

(2021) 11 KL CK 0036
In the High Court Of Kerala
Case No : Writ Petition (C) No. 6694 Of 2021

S. Vincent, Advocate

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 08-11-2021

Acts Referred:

Notaries Rules, 1956 — Rule 3, 6, 8(1)(c)

Citation : (2021) 11 KL CK 0036

Hon'ble Judges : P.V.Kunhikrishnan, J

Bench : Single Bench

Advocate : S.Vinod Bhat, Kum.Anagha Lakshmy Raman, Greeshma Chandrika.R, Deepa Narayanan

Final Decision : Disposed Of

Judgement

P.V.Kunhikrishnan, J

1. The petitioner is an advocate practising in Neyyattinkara Courts. He enrolled as an advocate on 21.12.1990. According to him, he is qualified for appointment as Notary and he satisfy the eligibility criteria required as per Rule 3 of the Notaries Rules, 1956 (for short "the Rules"). The petitioner submitted Ext.P1 memorial to the respondent. The competent authority examined Ext.P1 and conducted a preliminary enquiry as envisaged under Rule 6. After the enquiry, the competent authority submitted a report to the respondent recommending that the petitioner may be allowed to appear before the Interview Board. Ext.P2 is the report. The Interview Board constituted by the respondent asked the petitioner to appear before the Interview Board on 30.10.2014 and the petitioner appeared before the Board. The Board thereafter submitted its recommendation to the respondent. Ext.P3 is the recommendation. In Ext.P3, the petitioner was found to be competent for appointment as Notary for Neyyattinkara Taluk. It is the case of the petitioner that when there was no response from the respondent, the petitioner submitted Ext.P4 letter to the authorities. Even then, there was no response and hence, the petitioner approached this Court by filing W.P.(C.) No.

16077/2019 and this Court as per Ext.P5 judgment, directed the authorities to finalise the application submitted by the petitioner within a time frame. Based on the direction from this Court in Ext.P5 judgment, the authority concerned passed Ext.P6 order by which the application of the petitioner is dismissed saying that there is no intention to the Government to appoint any new Notary as per Rule 8(1) (c) in Neyyattinkara Taluk. The petitioner submitted Ext.P7 review petition before the authority concerned. As per Ext.P8 order, the review petition also dismissed with an observation that there are more eligible applicants in Neyyattinkara Taluk and the request of the petitioner to consider his application to appoint Notary at Thriuvananthapuram District cannot be considered. Aggrieved by the same, this writ petition is filed.

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. The counsel for the petitioner reiterated his contentions in the writ petition. The counsel submitted that the petitioner is a lawyer practising for the last 30 years. The counsel takes me through Ext.P2 inspection report in which it is stated that the applicant is a reputed person of the locality having good practice record. In Ext.P2, the authority concerned recommended that the applicant may be allowed to appear before the Interview Board. The counsel also takes me through Ext.P3, by which the competent authority inspected the office of the petitioner and submitted his report. The counsel submitted that the finding in Exts.P6 and P8 are contradictory. The counsel submitted that in Ext.P6, it is stated that there is no proposal to appoint any Notary in Neyyattinkara Taluk. But in Ext.P8, it is stated that there are more eligible persons at Neyyattinkara Taluk and request of the petitioner to consider his appointment outside Neyyattinkara Taluk is also rejected. The counsel submitted that in the instruction now submitted by the authority concerned will show that the appointment of notaries are not made for vacancy in an area but to State wide vacancies. The counsel submitted that the finding in Exts.P6 and P8 are unsustainable.

4. The learned Government Pleader on the other hand, submitted that the appointment of Notary is the discretion of the Government. Even if there are vacancies, it is the discretion of the Government to decide whether to appoint or not. The Government Pleader relied the judgment of this Court in Sugathan M.P. v. State of Kerala and anr.[2014 (2) KHC 763]. The Government Pleader takes me through paragraph No.22 of the above judgment and submitted that the applicants cannot submit before this Court that there is infringement of any right, if the appointment of Notaries are denied by the Government.

5. I considered the contentions of the counsel for the petitioner and the Government Pleader. There is no dispute about the dictum laid down by this Court in Sugathan M.P.'s case (Supra). I perused Ext.P6 and P8 orders. In Ext.P6, the reason to reject the application is that there is no intention to appoint anybody at Neyyattinkara Taluk. It will be better to extract the contents in Ext.P6.

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6. Thereafter, a review petition was filed by the petitioner and Ext.P8 is the order in the review petition. The relevant portion of Ext.P8 is also extracted hereunder:

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7. The petitioner submitted Ext.P7 review petition with a request to review Ext.P6 order and to consider the petitioner for appointment as District Notary, Thiruvananthapuram. In Ext.P8, the reason mentioned is that the application submitted by the petitioner is for Neyyattinkara Taluk and the petitioner has not submitted the memorial for getting an appointment in Thiruvananthapuram District excluding Neyyattinkara. But I think this order contradicts to some extent to the version of the Law Secretary in the instruction submitted to the Government Pleader as per letter dated 13.10.2021. The same is produced by the Government Pleader with a memo. It will be better to extract the relevant portion of the instruction dated 13.10.2021.

"Please refer to the letter cited. As per rule 8(4-A) of Notaries Rules, 1956 Central Government is empowered to decide the State quota of Notaries. As per Notification No G.S.R 815(E) dt 23/8/2012, Central Government amended the said rule and raised thereby the State quota of the Kerala from 1000 to 1250. The copy of the notification is enclosed as Ext RIA. It is brought to notice that as per Notaries Act and Rules any Advocate having the qualifications prescribed by rules, who intends to submit an application can apply by submitting a memorial at any time, even if there is no vacancy in the State quota. As such there is no system of notifying any vacancy in the State by the State Government. Once the appointment to State quota is saturated, further vacancy arises only on either the demise or voluntary surrender of Notaries. The Government can appoint any applicant at any time in any existing vacancy and is the exclusive discretionary power of the Government to fill or not to fill a vacancy and to select or to reject

any application received before it. It is true that while considering the application of the petitioner, there were vacancies in the State quota but the Government were not in intention to appoint a notary at Neyyattinkara Taluk at that time. It may also kindly be noted that, the quota of notaries is statewide and it is not stipulated in the rules to divide the quota and assign any number to any District or Taluk. Though the quota raised from 1000 to 1250 in the year 2018, the appointment process ended only by May 2021. The notifications in respect of the notaries as per Ext P13 to P16 are enclosed herewith as required in the letter referred above as Ext RIB to R1E, The above facts may kindly brought before the Hon'ble High Court as and when the case stand posted for next hearing."

8. In that letter, it is stated that the quota of Notaries is State wide and it is not stipulated in the Rules to divide the quota and assign any number to any District or Taluk. It is also stated that though the quota raised from 1000 to 1250 in the year 2018, the appointment process ended only by May 2021. If the vacancies are in the State quota and not stipulated to any area, what is stated in Ext.P8 order is not correct. According to me, Ext.P8 order is to be set aside.

9. The application of the petitioner either for Neyyattinkara area or in the Thiruvananthapuram District is to be reconsidered by the authority concerned, after giving an opportunity of hearing to the petitioner. It is stated in Ext.P8 that there are better candidates than the petitioner and that is why his application is not considered. The counsel for the petitioner submitted that, if the petitioner is given an opportunity of hearing, he will be able to substantiate his case. According to me, Ext.P8 can be set aside and the Government can be directed to reconsider the matter, after giving an opportunity of hearing, in the light of the observation made in this writ petition.

Therefore, this writ petition is disposed in the following manner.

- 1) Ext.P8 order is set aside.
- 2) The respondent is directed to reconsider Exts.P1 and P7 and pass appropriate orders in it, as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment.
- 3) Before passing final orders, the respondent will give an opportunity of hearing to the petitioner.
- 4) If the petitioner is found eligible by the authority after reconsidering the matter and if there is no vacancy as on that date, the petitioner should be given a preference in the next arising vacancy.