

(2003) 11 KAR CK 0038

In the Karnataka High Court

Case No : Writ Petition No's. 24803 and 24804 of 2000

Neelakant and Another

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 04-11-2003

Acts Referred:

Constitution of India, 1950 — Article 14
Notaries Rules, 1956 — Rule 3, 8 (3)

Citation : (2004) ILR (Kar) 2172 : (2004) 1 KarLJ 583 : (2003) 4 KCCR 401 SN

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Vighneshwar S. Shastri, for the Appellant; M.N. Ramanjaneya Gowda, Government Advocate for Respondent-1 and Narayan V. Yaji, for Respondent-2, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—Two practising Advocates at Dandeli have presented these writ petitions questioning the appointment of the 2nd respondent-another Advocate as notary under the Notaries Act, 1952 by the 1 st respondent as per order dated 23rd June, 2000 (copy at Annexure-M).

2. Petitioners have contended that they were also aspirants for the said appointment and had filed their applications seeking appointment as a notary. The District Judge, Uttara Kannada, Karwar, who is the Competent Authority to consider applications of interested persons to be appointed as notary had found that the petitioners as well as the 2nd respondent who were the aspirants and who had applied for being appointed as a notary pursuant to notification in this regard had not fulfilled the requirements of Rule 3 of the Notaries Rules, 1956 (for short, "the Rules"), inasmuch as they had not produced any proof to substantiate that they had practised at the Bar for more than 10 years and rejected their applications.

3. It appears, however that the 1st respondent-State Government having

appointed the 2nd respondent as a notary under the impugned order, petitioners have approached this Court questioning the correctness of the order passed by the learned District Judge rejecting their applications as not one eligible for consideration and also the subsequent appointment order issued by the Government appointing the 2nd respondent as notary.

4. Learned Counsel on behalf of the petitioners submitted that the petitioners had clearly indicated in their applications that they had more than 10 years experience at the Bar, that they had been practising before the Courts at Dandeli and were also appearing as Advocates before the Revenue Authorities and they had clearly indicated their date of enrolment from which it can be inferred that as on the date of the application they had put in practice of more than 10 years as Advocates. The applications came to be rejected by the learned District Judge mainly for the reason that the applicants had not produced any document to show that they were practising as Advocates for a period of more than 10 years along with Form I to be considered for appointment of notary at Dandeli. Petitioners have also urged that the appointment of the 2nd respondent being as per the recommendation of the District Judge who had rejected their applications, such recommendation is also violative of the provisions of the Rules and therefore, the order of appointment is also bad.

5. Writ petitions are contested by the respondents. Statement of objections has been filed on behalf of respondent 1. It is inter alia contended that the 2nd respondent was appointed as a notary not as per the recommendation of the District Judge itself but as it was brought to the notice of the Government that the rejection of application by the District Judge was not proper inasmuch as the 2nd respondent had furnished documentary support for his claim that he has been practising as an Advocate for more than 10 years by production of certificate issued in this regard by the President of the Bar Association at Dandeli. It is also asserted that the 2nd respondent along with another Advocate by name K.V. Prasad of Karwar went to the office of the Law Secretary at Bangalore and had complained that he had submitted documentary evidence for having practised as an Advocate for a period of more than 10 years and rejection of his application was not proper. It is also asserted that the 1st respondent had verified his claim and had found that there was a certificate dated 18-6-1993 issued by the President, Bar Association, Sirsi, stating that the 2nd respondent had been in active practice as an Advocate at the Sirsi Bar from December 1988 to June 1991 and as such it was found that the rejection of his application was not proper that the file was reopened and the 2nd respondent was informed accordingly. The proposal to appoint the 2nd respondent as additional notary at Dandeli was notified inviting objections and sent for publication to the office of the Civil Judge (Junior Division) and Judicial Magistrate First Class, Dandeli and the President, Bar Association, Dandeli on the notice board. In this regard the Civil Judge (Junior Division) and Judicial Magistrate First Class, Dandeli and the President, Bar Association, Dandeli have intimated that they have not received any objections within the permitted time and on the other hand, intimated

receipt of belated objections dated 25-9-1999 and 21 -9-1999 which were rejected and thereafter the 2nd respondent had been appointed as notary as per the impugned order.

6. The 2nd respondent has also filed statement of objections. It is asserted that the learned District Judge, Karwar had erroneously rejected his application that he had necessary experience of 10 years practice as an Advocate at the Bar that the learned District Judge after strictly scrutinising the application found that the 2nd respondent was eligible and had recommended his case to the 1st respondent for appointment as a notary while rejecting the applications of the petitioners, that the petitioners have presented these petitions out of spite and being disappointed by the rejection of their applications and the appointment of 2nd respondent as a notary by making false and incorrect averments in the writ petition, that the appointment made by the Government is purely an administrative act and the Government being satisfied about the eligibility of the 2nd respondent has appointed him as a notary and that order does not call for interference and the writ petitions are liable to be dismissed.

7. Learned Counsel for the petitioners has submitted that qualification for appointment as a notary prescribed under Rule 3 of the Notaries Rules, 1956 which is as under has been contravened:

"3. Qualifications for appointment as notary.--No person shall be eligible for appointment as a notary unless on the date of the application for such appointment.--

(a) a person had been practising at least for ten years; or

(aa) a person belonging to Scheduled Castes/Scheduled Tribes and Other Backward Classes had been practising at least for seven years; or

(ab) a woman who had been practising at least for seven years, as a legal practitioners; or

(b) he had been a member of the Indian Legal Service under the Central Government; or

(bb) he had been at least for ten years.-

(i) a member of judicial service; or

(ii) held an office under the Central Government or a State Government requiring special knowledge of law after enrolment as an Advocate; or

(iii) held an office in the Department of Judge, Advocate General or in the legal department of the armed forces".

8. It is submitted that though the person who had been practising as an Advocate for more than 10 years is eligible for appointment as notary, but the rule itself does not say that it should be necessarily be supported by some certificate or document in this regard. It is submitted that the requirement is that

the application should be in Form I and in that petitioners had clearly indicated that they had more than 10 years experience at the Bar. They had indicated their place of practice and as such the learned District Judge is not at all right in rejecting their applications for want of any documentary proof etc.

9. Secondly, it is contended that when once the applications were rejected, applications of such person or persons cannot be considered again within a period of six months as indicated in Rule 6 of the Rules and when once the learned District Judge had rejected applications of the petitioners as well as the 2nd respondent he could not have recommended for the second time within a span of about three months that the 2nd respondent could be appointed as notary.

10. Sri Ramanjaneya Gowda, learned Government Advocate appearing for respondent 1 has submitted that the learned District Judge had rejected all the three applications in the first instance for want of documentary proof of 10 years experience at the Bar. The 2nd respondent had subsequently approached the 1st respondent and had pointed out that he had submitted documentary proof that he had put in more than 10 years experience at the Bar and as this was verified from the file by the Government in exercise of its power under Rule 8(3) of the Rules had reopened the file and called for further report from the District Judge and as the District Judge pursuant to such verification had reported that the 2nd respondent had put in such experience had processed the application subsequently without going for a fresh notification. It is also submitted that it was well-within the powers of the Government to review an order of the District Judge rejecting the application and as the Government has exercised its power of review there was no need to issue fresh notification and on the other hand, as the application of the 2nd respondent was processed further the same was notified through the Civil Judge (Junior Division) and Judicial Magistrate First Class, Dandeli as well as through the President, Bar Association, Dandeli inviting objections. In the absence of any valid objections within the permitted time the Government processed the proposal further and had appointed the 2nd respondent as a notary which cannot be questioned in the present proceedings.

11. Learned Government Advocate also submits that the petitioners who have not objected to the proposed appointment of the 2nd respondent as notary at the relevant time and within the stipulated period cannot now seek to challenge the said appointment by filing the present writ petitions. It is urged that the petitions are required to be dismissed.

12. Though it is sought to be urged on behalf of the 1st respondent that at the instance of the 2nd respondent they had exercised the power of review as per Rule 8(3) of the Rules, the 2nd respondent who has himself filed a separate statement of objections has not asserted this position anywhere in his statement.

13. On the contrary it is only stated that the learned District Judge who had rejected all the three applications subsequently on a proper verification of the

records had found that the 2nd respondent had produced proof of his experience and had sent a report of confirmation that there was a certificate issued by the President of the Bar Association, Dandeli to the effect that the 2nd respondent had more than 10 years of experience at the Bar. Petitioners have disputed this aspect also by producing a copy of the endorsement issued by the President of the Bar Association (copy at Annexure-L) indicating that the proposed appointment of the 2nd respondent was neither intimated to the Association nor had it been notified there nor the President had issued certificate in favour of the 2nd respondent.

14. Be that as it may. The fact remains that the District Judge had on scrutiny of the applications had expressly rejected all the three applications for want of documentary proof. An application for appointment of a notary as required by the Rules is to be submitted in Form I and except for this form nothing else. If any document had been attached to this application in Form I, it is rather naive to believe that it could have escaped the attention of the District Judge at the relevant time, particularly as the District Judge has rejected the application only for this precise reason. While the version of the 1st respondent is that the matter was reviewed in exercise of the powers conferred on the Government under Rule 8(3) of the Rules, the version is not supported by the 2nd respondent himself. The 2nd respondent does not say anything about this. It is rather difficult to accept the version put forth by the 1st respondent to sustain the impugned order of appointment.

15. This aspect apart the applications are required to be considered by the District Judge, the Competent Authority under Rule 6 of the Rules which reads as under:

"6. Preliminary action on application.--(1) 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".

16. If only the learned District Judge is not satisfied about the claim of any applicant to the effect that he has put in more than 10 years experience at the Bar, he should notify such an applicant and call upon him to produce further proof if need be, rather than straightaway reject the application at that stage. When the applicants made a specific claim that they had the requisite experience, it was not proper for the learned District Judge to have rejected the applications straightway on the premise that it was not supported by documentary evidence or proof.

17. In such matters uniform practice should be followed and all applicants should be given a fair opportunity which is the requirement of Article 14 of the Constitution of India. The procedure adopted by the District Judge in rejecting

petitioners" applications in the first instance and then recommending the application of the 2nd respondent alone subsequently does not either meet the requirements of fairness and transparency in administration or does it inspire the confidence of this Court that all applicants have been given a fair and uniform treatment. The so-called power of review said to have been exercised by the Government as per Rule 8(3) of the Rules is also not one free from suspicion. It is not a power that can be exercised suo motu but only at the instance of an aggrieved person who is affected by an adverse order. Admittedly, there is no application for review by the 2nd respondent. The 2nd respondent himself has not claimed that he had sought for review by the Government in respect of the order passed by the learned District Judge rejecting his application also for not producing documentary proof of the claim of 10 years experience at the Bar. Subsequent recommendation said to have been made by the learned District Judge recommending the case of the 2nd respondent for being appointed as a notary is again one attracting the bar of Rule 6(1) of the Rules. Even the version of the Government that it had caused publication of the proposal to appoint the 2nd respondent as a notary by having the same published at the Bar Association at Dandeli as well as at the office of the Civil Judge (Junior Division) and Judicial Magistrate First Class, Dandeli, inviting objections is disputed.

18. In the circumstances the appointment of the 2nd respondent as a notary as per the impugned order at Annexure-M is held to be clearly in contravention of the rules and not one supported in law. The impugned order Annexure-M is quashed by issue a writ of certiorari. The 1st respondent is directed to take steps to cause renotification for the proposal for appointment of notary for the area and call for applications from all interested and eligible persons and process the application in accordance with law following the procedure as contemplated under the Rules.

19. Writ petitions allowed. Rule made absolute.