
(1969) 01 AHC CK 0011
In the Allahabad High Court
Case No : Spl. Appeal No. 9 of 1969

State Govt. of Uttar Pradesh

APPELLANT

Vs

Kashi Prasad Saxena

RESPONDENT

Date of Decision : 29-01-1969

Acts Referred:

Legal Practitioners Act, 1879 — Section 13
Notaries Act, 1952 — Section 10

Citation : AIR 1969 All 363

Hon'ble Judges : V.G. Oak, C.J;U.S. Srivastava, J

Bench : Division Bench

Advocate : Chief Standing, for the Appellant;

Final Decision : Dismissed

Judgement

Oak, C.J.—This special appeal arises out of a proceeding under the Notaries Act 1952 (hereinafter referred to as the Act). Kashi Prasad Saxena, respondent, was enrolled as a Notary public in the year 1959 to practise as such at Lucknow. His certificate was renewed for a period of three years with effect from 20-8-1962. One Krishna Chandra, Advocate made a complaint against Kashi Prasad Saxena, Notary public. The State Government referred the complaint for enquiry to the competent authority, namely the District Judge, Lucknow. He framed three charges against Kashi Prasad Saxena and submitted a report that the charges had been proved. On receiving that report from the competent authority, the State Government issued a notification on 11-3-1964 u/s 10 of the Act cancelling the certificate of practice granted to Kashi Prasad Saxena. He was perpetually debarred from practising as a Notary public. Kashi Prasad Saxena filed a writ petition in this Court challenging the State Government's order dated 11-3-1964. That writ petition was dismissed by a single Judge of this Court, but was allowed by a Division Bench in special appeal. The State Government's order dated 11-3-1964 was quashed. Kashi Prasad Saxena's certificate was thereafter renewed. The State Government decided to resume action on the

basis of the original complaint of Krishna Chandra, Advocate. On 3-3-1967 a notice was given to Kashi Prasad Saxena calling his explanation. He submitted an explanation. The State Government was not satisfied with the explanation. On 30-6-1967, the State Government issued another notification u/s 10 of the Act cancelling the certificate of practice granted to Kashi prasad Saxena. It was ordered that his name be removed from the Register of Notaries.

2. Kashi Prasad Saxena filed in this Court another writ petition challenging State Government's order, dated 30-6-1967. This second writ petition has been allowed by a single Judge of this Court He has quashed the State Government's order dated 30-6-1967. The State Government has, therefore, filed the present special appeal.

3. The impugned notification was issued by the State Government u/s 10 of the Act. Section 10 enables the State Government to remove a name from the Register of Notaries. Section 10 of the Act states:--

"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)

(b)

(c)

(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 practise as a notary."

In the instant case the State Government took action under clause (d) of Section 10 of the Act.

4. Rules have been framed under the Act. Rule 13 provides for an enquiry into allegations of professional and other misconduct of a notary.

Sub-rule (1) of Rule 13 states:--

"Whenever there is any allegation of professional or other misconduct on the part of a notary, the appropriate Government may direct an enquiry to be made by the competent authority into the allegations."

5. Annexure 9 to the writ petition is a copy of the Government notification dated 30-6-1967. After narrating the history of the case, the recital in the notification proceeded thus:--

"And whereas, the State Government after considering the explanation of the said Sri Kashi Prasad Saxena, notary, Lucknow. is of the opinion that the said Sri Kashi Prasad Saxena, notary, Lucknow, is guilty of such professional misconduct as renders him unfit to practise as notary."

The question arises whether it was open to the State Government to take action against the respondent on the footing that he has been guilty of such professional misconduct as renders him unfit to practise as a notary.

6. The charges against the respondent have been detailed in the judgment of the learned single Judge. Charge No. 1 was to the effect that the notary made no entry in his register regarding certain affidavits. Charge No. 2 was that none of the four affidavits was stamped with notarial stamp as prescribed by Article 42 of the Stamp Act. Charge No. 3 was that none of the four affidavits was stamped with adhesive stamps in accordance with Sections 10 and 11 of the Stamp Act.

The question arises whether these charges were of such a nature as to lead to the conclusion that the notary was guilty of professional misconduct. According to the plan of Clause (d) of Section 10 of the Act, misconduct can be of two kinds. Some misconduct may amount to professional misconduct. There may be misconduct of another kind. Such misconduct may not amount to professional misconduct. It is clearly implied in the plan of Section 10 of the Act that every irregularity or negligence on the part of a notary would not amount to professional misconduct. Professional misconduct suggests dishonesty or some conduct involving moral turpitude. The charges framed against Kashi Prasad Saxena do not suggest dishonest acts or acts involving moral turpitude,

7. When enquiry was resumed by the State Government against Kashi Prasad Saxena as a result of the proceeding in the previous writ petition, the notice dated 3-3-1967 was issued to the notary. Annexure 7 to the writ petition is a copy of the notice, dated 3-3-1967. That notice ran thus :--

"..... I am directed to send herewith a copy of the report of the Competent Authorityand you are required to submit your explanation in your defence within fourteen days of the receipt of this letter to the Secretary to the Government of U.P., Judicial (A-I) Department"

There was no indication in Annexure 7 that the three charges levelled against Kashi Prasad Saxena might amount to professional misconduct. Nor was there any indication in Annexure 7 that such professional misconduct might render the notary unfit to practise as such.

8. The decision of the Division Bench in the previous writ proceeding is reported in Sri Kashi Prasad Saksena Vs. State of Uttar Pradesh, . The learned Judges observed on page 180 thus:--

"It does not appear that the State Government ever addressed itself to 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 enquiry held against Kashi Prasad Saxena subsequent to that decision is open to similar criticism. In the first place it is difficult to take the view that the

charges framed against Kashi Prasad Saxena constitute professional misconduct. Secondly, the notice dated 3-3-1967 did not give any hint that the charges might amount to professional misconduct. Nor was there any indication in that notice that those charges were of such a nature that, if proved, Kashi Prasad Saxena was likely to be declared unfit to practise as a notary. In view of these defects in the proceedings, the notification dated 30-6-1967 was rightly quashed by the learned single Judge.

9. The special appeal is dismissed.