
(1966) 09 AHC CK 0020
In the Allahabad High Court
Case No : Special Appeal No. 69 of 1965

Sri Kashi Prasad Saxena

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 06-09-1966

Acts Referred:

Constitution of India, 1950 — Article 226, 311(1), 311(2)
Notaries Act, 1952 — Section 10, 11, 12, 13(12), 15

Citation : AIR 1967 All 173 : (1967) 2 LLJ 588

Hon'ble Judges : R. Chandra, J; Jagdish Sahai, J

Bench : Division Bench

Advocate : K.S. Hajela, for the Appellant; J.S. Trivedi, for the Respondent

Final Decision : Allowed

Judgement

1. This special appeal is directed against the judgment of B. N. Nigam, J. dated 7th of May, 1966 dismissing Writ Petition No. 380 of 1964 filed by appellant, Sri Kashi Prasad Saxena, who was a Notary practising in the City of Lucknow. In the writ petition aforesaid, the order of the State Government dated March 11, 1964 removing the name of the appellant-petitioner, Sri Kashi Prasad Saxena, from the register of Notaries is sought to be quashed.

2. Sri Kashi Prasad Saxena was appointed as a Notary by means of the order of the State Government dated 17th of August, 1959, for a period of three years. On 10-8-1962 his term was renewed for a further period of three years with effect from 20-8-1962. However, the State Government received certain complaints against him and asked the District Judge, Lucknow, who is a competent authority under the rules framed under the Notaries Act, 1952 (hereinafter referred to as the Act), to make an enquiry. The District Judge framed the following three charges against Sri Saxena:

1. Is it a fact that you made no entry in your register regarding the three affidavits dated 25-7-1961, 24-8-1961 of Sarjoo Prasad, Inder Prakash and

Chandra Mohan respectively?

2. Is it a fact that the four affidavits were not duly stamped and in spite of it you authenticated them?

3. It is said that none of these four affidavits were stamped with notarial stamps as required by Art. 42 of the Stamp Act and in spite of it you authenticated the affidavits?

3. Sri Saksena was called upon to submit an explanation and to meet the charges aforesaid and he did so on 29-6-1962. It appears that the District Judge made a report adverse to Sri Saksena. Sri Saksena applied for a copy of the report, but in spite of his request, no copy was supplied to him. As already stated earlier, he was removed by means of the order dated 11th of March, 1964 (annexure 4 to the writ petition).

4. The following questions were canvassed before B. N. Nigam, J. :

1. That the petitioner-appellant was holding a civil post under the State of U. P. within the meaning of Art. 311 of the Constitution of India and was for that reason entitled to the protection of Article 311(2) of the Constitution, and inasmuch as he was not given a reasonable opportunity of showing cause as required by that provision, the order of removal is void.

2. That the charges had not been proved against the petitioner and on the basis of those charges his name could not be removed from the register of Notaries.

4a. No other submission was made before Nigam, J.

5. Nigam, J. rejecting the submission of petitioner-appellant that he held a civil post under the State of U. P., concluded that the petitioner-appellant was not entitled to the protection of Article 311(2) of the Constitution of India.

6. In respect of the charges Nigam, J. held that "no reason has been made out for my holding that at least charges 1 and 3 were not satisfactorily proved against the petitioner". He further held that "there is nothing in the record to indicate that the State Government came to the conclusion of misconduct on the part of the petitioner on the proof of one or more of the charges". In the end, Nigam, J. concluded as follows:

"It, therefore, cannot be said that the final conclusion of misconduct is vitiated merely because the State Government's conclusion might be erroneous, as regards the second charge. There is nothing on record to indicate whether in the opinion of the Enquiring Officer and the State Government charge No. 1 was proved against the petitioner."

7. Mr. Haiela, who has appeared for the petitioner-appellant, has made a very strenuous argument before us to the effect that the petitioner was holding a civil post under the State of U. P. and for that reason was entitled to the protection of Article 311(2) of the Constitution of India. He has also submitted that the

charges on the basis of which the petitioner-appellant has been removed, could not amount to professional misconduct or even misconduct on his part and at best could be categorised as lapses or negligence on the part of the petitioner-appellant with the result that the case did not fall u/s 10 of the Act.

8. It has also been contended that inasmuch as three charges were framed, and it is not known as to what opinion the State Government held with regard to charge No. 2, the order of removal would be bad because it is not known as to what order the State Government would have passed if it had come to the conclusion that charge No. 2 had not been proved. For this learned counsel placed reliance on *Shibban Lal Saksena Vs. The State of Utter Pradesh and Others*, .

9. We proceed to consider the submissions made at the Bar seriatim.

10. Article 311, so far as it is relevant for our purposes reads:

"(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry.....

11. It is the admitted case of the parties that no opportunity as contemplated by Article 311(2) of the Constitution was ever provided to the petitioner-appellant.

12. Before Article 311(2) of the Constitution can apply to the petitioner-appellant's case, it must be found as a fact whether or not the petitioner held a civil post under the State of U. P. which he alleges to have held. In other words, the question requiring consideration is whether a Notary is an occupant of a civil post under the State of U. P. The expression "civil post" has not been defined by the Constitution. It has not been defined in the Civil Services (Classification, Control and Appeal) Rules also. In fact, the expression "holds a civil post" or "civil post" has not been defined in any Statute or Rule. How-even it is clear that the expression "holds a civil post under the State of U. P." means "is in the employment of the State of U. P."

13. Before we come to deal with the question as to whether or not the petitioner-appellant was occupying a civil post under the State of U. P., we would first like to mention his duties and the conditions with which he was governed. His functions are not such as to keep him fully occupied. Admittedly, he is neither paid a monthly salary nor any fees by the Government. The fee that is paid to

him is not by the Government but by the individual client whom he serves. He renders no service to the Government in the discharge of its sovereign functions or in its carrying on the civil administration of the State. On the other hand he serves the general public. He is not bound by the Government Servants' Conduct Rules. He has not to apply for leave if he wants to leave the station or does not want to attend to his work on a particular day. Government cannot compel him to work. He can discharge his duties at his residence and there is no place or building fixed wherein he is required to sit and work. He is free to carry on the profession of lawyer and his work as notary is only part-time in the sense that while carrying on the profession of an Advocate, he also discharges the functions of a Notary. Admittedly, he is on the rolls of the Court as an advocate and remained so even when he was a Notary. Nothing has been brought to our notice to show that relationship of master and servant exists between the State Government and him. His name does not appear in the State Civil List though according to the learned counsel for the appellant he is a gazetted officer of the State Government. The U. P. Government cannot and does not control the method of his work.

14. The duties assigned to him are of a professional nature. His essential function is to bestow an impress of authenticity upon certain acts performed by him under the Act at the request of individual members of the general public who requisition his services and recompensate him by paying him the prescribed fee which flows into his pocket and not in the coffers of the Government. His duties do not relate to activities which fall directly within the spheres of the Union or the State. All these conclusions follow from Section 8 of the Act, which deals with the functions of a Notary and reads:

"(1) A notary may do all or any of the following acts by virtue of his office, namely

(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, 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 matter;

(e) administer oath to, or take affidavit from, any person;

(f) prepare bottomry and respondentia 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 intended to operate;

(h) translate, and verify the translation of any document from one language into another;

(1) any other act which may be prescribed.

(2) No act specified in Sub-section (1) shall be deemed to be a notarial act except when it is done by a notary under his signature and official seal."

15. The appointment is made under the Act. The preamble of the Act reads:

"An Act to regulate the profession of notaries."

This shows that a notary carries on a profession and is not in the employment of any one including the State Government. Even though the preamble cannot be used to defeat the enacting clauses of a Statute, it has been treated to be a key for the interpretation of the Statute (See *In re, Kerala Education Bill, 1957*, AIR 1958 SC 956 and *Biswambhar Singh and Others Vs. The State of Orissa and Another*, .

16. Section 10 of the Act provides for the name of a notary being removed from the register of Notaries on the ground of professional misconduct and Section 15 of the Act empowers the Central Government to frame rules inter alia for making enquiries into the allegations of professional misconduct against a Notary. How can there be a professional misconduct if a Notary is not carrying on a profession, but is in service. Therefore, sections 10 and 15 of the Act also, like the preamble show that a Notary carries on a profession and is not in the service or employment of anyone. Sections 5, 9, 11 and 12 speak of the vocation of a Notary as "practice". The relevant words in Section 5 are "every notary who intends to practise". Those in Section 9 are "no person shall practise as a notary or do any notarial act." In Section 11 the words are "any reference to a notary public in any other law shall be construed as a reference to a notary entitled to practise under this Act", while in Section 12 of the Act the words are "practises as a notary."

From what we have said above it is clear that a Notary practises a profession and is not in service. Section 5 of the Act requires that every Notary who intends to practise as such has to pay the prescribed fee. The Notary becomes "entitled (a) to have his name entered in the register" of Notaries and (b) "to a certificate authorizing him to practise for a period of three years" only after he has paid the prescribed fee. He has also to pay a fee for getting his certificate renewed. The payment of fee is inconsistent with the holding of a post under the Government. It is consistent only with the carrying of a profession, the fee being in the nature of a licence fee for it is the fee for obtaining the certificate to practise. It is conceded that even when the Government, in the capacity of a litigant or in connection with its non-sovereign functions, requisitions the services of a Notary, it has to pay a fee to him like any member of the general public. The payment of

fees by the Government to the Notary is inconsistent with its being the employer of the Notary.

17. For the reasons mentioned above we are satisfied that the petitioner-appellant in the capacity of a Notary was only practising a profession and was not in the employment of the U. P. Government. He was, therefore, not holding a civil post under the State of U. P. and for that reason was not entitled to the protection of Article 311(2) of the Constitution of India. Mr. Hajela, who has appeared for the petitioner-appellant, has placed reliance upon *State of Uttar Pradesh and Another Vs. Audh Narain Singh and Another*, . This case related to Tahsildars appointed in a Government treasury in U. P. In that case admittedly the Tahsildars were in service and the only question was whether they were in the service of the State Government or in that of the Treasurer, who was appointed by the Government. In the present case the question is a very different one. the same being whether the petitioner-appellant was carrying on a profession or was in service under the State of U. P. We have recorded our reasons for coming to the conclusion that he was carrying on a profession and was not in the service of anybody including the State of U. P. This case, therefore, cannot be of any help to the learned counsel for the petitioner-appellant.

18. Mr. Hajela has also placed reliance upon *Brojo Gopal Sarkar Vs. Commissioner of Police and Another*, . This case related to a special constable and the question before the Calcutta High Court was whether a special constable was a public officer within the meaning of Section 2(17)(h), C. P. C. The learned Judge of the Calcutta High Court observed as follows:

"Thus an officer of the Crown or Government, whose duty it is as such officer, to prevent offences, to give information of offences, to bring offenders to justice or to protect the public health, safety or convenience (-----) will be regarded as a Public Officer,....."

18a. Mr. Hajela has also placed reliance upon *Raja Bahadur K.C. Deo Bhanj Vs. Raghunath Misra and Others*, , *Basdeo Vs. John and Co. and Others*, ; *Walayat Shah v. Sardara* AIR 1950 Lah 58; *Karuppa Udayar Vs. State of Madras and Others*, and *M. Yugandhra Rao Vs. The Govt. of Andhra and Another*, We have carefully read all these cases and are satisfied that the same are clearly distinguishable. None of these cases relate to a Notary and in none of them the question for consideration was whether a Notary carries on profession or is in the service of the State of U. P.

19. The next question to consider is whether in the circumstances of the present case it can be said that the order of the State Government removing the name of the petitioner-appellant from the register of Notaries is valid and within the jurisdiction of the State Government. Mr. Hajela has rightly submitted that the State Government could remove the petitioner only if the conditions of Section 10 of the Act have been satisfied. That provision reads:

"The Government appointing any notary may, by order, remove from the Register maintained by it u/s 4 the name of the notary if he--

(a) makes a request to that effect; or

(b) had not paid any prescribed fee required to be paid by him, or

(c) is an undischarged insolvent; or

(d) has been found upon inquiry in the prescribed manner, to be guilty of such professional or other misconduct as. in the opinion of the Government, renders him unfit to practice as a notary."

The impugned order, which was notified, reads:

"In exercise of the powers conferred by Section 10 of the Notaries Act. 1952. read with Clause (b) of Sub-rule (12) and Sub-rule (13) of Rule 13 of the Notaries Rules, 1956 the Governor is pleased to cancel with effect from the date of this notification the certificate of practice granted, under Clause (b) of Sub-section (i) of Section 5 of the aforesaid Act. to Sri Kashi Prasad Saxena and to order the removal of his name from the register of Notaries with effect from the said date and to perpetually debar him from practising as such." Apart from Section 10 of the Act there is no other provision which empowers the State Government to punish a Notary or to remove his name from the register maintained u/s 4 of the Act. We have already reproduced Section 10 of the Act earlier. There is nothing in it which empowers the State Government to "perpetually debar him from practising as such".

It is true that Rule 13 (12) gives the Government such powers and reads:

"13 (12) (a) The appropriate Government shall consider the report of the competent authority, and if in its opinion a further inquiry is necessary, may cause such further inquiry to be made and a further report submitted by the competent authority.

(b) If after considering the report of competent authority, the appropriate Government is of the opinion that action should be taken against the notary, the appropriate Government may make an order:

(i) cancelling the certificate of practice and perpetually debarring the notary from practice: or

(ii) suspending him from practice for a specified period; or

(iii) letting him off with a warning, according to the nature and gravity of the misconduct of the notary proved."

20. These rules have been framed u/s 16 of the Act. Actually the rules open with the words "in exercise of the powers conferred by Section 15 of the Notaries Act 1952 (53 of 1952) the Central Government hereby makes the following rules, namely: Section 15 of the Act reads:

"15. Powers to make rules.

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act;

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) 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;

(b) the certificate, testimonials or proofs as to character, integrity, ability and competence which any person applying for appointment as a notary may be required to furnish;

(c) the fees payable for appointment as a notary and for the issue and renewal of a certificate of practice, and exemption, whether wholly or in part, from such fees in specified classes of cases;

(d) the fees payable to a notary for doing any notarial act;

(e) the form of Registers and the particulars to be entered therein;

(f) the form and design of the seal of a Notary;

(g) the manner in which inquiries into allegations of professional or other misconduct of notaries may be made;

(h) the acts which a notary may do in addition to those specified in Section 8 and the manner in which a notary may perform his functions;

(i) any other matter which has to be, or may be, prescribed."

It would appear that the Central Government could frame a rule either under the general power conferred upon it by the opening words of Sub-section (2) or by any of the clauses mentioned in that provision. It is well settled that a rule cannot militate against a provision contained in the statute under which the rules have been framed. Section 10 or any other section of the Act did not confer on the State Government any bigger power than to remove the name of a Notary from the register maintained u/s 4 of the Act. Therefore even the general powers conferred by Subsection (2) of Section 15 of the Act cannot give the Central Government the jurisdiction to frame a rule which travels much beyond the scope of Section 10 of the Act. In other words when Section 10 of the Act does not give the appropriate Government the power of perpetually debaring a person from practising as a Notary and confines that power to at most removing the name from the Register of Notaries, the power to perpetually debar cannot be conferred by the rules.

If a person's name is removed from the Register of Notaries, there is no bar to his applying again. But once he is perpetually debarred, he can never apply again. u/s 10, or any other provision of the Act, the Government has no power to

inflict the extreme punishment of debarring perpetually. In our opinion, therefore, Rule 13 (12) (b), so far as it authorises the appropriate Government to permanently debar a Notary from practise, is beyond the rule making power of the Central Government and for that reason invalid. The order of the State Government therefore, so far as it perpetually debars the petitioner-appellant from practising the profession of a Notary is without jurisdiction and liable to be quashed.

21. We would also like to point out that Rule 13 is headed as "inquiry into the allegations of professional and other misconduct of a notary". Consequently that rule has been framed not under the general powers contained in Sub-section (2) of Section 16 of the Act, but under Clause (g) of Section 15(2) of the Act. That clause permits the Central Government to frame a rule providing "the manner in which inquiries into allegations of professional or other misconduct of notaries may be made". The power to perpetually debar is not comprehended in the expression "the manner in which enquiries.....of notaries may be made".

The rule permitting an order of debarring a person perpetually would therefore be beyond the scope of Section 16(2)(g) of the Act and for that reason also void.

22. Mr. Hajela also submits that inasmuch as the petitioner-appellant in spite of his request was not furnished with a copy of the report of the competent authority, there has been a failure of the principles of natural justice. There is no dispute about the fact that in spite of the request of the petitioner-appellant no copy of the enquiry report was furnished to him. Rule 13 (12) (a) and (b) of the Act clearly require the report of the competent authority to be considered before taking action against a Notary. Inasmuch as in the present case the petitioner-appellant was neither shown the report of the competent authority nor was furnished a copy of the same, he had no occasion to know as to what findings had been recorded against him by the competent authority. It has been contended by the learned Senior Standing Counsel that inasmuch as the law does not require any opportunity being given to a Notary after the competent authority has submitted its report and before action is taken by the appropriate Government, the petitioner appellant did not suffer in any manner by a copy of the enquiry report not being furnished to him.

The proceedings against a Notary u/s 10 of the Act read with Rule 13 of the rules are of a serious and penal nature. Not only a Notary is liable to be removed in those proceedings, he might also be adjudged guilty of serious charges of misconduct. In fact, any decision taken in those proceedings might adversely affect his reputation and future prospects. The enquiry, therefore, must be a fair one and a Notary must have full opportunity of knowing the material on the basis of which action may be taken against him. The appropriate Government while exercising powers u/s 10 of the Act read with Rule 13 exercises quasi-judicial and not merely administrative powers. Inasmuch as the copy of the report of the competent authority had not been furnished to the petitioner-appellant, he did not know as to what had been held against him and inasmuch as the State

Government acted on the basis of that report, the proceedings before the State Government cannot be said to have been fair. It is true that rules of natural justice vary with the varying constitutions of the Statutory bodies and the rules prescribed by the Act under which they function, but it is well settled that whether or not any rules of natural justice had been contravened should be decided in the light of the statutory rules and provisions. (See Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, .

In the present case we have already shown earlier that it is the report of the competent authority which is to be considered by the appropriate Government and it is that report which provides the basis for action against a Notary. The circumstances that a copy of that report, though asked for, was not given to the petitioner-appellant nor was the report shown to him leads to the conclusion that there was an infringement of the principles of natural justice. It is true that neither Section 10 nor Rule 13 provide a right of hearing, but it is implicit in the nature of the proceedings that a Notary whose conduct has been enquired into by the competent authority should be permitted to meet the report of the enquiry officer before it is acted upon by the appropriate Government.

23. The next question that requires consideration is whether the State Government while passing the impugned order has addressed itself to the requirements of law and to the limitations imposed upon Its jurisdiction by Section 10 of the Act. A Notary is not at the caprice of the State Government. He is a member of a profession and even though the State Government has the right under the provisions of the Act to regulate the functioning of that profession, it has got no arbitrary powers to deal with the Notaries as it likes. Before it can remove the name of any Notary from the register maintained u/s 4 of the Act, it must satisfy the requirements of Section 10 of the Act. In other words the State Government has no jurisdiction to remove the name of a Notary from the register maintained u/s 4 of the Act on a ground not contained in Section 10 of the Act. We have reproduced that provision earlier in this judgment. The notification of the State Government does not show under which subsection of Section 10 the Government has purported to act. However reading the charges and the Government notification removing the name of the petitioner-appellant from the register of Notaries it becomes clear that the Government acted or purported to act under Clause (d) of Section 10 of the Act. It is obvious that the petitioner appellant made no request for his name being removed nor has he failed to pay the prescribed fee. It is nobody's case that he is undischarged insolvent. Consequently the only provision under which the State Government could have acted is Clause (d) of Section 10 of the Act. The nature of the charges shows that the proceedings taken against the petitioner-appellant were for "professional misconduct" and not for "other misconduct". All the charges relate to the professional duties of a Notary.

24. The expression "professional misconduct" or the word "misconduct" has not

been defined in the Act. We have, therefore, to go to the dictionary meaning of the word "misconduct". Amongst other the meaning given to this word in Concise Oxford Dictionary is as follows:

"Malfeasance or culpable neglect of an official in regard to his office." The expression is also used in the sense of "improper conduct" or "wrong behaviour". In Ramnath Aiyar's Law Lexicon with regard to "misconduct" it has been stated as follows:

"The term "misconduct" implies a wrongful intention, and not a mere error of judgment."

In Words and Phrases Permanent Edition the meanings given to "misconduct" are "improper or wrong behaviour, or unlawful behaviour or conduct, or malfeasance."

25. In AIR 1930 144 (Privy Council) the Judicial Committee had to consider as to what does the expression "professional misconduct" occurring in Section 13 of the Legal Practitioners Act mean. Their Lordships observed:

"Before dealing with the charges it is right to state that, in their Lordships' opinion charges of professional misconduct must be clearly proved and should not be inferred from mere ground for suspicion, however reasonable or "what may be mere error of judgment or indiscretion." An appropriate guide may be found in Section 13, Legal Practitioners Act, No. 18 of 1879, under which a pleader or muktar may be suspended or dismissed, who is guilty "of fraudulent or grossly improper conduct in the discharge of his professional duty. (Underlining (here in " ") by us.

26. In the matter of a Pleader, Tirupur In Re: A Pleader, a Special Bench of the Madras High Court held that mere negligence does not amount to professional misconduct.

27. These cases being under the Legal Practitioners Act and dealing with the question of a professional misconduct of a lawyer are relevant for the decision of the case before us. It would also be noticed that a more professional misconduct is not sufficient for the removal of Notary's name from the register maintained u/s 4 of the Act. That professional misconduct must be such "as, in the opinion of the Government, renders him unfit to practise as a Notary". (See Section 10(d) of the Act). The notification does not show that the name of the petitioner-appellant has been removed for professional misconduct nor does it show that the State Government considered the professional misconduct of the petitioner-appellant (if any) to be such "as, in the opinion of the Government, renders him unfit to practise as a Notary". We have seen the record of the case maintained in the U. P. Secretariat. It does not appear that the State Government ever addressed itself to the question as to whether or not on the facts proved in the case the petitioner-appellant could be adjudged guilty of professional misconduct as distinct from negligence or mere lapse and whether the professional misconduct, if any, was so gross "as, in the opinion of the Government, renders

him unfit to practise as a Notary''''.

The State Government has no higher powers than those conferred upon it by Section 10 of the Act. Consequently if it wanted to take action against the petitioner-appellant on the ground of professional misconduct, it had first to find out whether on the facts proved, the petitioner-appellant was really guilty of professional misconduct and then to satisfy itself that the misconduct was so gross that it rendered the petitioner-appellant unfit to practise as a Notary. The State Government has neither addressed itself to this legal question nor has it recorded any finding in respect of this matter. Consequently it must be held that it did not comply with the requirements of law. We are, therefore, of the opinion that the order passed by the State Government cannot be sustained.

28. It appears from the judgment of Nigam, J. that arguments were advanced before him that none of the three charges had been established against the petitioner-appellant. This Court cannot appraise the evidence in support of a charge. It can, however, go into the legal question as to whether or not stamp had to be affixed under the provisions of Article 42 of the Indian Stamp Act on the four affidavits mentioned in charge No. 3, and whether the affidavits mentioned in charge No 2 required to be duly stamped. Similarly, it could also go into the question whether the law required entries of the affidavits mentioned in charge No. 1 to be made in register maintained by the petitioner-appellant.

29. We are, however, not going into these questions because we are of the opinion that in view of the findings recorded by us, the proper course would be to quash the order of the State Government and leave it open to the State Government to proceed against the petitioner-appellant afresh after furnishing him with a copy of the report of the competent authority. In that event it would be open to the petitioner-appellant to canvass before the State Government the questions relating to the three charges that were sought to be raised before us.

30. Before we conclude our judgment we would like to notice a submission made by Mr. Trivedi, the learned Senior Standing Counsel, to the effect that the term, for which the petitioner was appointed, having expired on 19th August 1965, the petition has become infructuous. The learned Senior Standing Counsel overlooks the provisions of Section 5(2) of the Act which read:

"Every such notary who wishes to continue to practise after the expiry of the period for which his certificate of practice has been issued under this section shall, on application made to the Government appointing him and payment of the prescribed fee, if any, "be entitled" to have his certificate of practice renewed for three years at a time." (Underlined (here in " ") by us).

From this provision it clearly follows that the petitioner-appellant had a legal right to get his certificate renewed even after 19th of August 1965. Consequently it cannot be said that with the expiry of the petitioner's term on 19-8-1965, he had no longer any interest in the certificate. Inasmuch as the petitioner was entitled to renewal of his certificate even after 19th of August 1965, he has a

complete cause of action to maintain the present writ petition. So long as the order of removal of the petitioner's name from the register maintained u/s 4 of the Act and perpetually de barring him stands the petitioner cannot apply for renewal. We, therefore, overrule this submission of the learned Senior Standing Counsel.

31. The result is that we allow this special appeal, set aside the judgment of Nigam J. dated May 7, 1965, allow writ petition No. 380 of 1964 and quash the order of the State Government removing the name of the petitioner- appellant from the register of notaries maintained u/s 4 of the Act. We, however, leave it open to the State Government to start fresh proceedings against the petitioner-appellant subject to the conditions laid down by us in the earlier part of this judgment. In the circumstances of the case we direct the parties to bear their own costs.