permit an action to be taken against the Notary and it is only the Appropriate Government, who shall make an order, cancelling the certificate of practice and debarring the Notary from practice.

It is trite position in law that when the statute prescribes a certain procedure to be followed and set out a mechanism, then it is necessary that the action to be taken shall clearly conform to the said procedure and no other way is possible. In *OPTO Circuits (India) Ltd. v. Axis Bank*¹, the Apex Court has observed as under :-

"14. This Court has time and again emphasised that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. Among others, in a matter relating to the presentation of an election

1 (2021) 6 SCC 707



petition, as per the procedure prescribed under the Patna High Court Rules, this Court had an occasion to consider the Rules to find out as to what would be a valid presentation of an election petition in Chandra Kishore Jha v. Mahavir Prasad [Chandra Kishore Jha v. Mahavir Prasad, (1999) 8 SCC 266] and in the course of consideration observed as hereunder : (SCC p. 273, para 17)

“17. ... It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.”

Therefore, if the salutary principle is kept in perspective, in the instant case, though the authorised officer is vested with sufficient power; such power is circumscribed by a procedure laid down under the statute. As such the power is to be exercised in that manner alone, failing which it would fall foul of the requirement of complying with due process under law. We have found fault with the authorised officer and declared the action bad only insofar as not following the legal requirement before and after freezing the account. This shall not be construed as an opinion expressed on the merit of the allegation or any other aspect relating to the matter and the action initiated against the appellant and its Directors which is a matter to be taken note of in appropriate proceedings if at all any issue is raised by the aggrieved party.”

25. In the case before us, The Notaries Rules, 1956 specify that on conduct of the inquiry by the Competent Authority, who acts as an inquiry officer, who is a fact finding authority, and he shall submit a report to the appropriate Government, who acts as a disciplinary authority, and who is competent to take an adverse action against the Notary, by exercising the discretion dependent upon the gravity of the misconduct of the Notary proved, this power definitely cannot be exercised by the ‘Competent Authority’.

It is the Appointing Authority, who is entitled to be an authority, to remove a Notary after conducting an inquiry into the allegations of professional or other misconduct and though the appropriate Government may designate the “Competent Authority” as inquiry officer, the final decision about an action to be taken against the Notary, by considering the report of the Competent Authority (Inquiry Officer) is prerogative of the



Appropriate Government. The decision is left to the subject to satisfaction of the appropriate Government to make an order, either by cancelling the certificate of practice or suspending the Notary from practice for a specified period or letting him off with a warning and the discretion shall be exercised by the appropriate Government, taking into consideration the gravity of misconduct of the Notary, which is proved before the Competent Authority.

We see no other way possible how the provision contained in Rules of 1956 can be implemented.

26. Since we find that whatever is the procedure that has been adopted in passing the impugned order despite the clear directions being issued by the Division Bench in the earlier round and when the Bench directed that the Competent Authority shall scrupulously follow the mandate of Rule 13, which has clearly prescribed the procedure before an order of cancelling the certificate of practice was handed over to the Petitioner, we are of the view that once again the Central Government has failed to abide by the said Rule and even follow the directions of the Division Bench. Left with no other alternative, we quash and set aside the impugned order dated 20/22 October, 2021 for the aforesaid reasons.

27. Since we have quashed the impugned order on the very first ground, which has been pressed into service by Mr. Patil, namely, the jurisdictional issue and the lack of procedure being adhered to, prescribed in the Rules of 1956, we must express that we have not touched the merits of the matter and though it is urged before us that the charges levelled against the



Petitioner are serious in nature, as *prima facie*, we are satisfied that the procedure that is prescribed for inquiring into the allegations of profession or other misconduct in the Rules of 1956 has not been adhered to and the final order is not an order passed by the appropriate Government, but by the same officer, who has conducted the inquiry, we find that there is a clearcut violation of the demarcation of power between the two authorities. Moreso, we also find substance in the submission of Mr.Patil that the copy of the report, prepared by the Competent Authority was not given to the Petitioner and though it is vehemently contested by Mr.Khandeparkar that it is not so prescribed in the Rules, by reading the principles of natural justice, we are of the view that if some report of the inquiry, which had the involvement of the delinquent himself, is not furnished to him, and no opportunity is afforded to meet with the findings in the said report, such an act is equally arbitrary, as it does not afford an opportunity to the delinquent to deal with the same and, therefore, it is violative of principles of natural justice and such an action cannot be sustained.

The role to be played by the Minister in-charge of a particular Department and the allocation of business to him for convenient transaction of business is specifically highlighted by the Hon'ble Apex Court in the case of ***A. Sanjeevi Naidu v. State of Madras***², and we deem it appropriate to reproduce the observations.

“8. It was urged on behalf of the appellants that the parliament has conferred powers under Section 68(C) of the Act to a designated authority. That power can be exercised only by that authority and by no one else. The authority concerned in the present case is the



State Government. The Government could not have delegated its statutory functions to any one else. The Government means the Governor aided and advised by his Ministers. Therefore the required opinion should have been formed by the Minister to whom the business had been allocated by "the Rules". It was further urged that if the functions of the Government can be discharged by any one else then the doctrine of ministerial responsibility which is the very essence of the cabinet form of Government disappears; such a situation is impermissible under our Constitution.

9. We think that the above submissions advanced on behalf of the appellants are without force and are based on a misconception of the principles underlying our Constitution. Under our Constitution, the Governor is essentially a constitutional head, the administration of State is run by the Council of Ministers. But in the very nature of things, it is impossible for the Council of Ministers to deal with each and every matter that comes before the Government. In order to obviate that difficulty the Constitution has authorised the Governor under sub-article (3) of Article 166 to make rules for the more convenient transaction of business of the Government of the State and for the allocation amongst its Ministers, the business of the Government. All matters excepting those in which Governor is required to act in his discretion have to be allocated to one or the other of the Ministers on the advice of the Chief Minister. Apart from allocating business among the Ministers, the Governor can also make rules on the advice of his Council of Ministers for more convenient transaction of business. He cannot only allocate the various subjects amongst the Ministers but may go further and designate a particular official to discharge any particular function. But this again he can do only on the advice of the Council of Ministers."

It is to be noted that the State Government with the Chief Minister in-charge of its affairs, is a collective body which constitute the Government and when the officials of the State Government discharge that functions, they are doing so as limbs of the Government and not as persons to whom the power of Government has been discharged. When it is directed that the decision shall be taken by the State Government, upon an inquiry report being submitted, it is not equivalent to say that the approval obtained from the Minister is the decision of the Government. It is to be kept in mind that the rules for allocation of business framed under Article 166(3), only authorises the Minister of a particular Department to exercise



those powers and functions which are specifically conferred on him in relation to that Department, but the decision taken by such an individual will not amount to a decision of the Government.

28. We have also perused the Noting, which is forwarded by the DLA & CA to the Minister of Law & Justice, it being placed before us through the affidavit-in-reply. The Noting of the Ministry of Law & Justice, Department of Legal Affairs (Notary Cell), under the signature of Shri T.K.Malik, DLA & CA, record that he had come to a conclusion that the Petitioner/Notary had failed to perform his notarial acts and he performed the functions in a cavalier manner and with instances of ante dating notarization of high value commercial value properties of same persons and non-maintenance of Notary Registers in proper format and this was *prima facie* reflective of professional misconduct.

Forming an opinion that the Notary is not fit to continue as a Notary and it is a clear case for invoking Rule 1(12)(a) of the Notaries Rules i.e. cancelling the certificate of practice and perpetually debarring the Notary from practice, the matter was forwarded for approval to the Hon'ble Minister of Law & Justice for cancellation of certificate of practice.

Worth it to note that the impugned order is also under the signature of Shri T.K.Malik, DLA & CA and the submission advanced by Mr.Khandeparkar that the approval of the Minister was obtained, and thereafter, the order is passed, once again fall foul of the fact that from the Noting it is evident that the decision itself is taken by Shri T.K.Malik, as he has



clearly expressed his opinion in paragraphs 19 and 20 thereof and only by stating that the approval of the Law Minister has been obtained, once again the order is issued by the same Authority, which is highly unacceptable.

With the aforesaid discussion, the Writ Petition is made absolute.

The impugned order dated 20/22 October 2021 is quashed and set aside. The name of the Petitioner shall continue to remain in the Register of Notaries and he is entitled to seek its renewal, as and when occasion arises.

Interim Application stands disposed of.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)