
(2010) 02 MP CK 0081
In the Madhya Pradesh High Court

Rajendra Kumar Chaudha and Others	APPELLANT
Vs	
Ayaz Ahmad Khan and Others etc. etc.	RESPONDENT

Date of Decision : 19-02-2010

Acts Referred:

Notary Rules, 1956 — Rule 7, 7(3)

Citation : (2010) ILR (MP) 1265

Hon'ble Judges : S.C. Sinho, J;A.K. Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arun Mishra, J.—The writ appeals have been preferred as against the order passed by Single Bench remitting the case to the Competent Authority to make the recommendations to the State Government in accordance with Rule 7 of the Notary Rules, 1956 (hereinafter referred to as "the Rules").

2. The brief facts are that by Notification dated 12-10-2007, 11 posts of Notary were notified for Katni District which include 4 posts for Katni, 1 for Dheemarkheda, 2 for Bohriband, 1 for Rithi, 2 for Badwara and 1 for Barhi. The District Judge was asked by the State Government to send a panel along with the memorial of eligible local Advocates in accordance with Rules 6 and 7 of the Rules. 77 candidates had filed the applications from Katni, 5 from Dheemarkheda, 9 from Bohriband, 10 from Rithi, 14 from Badwara and 9 from Barhi.

3. The District Judge forwarded the list on 25-1-2008 to the Principal Secretary of the Law and Legislative Department of State Government. The State Government approved names of respondent Nos. 5 to 15 out of the list and short listed them for appointment as Notary in the aforesaid Tehsils of Katni District. Petitioners submitted representations objecting to selection mode and failing to get redress filed the writ petitions.

4. It was submitted by the petitioners that while selecting respondent Nos. 5 to

15, Rule 7 of the Rules has not been complied with. Respondent Nos. 7,11 and 12 were not eligible for being appointed on the post of Notary.

5. In the return filed by respondent Nos. 5, 6 and 7 in the writ appeals, it is contended that the District Judge is not bound to record any reasons as to why the particular persons are recommended. Since all the applicants included in the panel prepared by the Competent Authority, have equal suitability and there can be no preferential treatment, the selection made by the State Govt. cannot be said to be arbitrary or discriminatory. No objection was sent by the Bar Association, therefore, Competent Authority was not bound to hold an enquiry in terms of Rule 7 (1) of the Rules. All the candidates were suitable, as such all the names were recommended.

6. The learned Single Judge has allowed the writ petitions and has held that the District Judge has failed to perform the duty enjoined upon him under the Rules. Consequently, matter has been remitted back to the Competent Authority to send a fresh report to the Government after complying with the provisions contained under Rule 7 of the Rules. Reports dated 25-1-2008 sent by District Judge in respect of Tehsil Barhi, Rithi, Dheemarkheda, Bohriband, Badwara and Katni have been set aside and selection made for respondent Nos. 5 to 15 as Notary has also been quashed. Aggrieved thereby the instant writ appeals have been preferred.

7. Learned Counsel appearing on behalf of appellants have submitted that there was due compliance of Rules 6 and 7 of the Rules. Objections were invited from the Bar Association. No objection was submitted. All the persons were eligible as such their names were recommended by the District Judge to the State Government. District Judge has discharged his duties as enjoined under the Rules, hence interference made by the learned Single Judge by quashing the appointment and directing fresh preparation of panel as per Rule 7 was uncalled for.

8. Shri V.S. Shroti, learned Sr. Counsel with Shri Vikram Johri appearing on behalf of District Judge has submitted that objections were invited from the Bar Association. No objection was received. The persons who had applied and were found to be eligible, the list of eligible candidates was forwarded to the State Government. He has also attracted attention of this Court to the amended rules. The amendment has been effected since 24-9-2009. The amended Rule 7(1) provides that Competent Authority can conduct an enquiry 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. He has to submit a report to the Appropriate Government and the State Government has power to constitute an Interview Board under Rule 7-A of the Rules for selection of candidates. Learned Counsel has submitted that it be clarified that in case further enquiry is necessary and fresh recommendations have to be made, the District Judge can conduct an enquiry under the amended Rules.

9. Shri Samdarshi Tiwari, learned Government Advocate has supported the case of the appellants. He has submitted that the appointments were duly made by the State Government, hence the order passed by the learned Single Judge be set aside.

10. Shri K.K. Pandey and Shri K.K. Gautam have submitted that the order passed by the learned Single Judge is in accordance with law. No case for interference in the writ appeal is made out.

11. Rule 6 of the Notary Rules, 1956 provides that the Competent Authority shall examine every application received by him and if he is satisfied that the application is not complete in all respects or 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 summarily and inform the applicant accordingly. In case applications are not rejected under Sub-rule (1) of Rule 6, in that case there is duty enjoined upon the District Judge to call for the views of the Bar Association, Bar Council, Incorporated Law Society or other authority as the case may be. Rule 7 (1) as it stood prior to amendment is as follows:

7. Recommendation 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.

After amendment, Rule 7(1) reads thus:

7. (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 that the applicant may be allowed to appear before the Interview Board.

12. There is a change in the procedure with respect to the appointment. Now the Competent Authority has to make report to the Appropriate Government recommending that the applicant may be allowed to appear before the Interview Board. Earlier constitution of Interview Board at State level was not provided, thus there is procedural change brought about by the amendment incorporated in Rule 7(1) and also by Rule 7-A which provides for constitution of the Interview Board by the State Government and thereafter appointment has to be made. It is not disputed that provision of amended Rules 7(1) and 7-A being procedural, have to be followed with respect to the pending applications also. Even otherwise, it is settled preposition of law that there is no vested right in the procedure part. The conditions of eligibility have not been changed.

13. Rule 7 (3) provides that while making the recommendations under Rule 7 (1), the Competent Authority shall have due regard to the matters enumerated therein from Clauses (a) to (e). The matters which have been enumerated are of importance and it is imperative to the Competent Authority to apply its mind having due regard to the matters enumerated in Clauses (a) to (e) of Sub-rule (3) of Rule 7 of the Rules. Mind has to be applied as to residence of the person where he resides and in which area he proposes his practice as Notary, as provided under Rule 7 (3) (a). Due regard has to be given to requirement of Notary by considering under Rule 7 (3) (b) the number of existing Notaries practicing in the area, whether it is necessary to appoint additional Notary. As per Rule 7 (3) (c) the Competent Authority has to apply his mind to the knowledge and experience of commercial law of the incumbents and thereafter has to make his recommendation with respect to fitness of the person. The Competent Authority in case of a legal practitioner has to consider the extent of practice of an incumbent and to find out whether the applicant is fit to be appointed as a Notary. The District Judge before placing an incumbent in the panel has to form an opinion on the basis of knowledge and experience, extent of practice and fitness of a person to be appointed as a Notary. Merely sending of names in order of seniority as has been done in the instant case, is absolutely dereliction of duty enjoined upon the District Judge. The purpose of recommending u/s 7(3) is that names of only fit and deserving persons having knowledge and experience of commercial law are included in panel. Due regard has to be given to the extent of practice, integrity, fitness etc.

14. In *Ashok Kumar Chowdhary Vs. State of Madhya Pradesh and Others*, , it has been opined by this Court that the District Judge is not supposed to act as a post office and forward the papers to the State Government. If there are more than one applications, then District Judge has to make recommendation for appointing Notary indicating the name of applicant who is more suitable than other applicants, in the order of suitability names have to be forwarded. From the file it should appear that enquiry as provided under Rule 7 (3) has been made by District Judge and District Judge has prepared the panel considering the knowledge and experience of each applicant and their suitability for appointment as a Notary. It is necessary for the District Judge to resort to the aforesaid aspect as job of Notary is a responsible job and they cannot be permitted to act in arbitrary manner on pick and choose manner by the State Government by forwarding all the applications of eligible candidates. Recommendation has to be made duly considering the requirement of Rule 7 of the Rules. Enquiry has also to be made as to honesty and integrity of the applicants before recommending their names to be appointed as Notary. It is not open to the State Government to make any appointment without District Judge determining the question as to person who is more suitable for appointment under Rule 7 (3). The act of bypassing Rule 7 (3) of the Rules, would amount to arbitrariness in the process of appointment of Notary.

15. In *Suryakant Chandrakar Vs. State of Madhya Pradesh and Others*, , it has

been opined by this Court thus:

A plain reading of Rule 7 (1) of the Rules makes it clear that the Competent Authority is required to make recommendation 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. Under Rule 7 (3) of the Rules, the Competent Authority while making recommendation is required to give due regard to various aspects enumerated in Clauses (a) to (e). After the report of the Competent Authority, the Appropriate Government is required to consider the same and make appointment of Notaries. The State Government while making appointment of a Notary is required to consider the report. Here, in the present case, the Competent Authority has stated in clear terms that he did not make any recommendation. From the letter of Competent Authority dated 2nd of March, 1998, it is apparent that he has just forwarded the memorials of 7 persons including respondent Nos. 3 to 5 along with the other documents to the State Government for appropriate action. The original records have been produced before me by Mr. Ghildiyal and a perusal thereof also does not show that the Competent Authority had made any recommendation as required under Rule 7 of the Rules. In fact, he has forwarded memorials of all the applicants along with the documents. Such a recommendation was obliged to be made by the Competent Authority under Rule 7 of the Rules. Non-rejection of the memorials under Rule 6 of the Rules and forwarding the same along with the documents of the respective memorialists in my opinion, cannot be construed as recommendation of the Competent Authority. He has thus failed to discharge his statutory obligation. That being so, appointment of respondent Nos. 3 to 5 as Notaries suffers from procedural ultra vires and cannot be allowed to stand. The view which I have taken finds support from the judgment of this Court in case of Ashok Kumar Choudhary (*supra*).

16. In the instant matters, what District Judge has done that he has invited the objections from the Bar Association, no objection was received and thereafter has forwarded the list of all the persons arranged in order of seniority to the State Government. The District Judge has totally failed to act as per the mandate of Rule 7 (3) of the Rules. It was incumbent upon the District Judge to send the names arranged in order of suitability of the incumbents whom he has considered to be appropriate having due regard to knowledge and experience, extent of practice and fitness, which has not been done in the instant case. Thus the learned Single Judge is justified in quashing the consequential action taken on the basis of violation of Rule 7 (3) of the Rules.

17. Shri V.S. Shroti, learned Sr. Counsel has submitted that the District Judge should be permitted to conduct oral interview of the incumbents. We do not go to that extent as oral interview is contemplated in the next stage after recommendation is made by the Competent Authority to the State Government, however, in order to ascertain the suitability, it is open to him to make such inquiry as he deems fit. He is free to call the candidates to find out the suitability

as per Rule 7 of the Rules but simply calling a candidate to elicit an information would not amount to interviewing him, it would only be step in aid in order to form an opinion under Rule 7 (3) of the Rules. When the Competent Authority applies the mind to the requirement of Rule 7 (3), which may be applicable in the case, it should appear from the noting of the file that the Competent Authority has made the recommendation after due compliance of Rule 7 of the Rules. He is not supposed to act in a mechanical manner. The appointment of Notary, as already mentioned, is an important job and names of only honest persons with integrity should be recommended by the District Judge, not the names of all the incumbents in order of their seniority or category wise as done in the instant case. The eligibility of an incumbent is a different aspect than assessing the suitability. Arranging the names in order of seniority cannot be said to be as per suitability. As person's suitability has to be adjudged on the basis of objective criteria as laid down in the Rules. It has been considered, must reflect from the file. The Competent Authority cannot shirk from its significant responsibility enjoined upon him under the Rules to ensure that incompetent and dishonest incumbents are not appointed as Notary on political basis and eliminated at grass root level. Recommendation of the District Judge serves the purpose of weeding out such elements from the zone of consideration who are not otherwise fit and suitable as per the requirements of the Rules. The District and Sessions Judges are expected to rise to the occasion, select the persons for recommending the name as per the criteria which has been laid down under the Rules and not to oblige every incumbent by sending the entire list to the State Government which amounts not only shirking from duty but tantamounts to flagrant violation of the rules at the end of the Competent Authority which cannot be tolerated even for a moment. Thus, District and Session Judges to be careful in future in making the recommendation. It has to be ensured that only the names of suitable persons be recommended as per requirements of Rules.

18. Resultantly, we find no merit in these writ appeals. Writ appeals are hereby dismissed. No costs.