

(1965) 10 MP CK 0002
In the Madhya Pradesh High Court
Case No : M.P. No. 58 of 1963

Narayanlal

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 13-10-1965

Acts Referred:

Notaries Act, 1952 — Section 15

Citation : (1967) J LJ 937

Hon'ble Judges : V.R. Newaskar, J; S.B. Sen, J; P.V. Dixit, J

Bench : Full Bench

Advocate : S.K. Agrawal, A.P. Tare, M.S. Jain and B.P. Mishra, for the Appellant;
S.L. Dubey, K.A. Chitale and Y.I. Mehta for opposite party, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sen, J.—This is a petition under Article 226 of the Constitution for a writ of mandamus or other suitable writ or direction as contemplated under the said Article.

2. The petitioner Narayandas is a legal practitioner resident of Indore and practising at Indore for more than 25 years. On 31-1-1963, the petitioner submitted a memorial required under rule 4 of the Notaries Rules of 1956, issued in exercise of the powers conferred by section 15 of the Notaries Act of 1952.

3. Though the petitioner alleged in the petition that he submitted the said memorial on 31-1-1963 but when this was disputed by the other side he did not challenge that actually the memorial was filed on 29-2-1963.

4. On receipt of this memorial, the District Judge who was competent authority, asked the applicant to make necessary deposit for publication on 14-3-1963. The applicant deposited the required sum and the memorial was published in Madhya Pradesh Gazette on 3-5-1963.

5. The petitioner further alleged that respondent No. 4 Nirmala Rani Potdar had

also applied for appointment as a Notary. When he came to know of this he made representation on 26-2-1963 (A/6) and 27-4-1963 (A/7) and informed the District Judge to consider his application while considering the case of respondent No. 4. The District Judge respondent No. 3 forwarded his report to the Secretary to the Government of M.P. Law Department in connection with the appointment of Notary. The recommendation was made for appointment of respondent No. 4 as Notary. While recommending, respondent No. 3, the District Judge did not consider the petitioner's application which was also pending before him. The petitioner further alleges that he requested the District Judge to hear him on his representation dated 31-1-1963 but this was not allowed on the ground that he had already forwarded the case of respondent No. 4. to the Government.

6. The petitioner then moved the respondent No. 2 Secretary Law Department on the ground that though his memorial was pending, it was not considered when the District Judge recommended the case of respondent No. 4. His objection was not heeded to and ultimately on 18-6-1963, respondent No. 4 was appointed as Notary. The petitioner was also told by the District Judge that the Government did not think it necessary to appoint Addl. Notary.

7. The petitioner states that the respondent No. 4 has not been practising as a legal practitioner for the last 11 years, and therefore she was not eligible for being appointed as Notary. He further states that memorial of respondent No. 4 did not contain the specification of her income as required under the law.

8. The applicant further states that he has been an old candidate for being appointed as Notary and as far back on 14-8-1956 he had applied but he was informed that appointment of Notaries has been stopped till such time as the rules on this subject were revised and finalised by the Central Government. After the Government had revised and finalised the said rules the petitioner reminded on various dates for his appointment as Notary viz. on 7-3-1958, 11-10-1958, 10-3-1959 and 20-2-1960 but every time he was told that there was no vacancy.

9. The petitioner has therefore moved this Court for quashing the order issued by respondent No. 1 appointing respondent No. 4 as Notary for Indore. He states that respondent No. 3 while recommending the Government respondent No. 1 for appointing respondent No. 4 as Notary have ignored the basic provisions contained in Rule 3 (b) of the Notary Rules, 1956 which contain a mandatory direction that the legal practitioner to be appointed must be practising for at least 10 years. This objection however was not pressed at Bar at the time of argument.

10. Returns have been filed by the Secretary, Law Department, the District Judge and Nirmalarani Potdar. In his affidavit, the Secretary, Law Department has stated that the petitioner submitted a memorial on 29-2-63. He has also admitted that deposit was asked for on 14-3-63. It was made on 18-3-63 and the petitioner's application was published on 3-5-63. It has been further stated

by the Secretary that respondent No. 4's memorial was submitted on 29-9-62 and published in the Government Gazette on 11-1-63. Certain objections were raised by two persons viz. Shantakumari Jain and Shri Nathulat. Opinion was also taken of the Bar Association, Indore. After considering the objections and opinion, the respondent No. 3 submitted his report to the Government on 30th April 1963. The Government communicated its decision on 20-5-63. The Secretary further denies that the petitioner's memorial was ripe for consideration at the time when the recommendation of respondent No. 4 was sent, and therefore the memorial was not considered to be pending.

11. It has further been averred by the Secretary, Law Department, that the respondent No. 3, District Judge, Indore gave the petitioner a hearing on 11-6-63 on his representation. The Secretary further submits that before sending the recommendation in favour of respondent No. 4, the file of the petitioner was not put up as it was not ripe for hearing inasmuch as the statutory period of fourteen days for objections had not expired. It has been denied by the Secretary, Law Department, that the petitioner's memorial was not considered after it was ripe. According to them, all the formalities were observed. Objection was also taken to the petition on the ground that under rule 83 of the Rules framed under the Notaries Act, review petition was competent before the respondent No. 1 the State of Madhya Pradesh. No review petition was, however filed by Narayanlal and instead he threatened to file a writ petition. The petitioner was not appointed because it was not considered necessary to appoint any additional Notary, after the appointment of respondent No. 4. The Secretary, Law Department averred that the objection of Nathulal was duly considered about the years of practice and the objection was found to be incorrect. The respondent No. 3 also had consulted the Bar Association, Indore, who had no objection to the appointment of respondent No. 4 as Notary. While admitting that the original application of respondent No. 4 did not contain the necessary information regarding the income, it was said that the same was supplied subsequently. The Secretary, Law Department, also filed his affidavit on the question of copies and inspection but as they were not necessary for the decision of the case, we need not detail them. Ultimately it was contended that the Government, after considering the merits of the case, has passed the impugned order which was entirely in its discretion and was not justifiable. The competent authorities or the Government have not committed any breach of rules.

12. The return of the District Judge is similar to that of the Secretary, Law Department. Respondent No. 4 Nirmalarani Potdar has filed an independent return he has stated that she filed her memorial on 20-9-62 to the respondent No. 1, the State of Madhya Pradesh, for being appointed as a notary for Indore Civil District. Her memorial was recommended by various authorities. It was published in the Madhya Pradesh Gazette on 11-1-63. Two persons, Shantakumari Jain and Nathulal objected. There was no objection on behalf of the petitioner. Therefore, regarding her qualification for appointment, it has been submitted by respondent No. 4, the petitioner cannot now raise an objection. She

also submits that at the time when her name was recommended, the petitioner's memorial was not ripe for hearing. The respondent No. 4 stated that she received licence from 25-5-63 and affixed the sign-board on 26-6-63 at her office at 26-, Mahatma Gandhi Road. She, therefore, says that this office is just opposite to the District where the petitioner has been practising, and therefore, he must have learnt about her appointment at the latest on the 26 June 1963. She has objected to the petition on the ground that the same has been filed late. The objections about her period of practice were duly considered and she has been found to be practising for more than ten years. Respondent No. 4 also objects to the petition on the ground that the memorial of the petitioner was not ripe for hearing when her name was recommended. Objection was taken on the ground that no review petition has been filed as provided under rule 8, and as he has failed to take the proper steps, he is not entitled to the discretionary relief under Article 226.

13. Though the petition as well as the returns are long, they contain matters most of which were either not pressed or not necessary for the purpose of the case. At the Bar, only two questions were agitated. The sole ground of attack from the petitioner was that there has been an infringement of Rule 7 (3) (e) of the Notaries Rules, 1956 in sending the recommendation of respondent No. 4. He has not challenged the order from any other point. The respondents in addition to their assertion that there has been no infringement of the rules or any section of the Notaries Act have submitted that the petition is liable to be dismissed on the ground of delay. We, therefore, need not refer to the various other points raised in the petition.

14. It has been admitted by both the parties that the memorial of the petitioner was filed on 29-2-63; it was published on 3-5-63, whereas the memorial of Nirmala Rani Potdar, Respondent No. 4 was filed on 20-9-62. The same was published in Gazette on 11-1-03 and the recommendation of the District Judge—the competent authority under the Act was sent on 30-4-63 and the appointment was made on 20-5-63. As the main plank of contention is Rule 7 (3) (e), quote the same below:-

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

(a) (b) (c) (d)

(e) where applications from other applicants in respect of the area are pending, whether the applicant is more suitable than such other applicants.

15. Notary, formerly called "Notary Public" which has been given this new name by the adaptation of Laws and Orders, 1956, has got certain functions to perform as mentioned in section 8 of the Notaries Act, 1952. As the duties are onerous and responsible, the Central Government have framed rules for the qualifications of a notary, the form and manner in which applications for appointment of a person as a notary may be made and disposal of such applications. The power to

make rules has been given to the Central Government, who will notify in the Official Gazette those rules. In exercise of that power conferred by Section 15, the Central Government have made rules under S.R. Order 234. Clause 3 of the Rules provides that no person shall be eligible for appointment as a notary unless, on the date of the application of such appointment, he has been practising as a legal practitioner for at least ten years; and Rule 5 says that a person may make an application for appointment as a notary in the form of a memorial addressed to the competent authority of the State Government. Certain form has also been provided for this memorial. Under rule 6, the competent authority shall examine every application received by him and if he is satisfied that the applicant does not possess the qualifications specified in Rule 3, or that any previous application of the applicant for appointment as a notary was rejected within six months before the date of the application, he shall reject it and inform the applicant accordingly and if the competent authority does not reject the application, he shall publish in the Official Gazette a notice of the application inviting objections to the appointment of the applicant as a notary, to be submitted within 14 days of such publication and it is also mentioned in Rule 6 that he may take opinion of the Bar Council or Bar Association etc. After this publication is done, then comes the recommendation of the competent authority. He will make enquiries into the objections and after making enquiries, he will send his recommendation.

16. We stop here to consider the grievance in the petition. The objection, as we have already mentioned, is that at the time of recommendation, the competent authority did not consider the memorial of the petitioner. We have already quoted above Rule 7 (3) (e) which is said to have been infringed. The contention of the petitioner is that at the time the recommendation was made, viz. on 30th April 1963, his application was pending because it was filed on 29-2-63. He contends that the moment the application is filed before a competent authority, it remains pending until it is disposed of. Admittedly, on 30th April, his application was not disposed of. Therefore, the petitioner contends, the competent authority should have considered the comparative merits of the two applicants. His application was from the very area as that of respondent No. 4. The recommendation on 30th April does not give any comparative view. It does not say that Nirmala Rani Potdar was more suitable than the other applicants. In fact, while considering the application of Nirmala Rani Potdar, respondent No. 4, his application was not considered at all. As this has been an infringement and violation of the Statutory Rules, the order of appointment of respondent No. 4 should be quashed.

17. The argument depends on the meaning of the word "pending." The ordinary meaning of the word "pending" is "remaining undecided: awaiting settlement" (Oxford Universal Dictionary - Third Edition). If this meaning is taken then undoubtedly on 30th April, the petitioner's application was pending. But we feel that the word "pending" used in Rule 7 (3) (e) has not been used in that sense. "Pending" means "pending for a decision". Before an application can be

"pending", it must acquire the importance for consideration. We have already referred to the various provisions of the Rules. Under rule 6, we have noticed that the competent authority has to examine every application received by him and he has to satisfy himself that the applicant possesses the necessary qualifications; he has to ascertain whether any previous application of his has been dismissed within six months. If this hurdle is crossed, then he is asked to deposit necessary amount for publication. If he does not deposit, he is out of consideration. After necessary expenses for publication are deposited, the petition appears in the Official Gazette. All these operations are included in the words, "preliminary action on application" as mentioned in the heading of Rule 6. This shows that this is merely a preliminary action before consideration of the application. Analogy can be found in the filing of a suit as the word "pending" is associated with a suit. A suit does not become "pending" before the same is registered. Before its registration, some formalities are to be observed. The filing authority has got to check up whether the suit has been brought in proper form; he has to check up whether it has been filed in the proper Court, whether proper court-fees have been paid,, whether proper valuation has been made and so on. It is only when these preliminaries are found to have been observed that a suit is registered. It is from that date that the suit becomes "pending". When a suit is filed and is returned for presentation to the proper Court, it is held to be not "pending" till the same is filed in the proper Court [See AIR 1940 185 (Nagpur)].

18. Section 52, Transfer of Property Act which deals with the doctrine of lis pendens gives an idea about the legal meaning of the word "pending." It has been given in explanation to section 52, Transfer of Property Act, that pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction. We have already seen that as soon as the memorial or application is presented before the District Judge, he has first of all to find out whether the applicant has got the necessary qualifications to make such application or whether he is debarred for any other reason. The next is the publication in the Official Gazette. As soon as these formalities are gone into and it is ascertained that the applicant possesses the necessary qualifications and does not possess any disqualifications, the memorial is published. It is at this stage after this publication that the memorial becomes "pending", because it is at this stage that the public has to say if they have to say anything. Before this publication, nobody has any right to say anything regarding the application or memorial. As we cannot consider a suit, before it is registered, whether it should be dismissed or allowed, similarly we cannot consider an application or memorial unless it is published in the Government Gazette. We would therefore hold that a memorial or application becomes "pending" only after publication. Admittedly when the recommendation was made regarding Respondent No. 4, the memorial or application of the petitioner was not published and therefore it cannot be said to be "pending" with the above interpretation.

19. Further, if we take that the application becomes pending on the day the

application is presented to the competent authority, we are likely to reach to some impossible position. Let us take the dates in this case. The recommendation for Respondent No. 4 was sent on 30-4-63; if any applicant files his memorial on 25th of April, it will take us, we may normally assume, to the end of June, when the publication will be made and objections would be forthcoming. But before any recommendation can be made some time in July, yet another applicant may come and file his application and his application will have also to be considered and the consideration will have again to be postponed. In this way, recommendation for the appointment of a notary would be postponed ad infinitum.

20. In "Craies on Statute Law," Fifth Edition, the following observations are relevant:-

I find that he stated it very clearly and accurately in *Greg v. Pearson* (1857) 6 H L C 61 in the following terms: I have been long and deeply impressed with the wisdom of the rule, now, I believe, universally adopted at least in the Courts of law in Westminster Hall that in construing wills, and indeed statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or Boras repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid the absurdity and inconsistency, but no further.

21. It is also useful to quote the following extract from Chapter IX of "Maxwell on Interpretation of Statutes", 11th Edition, at page 221:-

Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modified the meaning of the words, and even the structure of sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation, or by rejecting them altogether, under the influence no doubt, of an irresistible conviction that the legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.

22. We have noticed the absurd results it will lead to if we take the meaning of the word "pending" as from the date when the application was filed. In fact with that interpretation it is conceivable that no notary can be appointed. Such was, therefore, never the intention of the Legislature. In the King *Rex v. Ettridge* (1909) 2 K B 24 whereby Darling J., writing on behalf of all the Judges held:-

Where no meaning can be given to certain words of a statute without rejecting

some of those used in it, or where the statute would become a nullity were all the words retained, the court has power to read a section as though the words which make it meaningless or nullity it were not there.

23. In *King v. Vasey and Lally* (1906) 2 K B 748, an amendment was being considered. Following the dictum laid down in *Salomon v. Duncombe and others* 11 AC 627 Lord Alverstone C.G. agreed with the view:-

It is, however, a very serious matter to hold that when the main object of a statute is clear it shall be reduced to a nullity, by the draftsman's unskilfulness or ignorance of law.

24. We have seen that the application is considered after waiting for fourteen days after the publication. It is only after fourteen days when the objections come that the memorial is taken up for consideration. Before that, the application or the memorial is not looked into except for the purpose of "preliminary action on application" as mentioned in Rule 6. Therefore, we have to read the words "after publication" after the word "pending", or some such words after the word "pending" in Rule 7 (3) (e). In any case, in our view, the word "pending" used in this Rule means pending for consideration.

25. We may also arrive at this conclusion from the other words used in that very Rule. Rule 7 (3) (e) indicates that the District Judge or the competent authority will recommend a particular applicant that he is more suitable than other applicants. This comparative suitability can only be considered after the application is taken up for consideration which can be done only after the same is published and objections invited i. e, after fourteen days of the publication. Therefore, at the time of recommendation, the application which should receive consideration should be ripe. That means, all those applications should have crossed the stage of publication. It is then only that any application can be said to be "pending", which only means pending for consideration and if we read the words "for consideration" after the word "pending," it contemplates publication and a stage subsequent to the objections, if any, filed by interested parties. In this view of the case also we cannot say that the word "pending" in Rule 7 (3) (e) means pending from the date the application is filed before the competent authority.

26. We thus see, from whichever angle the matter is looked into, that the competent authority has not infringed any statutory rules and therefore the order appointing Nirmala Rani Potdar Respondent No. 4, cannot be said to be illegal.

27. On the question of delay, the petitioner has argued that the respondent No. 4 was appointed a notary on 20th May 1953. He did not receive any notice of this appointment. His own application was rejected on 26-6-63. On receipt of this memo, he made a demand of justice on 29th July 1963 as per Ex. A/14. This demand of justice, the petitioner describes as a petition of review as contemplated under rule 8 (3). He then moved the Department concerned for the certified copies by an application dated 28-1-63 which was rejected on 16th

September 1963. The petition has been filed on 18-12-63. He has also stated that after the demand for justice was made, which he considers to be an application for review, he has not received any reply and therefore he had to wait for some time.

28. It is undoubtedly true that Rule 8 (3) does not prescribe any particular form of review. Annexure 14, which the petitioner calls an application for review contemplated under rule 8 (3), can be treated as such as no form is prescribed and if we read that demand of justice dated 29th July 1963, we see that he has made all the grievances and has given all the history asking to cancel the appointment of Nirmala Rani Potdar as a notary. As this was not replied to by the State or the Secretary, Law Department, we think that delay is not so much as would defeat his petition, specially in view of the fact that he had been making attempts to obtain certified copies which had been refused, the latest refusal being on 16-9-63.

29. As we do not find that the order appointing Nirmala Rani Potdar as notary is illegal or against any statute or rule, the application is dismissed with costs. The petitioner will bear the costs of all the respondents. Counsel's fee Rs. 50 for each party.

Newaskar J. - Facts, which are material for the petition, are clearly stated by my brother Sen J., in para. 14 of his order. They are as follows:-

Opponent Nirmala Rani Potdar submitted her memorial to the District Judge, Indore, on 29-9-1962. It was published in the Gazette on 11-1-1963. The petitioner submitted his memorial on 29-2-1963. He submitted the necessary deposit on 18-3-1963 pursuant to the order dated 14 3-1963. The learned District Judge made the report to the Government recommending appointment of Nirmala Rani on 30-4-1963.

31. On these facts the contention raised on behalf of the petitioner is that in thus making the recommendation he did not pay due regard to the Application submitted by the petitioner which was then pending as required by Rule 7 (3) (e) of the Notaries Rules, 1956.

32. The position taken by the opponents is that the application of the petitioner could not be said to be pending on 30-4-1963 as the same had not been published under rule 6 (2) for the purpose of inviting objections to his appointment.

33. Thus the sole question for consideration is, when the pendency of an application commences ? Does it commence when such application is made and is not rejected under rule 6 (1) or does it commence when such application has been duly published in the Gazette for inviting objections and the time for submitting objections to the appointment of the applicant has expired?

34. In order to seek correct answer to these questions it will be useful to refer to the material provisions in the Notaries Act and the Notaries Rules.

35. Section 3 of the Act gives power to the Government to appoint persons as notaries who are either legal practitioners or who fulfil qualifications as may be prescribed by the Rules made under the Act. Section 6 entitles any person appointed as notary to a certificate authorizing him to practise for a period of three years on payment of prescribed fees and a person already holding a certificate for a certain period is, on application made to the Government appointing him and on payment of prescribed fees, entitled to have his certificate renewed for three years at a time. u/s 6 a list of notaries is published by the Central Government and the State Government with prescribed details of Such persons. Such notaries, who are entitled to practise on appointment or on renewal of their certificates, should have and use seals or such forms and designs as may be prescribed. Section 8 enumerates the functions of notaries. Section 9 provides bar for practising without a certificate. Section 10 empowers the Government appointing a notary to remove him on one or more of the grounds mentioned in that section. Section 15 confers rule-making power upon the Central Government to make rules, to carry out the purpose of the Act and in particular by sub-clause (a) of Section 15(2) it authorizes the Central Government to make rules providing for the qualifications of a notary, the form and manner in which application for appointment as a notary may be made and the disposal of such applications.

36. The Rules made pursuant to this power are the Notaries Rules, 1956. The prescribed qualification, which is material in connection with the present petition, is that the person seeking appointment as a notary should R.F.-53. have been practising as a legal practitioner at least for 10 years. By Rule 4 it is provided that a person may make an application for appointment as a notary in the form of a memorial, addressed to such officer or authority of the appropriate Government as the said Government may by notification in the Official Gazette designate, and drawn in accordance with the Form I prescribed under the Rules. Rule 6 empowers the competent authority to examine the application and, on being satisfied, that the applicant does not possess the prescribed qualification or his similar application had been rejected within six months before the date of his application, to reject the same. Where he does not do so he has to publish in the Official Gazette a notice of the application inviting objections, if any, to the appointment of the applicant to be submitted within 14 days. He may also ascertain the view of any Bar Council, Bar Association, Incorporated Law Society or any authority in the area in question regarding the propriety of such appointment. Material part of Rule 7, which is important for the purpose of the present case is as follows: -

(1) The competent authority shall, after holding each inquiry as he thinks fit and after giving the applicant an opportunity of making his representations against the objections, if any, received within the time fixed 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 to which the application relates or that it may be rejected.

(2)

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

.....

(e) Where applications from other applicants in respect of the area are pending, whether the applicant is more suitable than such other applicants.

37. Now, the complaint of the petitioner is that the designated authority in this case namely the District Judge, Indore, has not had due regard to the application of the petitioner for his appointment as a notary although that application was pending at the time he made the recommendation to the Government for the appointment of the opponent No. 4. The petitioner, who fulfils the necessary qualification and whose application had been rejected by the District Judge under rule 6 (1), has no doubt fundamental right to carry on the profession of practising as a notary and has consequently right to have the statutory functions of the competent authority under the Rules properly exercised. It would therefore seem that the competent authority, in such circumstances, can well be said to act in a quasi-judicial manner vide Raman and Raman Ltd. Vs. The State of Madras and Another, .

38. It is disputed that the District Judge, when he made his report dated 30.4-1964, did not have any regard to the application of the petitioner which had been filed on 29-2-1963 and in respect of which necessary deposit required to be made for its publication had been made on 18-3-1963 and the sole question is was the petitioner's application "pending" as the word is used in Rule 7 (3) (e) of the Rules.

39. The word "pending", with reference to an application made to an authority, in the form as nearly as is prescribed and has neither been rejected under rule 6(1) nor has it been disposed of by making recommendation to the Government for its being allowed or rejected. The word as indicated in the Concise Oxford Dictionary means "undecided" or "awaiting decision". In Stroud's Judicial Dictionary it is mentioned that:

A legal proceeding is "pending" as soon as commenced (on which see 5 Rep. 47, 48; 7 Rep. 30), and until it is concluded, i. e. so long as the Court having original cognizance of it can make an order on the matters in issue, or to be dealt with, therein.

40. Thus if the application is before the authority and has neither been rejected at the initial stage nor disposed of at the final stage can be properly described as pending.

41. The question of pendency of a suit has received judicial consideration in connection with a doctrine of LIS PENDENS as incorporated in section 52 of the Transfer of Property Act. The Courts had to consider when the pendency of a suit

commences and when it comes to an end.

42. In *Nathusingh v. Anandrao* 1940 N. L. J. 20 : A.I. R. 1941 Nag. 185 : I. L. R. 1941 Nag, 652 the question as to commencement of pendency arose under the following circumstances. A plaint was presented to a Court not competent to try it. On its being returned for presentation to proper Court it was so presented to such Court. It was in these circumstances held that the pendency commenced at the time of the subsequent presentation. This confirms the view that the pendency commences when it is presented to a proper authority and has not been rejected at the outset. There, no question as to whether it is ripe for judicial consideration or not really arises.

43. In *Nagubai Ammal and Others Vs. B. Shama Rao and Others*, their Lordships of the Supreme Court were required to consider when the pendency of a suit for maintenance seeking creation of charge commences. Does it commence when the plaint in such a suit is presented to a Court having jurisdiction or when a decree creating a charge for maintenance is passed. Their Lordships held it to have been rightly conceded that it commences on the date the plaint is presented and if it be a suit filed in *forma pauperis* it commences when an application for permission to sue in *forma pauperis* is presented.

44. As regards the ending of the pendency it is clear that it comes to an end when the case is disposed of so far as that Court is concerned.

45. Explanation to section 52 of the Transfer of Property Act, which clarifies this position, is as follows:-

For the purpose of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree, or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

46. This, no doubt, is the provision with reference to a suit. But considerations on which the explanation is based would ordinarily be the considerations which would apply to any application before a statutory authority including one under the Notaries Rules unless there is anything in the subject or context to suggest otherwise.

47. It is contended on behalf of the respondent: that in the case of Rule 7 (3) (e) of the Notaries Rules subject and context requires that pendency of an application for appointment of a notary commences only when it is ripe for hearing which it could only be after the expiry of fourteen days subsequent to the publication of the petition.

48. There is, in my opinion, nothing either in the subject or context to give to the word that limited meaning different from what it ordinarily signifies. It was

contended on behalf of the respondent that the steps taken in examining the application, with a view to find whether the applicant fulfils necessary qualifications, and is not one whose similar application for appointment had been rejected within six months next before the date of the application in question, for publishing the application in the question, for publishing the application in the Official Gazette with a view to invite objections to his appointment, constitute merely a preliminary action for consideration of the application as indicated in the heading of Rule 6. That heading is "preliminary action on application" and that it is only when such preliminary action is taken and the time for preferring objections expires that the application is capable of being considered. The pendency with reference to such an application, it is said, commences when it is thus ripe for consideration.

49. In this connection analogy of a suit is referred to and it is said that before a suit is deemed to be pending the plaint has got to be checked with reference to it being in proper form, accompanied by proper court-fee and filed in competent Court and it is only when it is registered as a suit that it becomes pending.

50. This contention is either hardly tenable or is useful for consideration of the present question. I have already referred to the decision of the Supreme Court as also the explanation to section 52 of the Transfer of Property Act which indicate that the pendency commences when a plaint is presented to a competent Court. If it is rejected for certain defects there is no plaint and the pendency ceases. But if it is found to be in order the pendency commences on presentation.

51. Reliance is sought to be placed on behalf of the respondents upon the decision of the Supreme Court in *Purshottam Bhal Punambhai Patel v. The State Transport Appellate Authority of Madhya Pradesh and others* Civ. App. No. 762 of 1963 decided on 14-4-1964, which is a case under the Motor Vehicles Act, where the question as regards the correct interpretation of the phrase "transport services likely to operate in the near future" in section 47(1)(e) of the Motor Vehicles Act was considered. Their lordships observed in their judgment:-

In the ultimate analysis the criticism of the learned Judge may be thus summed up. Section 47(1)(c) of the Act requires the Transport Authority to take into account not merely the adequacy of the transport services operation at the time, but also those which are "likely to operate in the near future." The Transport Authority had by having regard to this criterion, which it was obliged by statute to take into account, limited the permit granted on the through route to I. The Tribunal had improperly set aside this order of the Transport Authority by disregarding the statutory condition to the exercise of its powers. We do not agree with the learned Judges in this criticism of the order of the Tribunal.

Then:-

Lastly there is one other matter which related to the significance of the consideration recited in section 47(1)(e) in the scheme of the provisions of the

act. If the learned Judges interpreted the Act to mean that at each and every stage the adequacy of passenger transport services likely to operate in the near future in the sense of the pendency of diverse applications seeking permits for routes over-lapping those for which permits are sought by applications which are under immediate consideration, we must express our dissent. Such a construction of Section 47(1)(c) would render the provisions of the Act relating to the consideration of application for permits wholly unworkable because applications may be made by operators at any time provided in the time limits of section 67(2) of the Act are satisfied. That provision runs:-

"57(2) An application for a stage carriage permit or a public carrier's permit shall be made not less than six weeks before the date on which it is desired that the permit shall take effect, or, if the Regional Transport Authority appoints dates for the receipt of such applications, on such dates."

If it were held that immediately an application is made for a permit on a route which is the same as that for which applications are being considered by the Transport Authority u/s 67(5) or which might have material bearing on the grant of permits on that route, the Transport Authority would have to hold its hand and wait till all the applications could be considered together, then it would be apparent that if there are successive applications at intervals for these permits the stage might never be reached when the applications could be considered and a permit granted. Once it is recognised that the grant of permits to transport operators to ply their carriages on specified routes is primarily for the benefit of the travelling public, it would be seen that such a result would mean that the public would be deprived of transport service for appreciable length of time and this could not have been contemplated by the Act.

52. Their Lordships in that case were required to consider whether the phrase "adequacy of passenger transport service likely to operate in the near future, meant that such adequacy could not be legally considered unless the diverse applications seeking permits for the routes over-lapping those for which permits are sought, which might be pending are considered. They answered the question in the negative.

53. We are in the present case not dealing with a similar expression used in similar context and it would not be correct to proceed on analogy and seek to modify the plain meaning of a word having well-known import.

54. Considerations of expediency, no doubt, play their part as also those of public convenience in the matter of interpretation of a statute but this can only happen where the word used is ambiguous and can lead to a meaning advancing the real purpose of the Act or contrary to it. In such a case the former meaning can be preferred. But where there is no ambiguity such considerations are hardly germane. Legislature, if it thinks fit, can amend so as to give effect to its supposed intention if there be so which it has not expressed.

55. For these reasons I would, with great respect to my learned brother Sen J.,

disagree with the view taken by him and hold that the petition deserves to be allowed and the order passed by the State appointing the respondent Mrs. Nirmala Rani Potdar as the Notary public ought to be set aside on the ground that the learned District Judge, while making the recommendation, has failed to comply with the requirement of Rule 7 (3) (e) of the Notaries Rules, 1956.

[On account of the difference between Newaskar and Sen JJ., the petition was heard by the Chief Justice who delivered the following opinion.-]

Dixit C. J.-In this application under Article 226 of the Constitution of India, which has come up before me on a reference by a Division Bench, the petitioner challenges the validity of the appointment of the respondent No. 4 Shrimati Nirmala Rani Potdar as a notary for the Indore civil district and seeks a writ of certiorari for quashing an order passed by the Government in June 1963 with regard to her appointment as notary.

57. The matter arises thus. The appointment of notaries is regulated by the Notaries Act, 1952, and the Rules made thereunder. Section 3 of the Act gives to the State Government the power to appoint any legal practitioners or other persons possessing the prescribed qualifications as notaries for the whole or any part of the State. Section 15 gives to the Central Government the power to make rules providing, inter alia, for the qualifications of a notary, the form and manner in which applications for appointment as a notary may be made and the disposal of such applications. The Notaries Rules, 1956, (hereinafter referred to as the Rules) have been framed by the Central Government in exercise of the powers conferred on it by Section 15 of the Act. Rule 3 lays down qualifications for appointment as a notary. It says that no person shall be eligible for appointment as a notary unless on the date of the application for such appointment he is either a notary public appointed by the Master of Faculties in England, or has been practising as a legal practitioner for atleast ten years. Under rule 4 an application for appointment has to be made in the form of a memorial addressed to the competent authority and in the prescribed form. By Rule 6 it is provided that the competent authority shall examine every application received by him, and if he is satisfied that the applicant does not possess the qualifications specified in Rule 3, or that any previous application of the applicant for appointment as a notary was rejected within six months before the date of the application, Bhall reject it and inform the applicant accordingly. If the competent authority does not reject the application on the ground of the applicant not being qualified for appointment, then he is required to publish in the Gazette a notice of the application inviting objections, if any, to the appointment of the applicant as a notary. The objections have to be submitted within fourteen days of the publication of the notice. The competent authority may also ascertain from the Bar Council, Bar Association, Incorporated Law Society or other authority in the area where the applicant proposes to practise, the objections, if any, to the appointment of the applicant as notary, to be submitted within the time fixed for the purpose. Thereafter, as prescribed by Rule 7, the competent authority has to

make a report to the Government recommending either that the application may be granted for the whole or any part of the area to which it relates or that it may be rejected, after holding such enquiry as he thinks fit and after giving the applicant an opportunity of making his representations against the objections, if any, received under rule 6 (2). Rule 7, in so far as it is material here, runs as follows: -

7 Recommendations of the competent authority.-

(1) The competent authority shall, after holding such inquiry as he thinks fit and after giving the applicant an opportunity of making his representations against the objections, if any, received within the time fixed 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 to which the application relates or that it may be rejected.

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

(e) Where applications from other applicants in respect of the area are pending, whether the applicant is more suitable than such other applicants.

58. The respondent No. 4 Nirmala Rani Potdar submitted her memorial for appointment as a notary on 20th September 1962. A notice of her application was published in the Gazette on 11th January 1963 inviting objections to her appointment. Only two persons objected to her appointment. The petitioner Narayanlal was not one of them. He did not prefer any objection to her appointment within the time prescribed by rule 6 (2). The opinion of the Bar Association, Indore, was also invited in the matter of her appointment and the Association stated that it had no objection to the appointment of Nirmala Rani as a notary. On a consideration of the application of the respondent No. 4 and the objections received to her appointment the competent authority, namely, the District Judge, made a report to the Government on 30th April 1963 that Nirmala Rani Potdar should be appointed as a notary for the Indore civil district. This recommendation of the District Judge was accepted by the Government and accordingly Nirmala Rani was appointed as notary.

59. The petitioner Narayanlal presented his application for appointment as a notary on 28th February 1963. The District Judge directed him on 4th March 1963 to deposit publication charges which he did on 18th March 1963. His application was published in the Gazette on 3rd May 1963.

60. Before the referring Division Bench the petitioner contended that as he had applied in February 1963 for appointment as a notary and as the competent authority had directed the publication of a notice of his application inviting objections, his application was pending on 30th April 1963, that is, the date on which the District Judge recommended to the Government the appointment of Nirmala Rani Potdar as a notary; that the District Judge was not justified in

making any recommendation on the application of Nirmala Rani without taking his pending application also into consideration as required by clause (e) of sub-rule (3) of rule 7; and that consequently the recommendation made by the District Judge was invalid and so also was the appointment of Nirmala Rani Potdar as a notary by the Government on the basis of that recommendation.

61. This contention found favour with Newaskar J. who took the view that as the petitioner's application had not been rejected under rule 6 (1) on account of his being disqualified and had not been disposed of under rule / on 30th April 1963, it was a pending application and, therefore, the District Judge was required to pay due regard to his application for determining the suitability of the petitioner and Nirmala Rani for appointment as a notary. As at the time of making his recommendation for appointment of Nirmala Rani as a notary the District Judge had not taken into consideration the petitioner's application, Newaskar J. came to the conclusion that the petition should be allowed and the Government's order appointing Nirmala Rani Potdar as a notary should be quashed. Sen J., however, took the view that the word "pending" used in Rule 7 (3) (e) did not mean "pending as from the date when the application was filed" before the competent authority but that it meant "pending for consideration" and that this contemplated "publication and a stage subsequent to the objection." As the notice of the petitioner's application was published in the Gazette on 3rd May 1963, Sen J. held that his application was not pending on 30th April 1963, the date on which the District Judge made his recommendation to the Government for the appointment of Nirmala Rani Potdar as a notary, and that, therefore, Clause (e) of sub-rule (3) of rule 7 had no applicability and the appointment of the respondent No. 4 Nirmala Rani was valid. Accordingly, Sen J. was of the opinion that the petition should be dismissed.

62. The sole question I have to decide in this case is as to the meaning of the word "pending" occurring in clause (e) of sub-rule (3) of rule 7 of the Rules. There can be no doubt with regard to the general or popular meaning of the term "pending". A matter is said to be pending in a Court or before an authority or a tribunal when any proceeding can be taken in it. An action or proceeding is pending "as soon as it is commenced and until it is concluded." There is no doubt that according to the general meaning of the term "pending," an application for appointment as a notary would be pending before the competent authority from the date when it is made till it is disposed of by a recommendation to the authority under rule 7. The real question is whether this general meaning best suits the scope and object of the provision in which the word "pending" has been used. It is well settled that "the words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonies with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained. (Maxwell on Interpretation of Statutes, 11th Edition, page 51). Again, later in the

same book it has been stated at page 58:-

It is in the interpretation of general words and phrases that the principle of strictly adapting the meaning to the particular subject-matter with reference to which the words are used finds its most frequent application. However wide in the abstract, they are more or less elastic, and admit of restriction or expansion to suit the subject-matter. While expressing truly enough all that the legislature intended, they frequently express more in their literal meaning and natural force; and it is necessary to give them the meaning which best suits the scope and object of the statute without extending to ground foreign to the intention. It is, therefore, a canon of interpretation that all words, if they be general and not express and precise, are to be restricted to the fitness of the matter.

The first passage has been quoted with approval by the Supreme Court in *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, , So also in *Bret v. Bret* (1926) 3 Add 210 : 162 E R 456 Sir John Nicholl M.R. said as follows:-

The key to the opening of every law is the reason and spirit of the law- it is the "animus imponent is" the intention of law-maker, expressed in the law itself, taken as a whole. Hence, to arrive at the true meaning of any particular phrase in a statute, that particular phrase is not to be viewed detaobed from its context in the statute: it is to be viewed in connexion with its whole context-meaning by this as well the title and preamble as the purview or enacting part of the statute.

63. In arriving at the true meaning of the word "pending" as used in clause (e) of Rule 7 (3) the set up and the context in which the word has been used cannot, therefore, be ignored. Now, Clause (e) of Sub-rule (3) of Rule 7 deals with the question of determining the suitability of a person for appointment as notary where there are many applicants. It enacts that in making his recommendation under sub-rule (1) about an applicant, the competent authority shall, where applications from other applicants in respect of the area are pending, consider whether the applicant is more suitable than such other applicants. It is obvious that the suitability of a person for the appointment is to be determined and the selection is to be made from amongst the several applicants, who must all be qualified for appointment as a notary. The suitability spoken of in clause (e) is of applicants who possess the qualifications specified in Rule 3 and who are not disqualified. It follows, therefore, that for the purpose of clause (e) a memorial for appointment, which has been made but which has not been examined by the competent authority under rule 6 (1), cannot be regarded as a pending application. There does not seem to be any difference of opinion between Newaskar J. and Sen J. on this point. According to Newaskar J., "pendency commences when it (application) is presented to a proper authority and has not been rejected at the outset." If, therefore, the general rule that a proceeding is pending "as soon as it is commenced" cannot be applied here and a memorial, which has been made but which has yet to pass examination under rule 6 (1), cannot be considered as giving rise to pending proceedings making the

application a pending one, the stage at which that application on not being rejected under rule 6 (1) becomes a pending application has to be fixed. There must be some reason and basis for the fixation of that stage. It cannot be fixed arbitrarily. Now, for determining the suitability of various applicants under clause (e) of Rule 7 (3) it is not sufficient that notices of their applications inviting objections should have been published in the Gazette. It is essential that those applications should become "ripe" for being taken up for consideration after the expiry of the period stated in Sub-rule (2) of Rule 6 for lodging objections. When under sub-rule (2) of Rule 6 objections to an application have to be invited, then clearly the suitability of the applicant can be determined only after the expiry of the period of submitting objections and not before it and after considering the objections, if any, received and the representation of the applicant against the objections. It is thus plain that for the purpose of clause (e) of Sub-rule (3) of Rule 7 a pending application can only mean an application notice of which has been published in the Gazette under rule 6 (2) and which, after the expiry of the period for filing objections, has become ripe for consideration under rule 7. What clause (e) of rule (3) of rule 7 prescribes is that if at the time of consideration of an application under rule 7 there are already other ripe applications requiring consideration, then the competent authority shall consider all those applications together and make a selection of the person most suitable for appointment as a notary. The competent authority cannot postpone action under rule 7 anticipating the filing of fresh memorials or of those made in the meantime becoming ripe after the expiry of the period for submitting objections under rule 6 (2).

64. If the word ""pending" as used in clause (e) were to be given a meaning and connotation other than that indicated above, it would lead to an impossible situation and hold up the disposal of memorials by the competent authority for an indefinite time. It is noteworthy that Rule 6 does not prescribe any time-limit within which a memorial must be examined or published in the Gazette. Rule 7 also does not lay down any time-limit for the making of a recommendation. But this does not mean that the competent authority can sit over a memorial made to him as long as he likes without taking any action on it. He has to take the steps prescribed by Rules 6 and 7 within a reasonable time. If it were to be held that immediately after a notice of the application inviting objections has been published in the Gazette under rule 6 (2), the application becomes a pending one for the purposes of rule 7 (3) (e), then the competent authority would be required to stay its hand and wait till all the applications can be considered together after they have become ripe on the expiry of the period of lodging of objections; and then if there are successive memorials at intervals in the meantime for appointment as notaries, the stage for consideration of all those applications together under rule 7 will never be reached. This would clearly defeat the whole object of the Act and the Rules.

65. In this connection it would be pertinent to refer to the observations made by the Supreme Court in *Purahottam Bhai Punam Bhai Patel v. The State Transport Appellate Authority, M.P. Gwalior and others* Civil Appeal No. 762 of 1963 decided

on 14-4-1964 while dealing with the question of consideration of applications made u/s 57 (2) of the Motor Vehicles Act, 1939, for grant of stage carriage permits. There is great similarity in the procedure that has to be followed by the Regional Transport Authority when an application for the grant of a stage carriage permit is made and the procedure that is to be followed under the Notaries Rules, 1956, when an application for appointment of a notary is made. u/s 57 of the Motor Vehicles Act, 1939, an application for a stage carriage permit has to be published in the Gazette inviting representation and objections. The application is taken up for consideration by the Regional Transport Authority after the expiry of the time fixed for making representations and the Regional Transport Authority is required to give to the applicant and the persons making representations, an opportunity of hearing. The Supreme Court, after referring to section 57 (2), said:-

If it were held that immediately an application is made for a permit on a route which is the same as that for which applications are being considered by the Transport Authority u/s 67 (5) or which might have a material bearing on the grant of permits on that route, the Transport Authority would have to hold its hand and wait till all the applications could be considered together, then it would be apparent that if there are successive applications at intervals for these permits the stage might never be reached when the applications could be considered and a permit granted.

Though these observations were made in relation to a matter falling u/s 57 of the Motor Vehicles Act, 1939, the reasoning underlying those observations fully applies here.

66. In my opinion, the pending applications referred to in clause (e) of rule 7 (3) of the Rules are those applications which have become ripe for consideration under rule 7 after the expiry of the period of lodging of objections under rule 6 (2). On this meaning of the word "pending" the petitioner's memorial, notice of which was published in the Gazette on 3rd May 1963, was clearly not a pending application on 30th April 1963 when the competent authority took up for consideration the memorial of the respondent No. 4 and made the recommendation about the appointment of the said Respondent as a notary. That being so, the recommendation made by the District Judge on 30th April 1963 with regard to the appointment of Nirmala Rani Potdar as a notary cannot be assailed on the ground that it was in violation of clause (e) of rule 7 (3). In my view, the recommendation made by the District Judge was a valid one and the appointment made by the Government of the respondent No. 4 as a notary on the basis of that recommendation was also valid. For these reasons, I am of the opinion. That the application of the petitioner Narayanlal should be dismissed.

67. Let the case be now placed before the referring Bench for final disposal.

The petition was placed before Newaskar and Sen JJ. who passed the following.

ORDER.

In accordance with the opinion expressed by the third Judge the petition is dismissed with costs. Counsel's fee shall be taxed at Rs. 50.