
(1993) 07 DEL CK 0016

In the Delhi High Court

Case No : Civil Writ Petition No. 784/92

Om Prakash Jain and another

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 28-07-1993

Acts Referred:

Citation : AIR 1994 Delhi 59 : (1994) 28 DRJ 171

Hon'ble Judges : V.B. Bansal, J

Bench : Single Bench

Advocate : J.M. Khanna, for the Appellant; Madan Lokur, for the Respondent

Judgement

1. Petitioners have filed this writ petition under Art. 226 of the Constitution of India with a prayer to issue writ, order in the nature of mandamus, certiorari or any other writ to quash the notification dated 31-1-1992, issued by the Government of India, Ministry of External Affairs, to the effect that only those documents will be given to the Ministry of External Affairs for authentication, which have been attested by the officers, specifically designated to do so by the State Governments.

2. Briefly stated, the facts leading to the filing of this writ petition are as under :

Om Prakash Jain, petitioner No. 1 was appointed as a Notary by the Government of India and was registered as such under S. 5 of the Notaries Act, 1952 (hereinafter referred to as "the Act"). P.Y. Bhagat, petitioner No. 2 was appointed as a Notary by Delhi Administration on 5-12-1986 and their appointments are valid till date. The names of the Notaries are entered in the register and they can be removed on the grounds mentioned in S. 10 of the Act. The acts, which can be performed by the Notaries have been specified in S. 8 of the Act, which include attestation and authentication of instruments intended to take effect in any country or place outside India in such form and language as may conform to the law of the place where such deed is entitled to operate and also to translate and verify the translation of any document from one language into another.

It has been claimed by the petitioners that by virtue of their appointments as Notaries, they have been attesting documents which were to be submitted in foreign countries besides the documents, to be submitted to different authorities in India. They had been charging fee, as prescribed under Rule 10 of the Notary Rules, 1956 (hereinafter referred to as "the Rules"), which have been framed by the Government in exercise of powers under S. 15 of the Act.

It is claimed that by issuing the aforesaid letter/notification, the respondents have violated the fundamental rights of the petitioners to continue their profession and to practice as a Notary under the Act and the petitioners have been deprived of their functions and thus, it has effected even their means of livelihood and thus this petition.

3. Respondents No. 1 to 3 have opposed this writ petition and a counter-affidavit has been filed by Y.P. Singh, respondent No. 2. It has inter-alia been pleaded that the Ministry of External Affairs has been receiving complaints that a large number of fake certificates were being presented to the Ministry duly authenticated by the Notaries Public since there were as many as 14000 notaries public all over India and the Ministry of External Affairs is not in a position to maintain their specimen signatures. It was also claimed that the Consumer section is too under staffed and unable to take the responsibility of maintaining up to date specimen signatures of thousands of notary public. It was also claimed that most of the Indian citizens in need of authentication of documents were those seeking jobs and Therefore, fraud has serious implication on job prospects of such persons and that the documents received in the morning were being authenticated and returned to the applicants the same day. It has also been claimed that the Ministry of External Affairs was under no obligation to grant authentication merely because a document has been notarised and even otherwise, it was impossible to maintain signatures, of about 14000 notaries public. Further averments in the counter have been that some notary public have falsely been claiming that they have been recognized by the Ministry of External Affairs while there was no such recognition by the Ministry of External Affairs and that there have been fake authentications which have come to the notice of the Government of India. It has, thus, been pleaded that the impugned order has been issued keeping in view the convenience of the general public and to avoid embarrassment to the Government of India. It has also been claimed that the Notary Public have not been prevented or prohibited from attesting the documents and thus, a prayer has been made that the writ petition may be dismissed.

4. I have heard Shri J. M. Khanna, learned counsel for the petitioner and Shri Madan Lokur, learned counsel for respondents Nos. 1 to 3. No one has appeared for respondent No. 4.

5. The Notaries Act, 1952 is a Central Act, which extends to the whole of India. It is a complete code dealing with the appointment of Notaries, their duties and removal of their names from the register. S, 3 provides that the Central

Government in the whole or any part of India and State Government for the whole or any part of the State can appoint as Notaries, any legal practitioners or any other persons, who possess such qualifications, as may be prescribed. The Central Government and every State Government are required to maintain register, as prescribed under the Rules to include particulars relating to the Notaries including their names, date of birth, residential and professional address, the date on which the name is entered in the register, their qualifications and there has to be annual publication of the list of the Notaries. S. 8 deals with the functions of the Notaries, which are :

- "(a) verify, authenticate, certify or attest the execution of any instrument;
- (b) present any promissory note, hundi or bill of exchange for acceptance or payment or demand better security;
- (c) note or protest the dishonour by non-acceptance or non-payment of any promissory note, hundi or bill of exchange or protest for better security or prepare acts of honour under the Negotiable Instruments Act (XXVI of 1881) or serve notice of such note or protest;
- (d) note and draw up ship's protest, boat's protest or protest relating to demurrage and other commercial matters;
- (e) administer oath to, or take affidavit from, any person;
- (f) prepare bottom and respondent bonds, charter parties and other mercantile documents;
- (g) prepare, attest or authenticate any instrument intended to take effect in any country or place outside India in such form and language as may conform to the law of the place where such deed is entitled to operate;
- (h) translate and verify the translation of, any document from, one language into another;
- (i) any other act which may be prescribed."

Section 10 relates to the grounds, on which the name of any Notary can be removed from the register. Section 14 deals with the reciprocal agreement for recognition of notarial acts done by foreign Notaries. This Section reads as follows:

"14. Reciprocal arrangements for recognition of notarial acts done by foreign Notaries -- If the Central Government is satisfied that by law or practice of any country or place outside India, the notarial acts done by notaries within India are recognized for all or any limited purposes in that country or place, the Central Government may, by notification in the Official Gazette, declare that the notarial acts lawfully done by Notaries within such country or place shall be recognized within India for all purposes, or as the case may be, for such limited purposes as may be specified in the notification."

Rule 3 of the Rules deals with qualifications for appointment as a Notary. According to this Rule, no person is eligible for appointment as a Notary unless on the date of application for such appointment, he was a Notary Public appointed by Master of Faculties in England, or he has been practicing as legal practitioner for at least ten years. Rule 10 prescribes the fees, which can be charged by the Notaries for the different acts, to be performed by them, as Notary,

6. Learned counsel for the petitioner has submitted that both the petitioners are Notaries, petitioner No. 1 having been appointed by the Central Government and petitioner No. 2 by the State Government. Learned counsel for the respondent has not controverted this submission and thus, it is clear that the petitioners are Notaries being affected by the issuing of the impugned notification and thus, competent to file the writ petition.

7. Learned counsel for the petitioner has submitted that the petitioners are performing the statutory duties under the Act of Parliament and this power of the petitioners cannot be taken away by any one including the Central Government by way of issuing an executive order. He has also submitted that under S. 8, the petitioners are competent to prepare, attest or authenticate any instrument intended to take effect in any country or place outside India and also to translate and verify the translation of any document from one language into another, but on account of the respondents having issued the notification, they have been debarred from doing so thereby they have been deprived of their livelihood, which is not permissible. He has further submitted that the designated officers of the State Governments, Union Territories concerned, may not be even competent to do the attestation work and thus, not only that the petitioners have been deprived of their work, the impugned order has also authorised persons, not competent to do the work of attestation. A prayer has, Therefore, been made that this impugned order may be set aside.

8. Learned counsel for the respondents has, on the other hand, submitted that there has not been any restraint on the petitioners in doing the work of attestation and it is on account of the administrative difficulties, experienced by the respondents, that the impugned order has been passed. He has submitted that there have been about 14000 notaries public all over India and it has not been possible to keep up to date signatures of the Notaries and there has been shortage of staff in the concerned section of the Ministry of External Affairs and it is on this account that the impugned order has been issued. He has also submitted that there is no objection on the part of the respondent in the petitioners carrying out the work of attestation, as permitted by the Act.

9. The short question, Therefore, for consideration is as to whether any restriction has been imposed on the Notaries in continuing with the work of attestation by the impugned letter dated 31-1-1992 and the press note? As already referred to, the functions assigned to the Notaries, have been specified in S. 8 and by virtue of the said provision, the Notaries are competent to verify,

attest or authenticate any instrument intended to take effect in any country or place outside India. It is the admitted case of the parties that as regards the countries with whom reciprocal arrangements have been made by the Central Government, the documents attested by the Notaries in terms of the Act are directly submitted to the concerned embassies or officers and they are accepted without any objection. It is only in respect of the documents, required by the parties sent to the countries having no reciprocal arrangement with the Central Government that the documents are not accepted by those countries unless they are unauthenticated by the Ministry of External Affairs, Govt. of India. It is in order to avoid the difficulty of keeping a record of the specimen signatures of the Notaries practicing throughout the country that this letter has been issued. The question for consideration is as to whether any restriction has been imposed on the Notaries in performing their duties under the Act, and my answer is in the affirmative. It is clear that by virtue of this letter, the Central Government has made known to the State Governments/ Union Territories, through Chief Secretaries that all documents submitted to the Ministry of External Affairs for authentication, should be signed and attested only by the officers mentioned therein and that all the concerned persons should be informed accordingly. In view of these instructions, would anybody approach a notary public for getting the attestation of the documents, to be submitted in the foreign country with whom there are no reciprocal arrangements, which are not attested by the Ministry of External Affairs and thus, would not be accepted by the concerned persons of the foreign countries. It would, thus, clearly mean that even though the Notaries are authorised under the Act to attest the documents, the parties have been advised not to get the same attested from them if they intend to send them abroad and instead, they should get the documents attested from the persons mentioned therein. This, in my view, is not permissible and in fact, the letter goes against the provisions of the Act.

10. The submission made by the learned counsel for the Union of India, in fact, has been that there was no intention on the part of the Central Government to put any restriction on the Notaries in performing their duties, assigned to them under the Act. He has also submitted that the officers mentioned in the press note have only been asked to attest the documents and not to perform the duties as a Notary. Keeping in view these facts, I am clearly of the view that the impugned letter cannot be sustained and the notarial work can be performed only by the persons, who are appointed as Notaries under S. 3 of the Act.

11. In view of my a foregoing discussion, the writ petition is allowed, the impugned letter dated 31-1-1992 and the press note are quashed. Petitioners are also entitled to costs.

12. Petition allowed.