
(1965) 10 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Civ. Petition No. 58 of 1963

Narayanlal Jodhraj Singhal

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 30-10-1965

Acts Referred:

Notaries Rules, 1956 — Rule 3, 6(1), 6(2), 7, 7(3)

Citation : AIR 1966 MP 199

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

Bench : Full Bench

Advocate : S.K. Agrawal, for the Appellant; S.L. Dubey and K.A. Chitle, for the Respondent

Final Decision : Dismissed

Judgement

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.

2. 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 formed by the Central Government in exercise of the powers conferred on it by Section 15 of the Act. Rule 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 practicing as a legal practitioner for at least 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, shall 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 practice, 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 C, 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. "

3. 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.

4. 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.

5. 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.

6. 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 7 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.

7. 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 stated that "the words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise 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 *Brett v. Brett* (1826) 3 Addams 210: 102 ER 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 imponentis" 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 detached 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.
"

8. 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 slated 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 re-presentation 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 C (2) and which, after the expiry of the period for filing objections, has become ripe for consideration under Rule 7. What Clause (c) of Sub-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).

9. 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.

10. In this connection it would be pertinent to refer to the observations made by the Supreme Court in *Purshottam Bhai Punam Bhai Patel v. State Transport Appellate Authority M. P. Gwalior*, Civil Appeal No. 762 of 1963 DA 14-4-1964 (SC), 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 representations 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 or 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 57 (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.

11. 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.

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

ORDER BY DIVISION BENCH

13. 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.