
(2012) 05 KL CK 0016
In the High Court Of Kerala
Case No : W.A. No. 346 of 2010

State of Kerala and others

APPELLANT

Vs

Sreedharan Nair, G

RESPONDENT

Date of Decision : 02-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 139
Criminal Procedure Code, 1973 (CrPC) — Section 297
Evidence Act, 1872 — Section 10, 58, 78, 85
Notaries Act, 1952 — Section 10, 10(d), 4, 8, 8(1)(a)
Stamp Act, 1899 — Section 10, 22

Citation : AIR 2013 Ker 1 : (2012) 2 ILR (Ker) 643 : (2012) 2 KLJ 734

Hon'ble Judges : Manjula Chellur, Acting C.J.; P.R. Ramachandra Menon, J

Bench : Division Bench

Advocate : Girija Gopal, for the Appellant; S. James Vincent, for the Respondent

Final Decision : Allowed

Judgement

Ramachandra Menon, J.—Does it require any "wrongful intention or a corrupt motive" in connection with any act/omission, to constitute any delinquency in respect of Section 8 (1) (a) of the Notaries Act to remove the name of a Notary from the Register maintained u/s 4, as provided u/s 10 (d) of the Act, read with Rule 13 (12) (b) of the Notaries Rules, 1956, is the primary question. A Notary who is bound to discharge the notarial acts as per the specific provisions of the Act/Rules, if attests an affidavit without signature of the deponent therein, certifying that the deponent had subscribed his/her signature in his presence, will it constitute any misconduct/professional misconduct to be proceeded with, is the specific point to be answered. Whether the law declared by a learned Single Judge of this Court in Mohandas v. State of Kerala 2001 (3) KLT 174 that, in order to characterise certain act or omission as misconduct/professional misconduct, there must be "wrongful intention or corrupt motive", to be in conformity with the statutory prescription, has been correctly laid down, is yet another question to be answered. This appeal has been preferred by the State

and its officers, being aggrieved of the judgment in W.P.(C) No. 28720 of 2009, whereby the punishment imposed upon the respondent/writ petitioner barring from pursuing his practice as a Notary, in view of the proven misconduct and the notification issued in this regard, has been intercepted by the learned Single Judge, placing reliance on the decision cited supra and also that of a Division Bench of the Allahabad High Court in Government of Uttar Pradesh v. Kashi Prasad AIR 1969 Allahabad 363 wherein it was held that, every irregularity or negligence on the part of a Notary would not amount to professional misconduct.

2. The sequence of events is as follows: The respondent/writ petitioner is a lawyer, practicing mainly in the Courts of Thiruvananthapuram District, ever since from 13-11-1971. He was appointed as a Notary by the State Government on 14-3-1995. The registration as Notary was being renewed from time to time, but when he applied for renewal in the year 2005, the application was rejected, which led to filing of W.P. (C) No. 9931 of 2005. The said case was disposed of as per Ext. P-1 judgment, quashing the impugned order (Ext. P-10 therein) and directing the Principal Secretary to the Department of Law to reconsider the matter, as specified, in relation to the restriction of number of Notaries and renewal of certificate of practice. Pursuant to the said verdict, the matter was considered and the respondent was given renewal as per Ext. P-2, for a further period of five years from 16-12-2006 and this was notified as prescribed, vide Ext. P-3 notification.

3. While so, the respondent/writ petitioner was served with Ext. P-4 notice dated 17-1-2008 by the Law Secretary of the State, seeking for his explanation in respect of some serious misconducts pertaining to notarisation of documents. Writ Petitioner was also served with copies of relevant materials, particularly, the affidavit of one Mr. Francis James Chacko called Francis James dated 21-12-2007 (which was allegedly attested and notarised by the respondent/writ petitioner without any signature of the deponent), a copy of the communication dated 9-1-2008 preferred by the Passport Officer enclosing the aforesaid affidavit; a similar affidavit dated 31-12-2007 of one Ms. Jisha Das showing the signature/ attestation of the respondent as a Notary, affixing notarial stamp and seal (without any signature of the deponent) and the explanation of Ms. Jisha Das submitted before the Passport Officer, conceding that she was unaware of the procedure.

4. On receipt of the above notice, the writ petitioner preferred Ext. P-5 explanation, stating that, in the case of Mr. Francis James Chacko, it was signed on the second page. In respect of Ms. Jisha Das, though he had insisted requirement of the presence of the deponent, the mother of the deponent, who was personally known to the writ petitioner conveyed that the daughter wanted to attend classes on that day and agreed to sign the affidavit before submitting the same to the Passport Officer, under which compelling circumstance, he attested the same without signature of the deponent, as he used to have such course in the case of reliable persons, close relatives, friends and persons

holding high office. It was further stated that the writ petitioner never did anything for material gains and he actually knew that, what he did was not correct, simultaneously assuring that he would not do similar things in future. The reply preferred by the writ petitioner was not satisfactory to the concerned authority, who issued Ext. P-6 show cause notice, pointing out that, the writ petitioner behaved in an irresponsible and improper manner while attesting an important document like affidavit on oath. Explanation, if any, was called for, why disciplinary action as contemplated under the relevant provisions of law should not be taken against him.

5. The writ petitioner submitted Ext. P-7 explanation, virtually reiterating the contents of Ext. P-5 and adding that the show cause notice was defective on many a count, it was vague and further that it was not in accordance with law. The writ petitioner also contended that Rule 13 of the Notary Rules was not applicable to his case and that the allegation did not constitute any professional or other misconduct. It was stated that every irregularity or negligence would not amount to professional misconduct, which on the other hand required to have some dishonesty or some other instance involving moral turpitude, as one of the ingredients, which was conspicuously absent. Yet another contention was that the complaint preferred by the Passport Officer was not in the prescribed format contemplated under Rule 13 (1) and the Passport Officer could not be said to be a "complainant"; to sustain the proceedings. Something more was added with regard to the alleged corruption, malpractices and malfunctioning of the Passport Office. The writ petitioner was given an opportunity of hearing vide Ext. P-10 and after considering the facts, figures and relevant provisions of law, Ext. P-11(a) order was passed by the competent authority on 19-9-2009 arriving at the guilt of the writ petitioner, deciding to cancel the Certificate of Practice and perpetually debarring him from practising as a Notary. This was notified vide Ext. P-11 notification dated 19-9-2009, as prescribed, which made the writ petitioner to approach this Court challenging the entire proceedings by filing the writ petition.

6. The Certificate of Practice of another lawyer by name M.P. Sreedharan Nair was also cancelled and notified by the State, almost under the similar circumstances, and this was challenged by the aggrieved party by filing W.P.(C) No. 28140 of 2009. Both the writ petitions were considered together and the learned Judge observed that there was no case for the State/ competent authority that the action/omission on the part of the writ petitioners was with a wrongful intention or corrupt motive to constitute the professional misconduct, so as to sustain the punishment imposed. Based on the decision in Mohandas's case (cited supra) and that of a Division Bench of the Allahabad High Court in AIR 1969 Allahabad 363 (cited supra), the learned Judge observed that, the writ petitioners were not called upon to meet any charge, that they had acted with dishonest intention or with a conduct involving moral turpitude. It was observed that there was no allegation that the writ petitioners had attested affidavits even before the deponents affixed their signature with a wrongful intention or corrupt motive; thus holding that dishonesty or misconduct involving moral turpitude

was to be proved and that, apart from the solitary act of misconduct which formed the foundation for the impugned order, no other previous instance of misconduct in discharging of their duties was placed on record. The impugned orders dated 19-9-2009 were set aside, declaring that the writ petitioners could be deemed as under suspension from 19-9-2009 till date and in turn, the State/department was directed to take necessary steps to restore their names in the Register of Notaries w.e.f. 3-12-2009 and revalidate their certificates, which is under challenge in this appeal preferred by the State.

7. The learned Government Pleader submits that the finding and reasoning given by the learned Single judge is not in conformity with the relevant provisions of law and that the learned Judge is not justified in simply following the decision rendered by another learned Single Judge of this Court in Mohandas's case (cited supra), for the reason that, the said decision does not reflect the correct position of law. It is added that the reliance placed on the decision rendered by the Division Bench of the Allahabad High Court in AIR 1969 Allahabad 363 (cited supra) is not correct, as the dictum therein is only that, every instance of negligence/irregularity in discharging the notarial activity will not constitute a misconduct; with regard to which proposition, there is no dispute at all. In fact, the dispute is more in respect of attestation by a Notary, affixing notarial stamp and seal, without any signature or presence of the deponent before the Notary, who still certified that it was signed before him. Does it not amount to a misconduct/professional misconduct, is the point; which according to the State, can be answered only in the positive. The learned Government Pleader submits that the law has not been correctly declared by the learned Single Judge in Mohandas's case (cited supra) and existence of wrongful intention/motive is not mandatory even in criminal cases. The learned Government Pleader also places reliance on the decision rendered by the Apex Court in Dy. General Manager, Redesignated as Dy. Director, ISB and Others Vs. Sudarshan Kumari and Others, contending that the verdict passed by the learned Single Judge is liable to be intercepted by this Court

8. Sri S. James Vincent, the learned counsel for the respondent/writ petitioner submits that the finding and reasoning given by the learned Single Judge is perfectly within the four walls of law. The contentions raised in the writ petition and placed before the learned Single Judge are sought to be reiterated, of course, placing reliance on the decision rendered by this Court in Mohandas's case (cited supra) and on AIR 1969 Allahabad 363 (cited supra), besides seeking to explain the meaning of term "misconduct"/"professional misconduct" with reference to Black's Law Dictionary, Wharton's Law Lexicon etc. and referring to some other precedents in this regard.

9. So as to have an effective analysis of the issue, it is necessary to go through the Scheme of the Notaries Act, 1952. Among the various functions of Notaries mentioned u/s 8 of the Act, clause (e) of sub-section (1) refers to the act of administering oath to or taking affidavit from any person. Sub-section (2) says

that no act specified in sub-section (1) shall be deemed to a notarial act, except when it is done by a Notary under signature and official seal. Section 4 deals with the necessity to maintain "Register" of Notaries appointed by the appropriate Government and removal of the names from the Register is dealt with u/s 10. Clause (d) of Section 10 says that the name of a Notary could be removed, if he has been found, upon enquiry in the prescribed manner, to be guilty of some professional or other misconduct as in the opinion of the Government renders him unfit to practise as Notary.

10. Rule 13 of the Notaries Rules, 1956 refers to the enquiry into the allegation of professional or other misconduct of a Notary. This rule enables the appropriate Government to conduct an enquiry into the misconduct of the Notary, either "suo motu" or on a complaint received in Form XIII. The functions of Notary under the Act are very significant and specific. By virtue of such powers, even some of the duties of Sub Registrars under the Registration Act are made possible to be done through Notaries. The role of Notary is very pivotal and significant, since the notarial act is recognized and accepted as a reflection of the true state of affairs in the course of proceedings under various other statutes/enactments. Section 297 of the Code of Criminal Procedure, 1973 stipulates under sub-section 1 (c), that the affidavits to be used before any Court under the said Code may be sworn or affirmed before any Notary appointed under the Notaries Act, 1952. Similarly, Clause (aa) of Section 139 of the Code of Civil Procedure, 1908 recognizes "oath on affidavit" to be administered by any Notary appointed under the Notaries Act, 1952. Section 78 of the Indian Evidence Act, 1872 also refers to the role of a Notary with regard to the proof of certain official documents. u/s 85 of the very same enactment, it is stipulated that, Court shall presume that every document purporting to be a Power of Attorney and executed before and authenticated by a Notary, was so executed and authenticated.

11. As observed by a learned Judge of the Karnataka High Court in *V. R. Kamath v. Divisional Controller, KSRTC* AIR 1997 Karnataka 275, when a Notary administers an oath/affirmation, he is mandatorily required to enter the name and particulars as prescribed and obtain the signature of the deponent in the relevant Register, which is an integral part of the act of attestation or act of administering oath/affirmation. It has been further held in the said verdict that, making endorsement relating to administration of oath/affirmation, in the absence of a party, is similar to recording affidavit in the absence of a witness, adding that, such things should not happen and cannot be permitted to happen. It has been further observed in paragraph 11, that as the concerned affidavit (verifying the writ petition) was signed by some one other than the actual party concerned, it had to be held that, the writ petition itself was defective.

12. Whether a defect of the above nature could be rectified by permitting the party to withdraw the affidavit and replace the same by a proper one, came up for consideration before the Apex Court in *Dy. General Manager, Redesignated as Dy. Director, ISB and Others Vs. Sudarshan Kumari and Others*, whereby it was held

that the concerned High Court was not justified in permitting/giving liberty to withdraw the writ petition and to file another writ petition on the same cause of action. Referring to the scope and intention of 10 (d) of the Notaries Act, the Apex Court observed that the misuse of licence granted to a Notary, who issues false attestation and indiscriminately attests affidavits to be filed by the party who has not been properly identified, definitely constitutes "misconduct" contemplated therein and hence the Registry was directed to issue notice to the concerned Notary to show cause, why he should not be prosecuted and punished for attesting false impersonators and why his licence should not be cancelled. The factual position involved in the present case has to be considered and analysed in the above background.

13. Respondent/writ petitioner has admitted the insinuation made against him to the extent that the concerned affidavit was signed/attested by him subscribing his signature with seal, also affixing notarial stamp, though it did not bear the signature of the deponent. The explanation offered in Ext P-5 was that the mother of the deponent knew him very well for long, who requested to have the affidavit attested. According to the respondent/writ petitioner, even though he insisted for the presence of the deponent, it was replied by her mother that the deponent wanted to attend the college and agreed to have it signed before submitting the same to the passport office. The explanation as contained in paragraph 5 is relevant, which is extracted below:

Regarding the unsigned affidavit of one Jisha Das, involved here. Her mother knows me for long wanted an affidavit from me. I insisted the requirement of the presence of the deponent. As her daughter wanted to attend the college; on the day, she agreed to sign the affidavit before submission of the same to the passport office deponent omitted to sign not deliberately but due to ignorance as stated in her submission to the Passport Officer dated 4-1-2008 which was sent along with the complaint. I am 36 years of practice as Advocate in the Thiruvananthapuram courts. Due to several compelling reasons, I was forced to attest affidavit of reliable persons like friends, relatives sick and persons holding high office etc. on condition to sign by them. In all cases, they would sign also. Normally these affidavits are intended for their personal needs and not for using any conflicting interests. Here, due to the ignorance of the deponent aged only 21, failed to sign, which is made use by the Passport Officer against me. I fully understand the seriousness of the affidavits to be signed by the deponents. In some cases, I used to do the same as stated above, not motivated by any undue material gain, but only with a view to help persons. In many cases, I used to attest without receiving fees even, with the obligation of respecting or considering persons. So far no complaints against me by the persons who secured services from me. Hence, the Passport Officer cannot be said to be a complainant, as he had not obtained any services from me. I never did anything for any material gain. Strictly speaking, what I did is not correct. I know it fully. Due to some compelling exigencies as stated above, I am forced to do such acts, that too with good faith and with a view to help people. Hereafter, I assure your

honour that I shall not do similar things in future.

But when the writ petition was filed, the line of defence was something different, as contained in paragraph 2, which is extracted below:

2. He was re-appointed for a term of five years by Notification No. 6513/H4/2007/LAW dated 29-9-2007, a true copy of which is produced herein and marked as Exhibit P-3. On 31-12-2007, by an inadvertent oversight, the petitioner signed an affidavit before it was signed by the deponent, Smt. Jisha Das, who, and whose parents, were known to the petitioner for a long time. It so happened that the affidavit was kept on the table and he had left to attend the court, but his Clerk permitted the deponent to take away the affidavit on the assumption it was complete, without seeing that it was signed by the deponent.

14. On a comparison of paragraph 5 of Ext. P-5 and paragraph 2 of the writ petition, it is evident that the respondent/writ petitioner concedes that the affidavit was attested by him without the deponent being present before him and without any signature of the deponent in the affidavit. The version in paragraph 2 of the writ petition is that, it was only an "oversight" and that the respondent was hurriedly proceeding to the Court, leaving the affidavit on the table, but the clerk permitted the deponent to take it away on the assumption that it was complete, without ensuring that the same was signed by the deponent. This is quite different from the version in Ext. P-5, where it is conceded that the deponent was never present before him. This by itself shows that the respondent/writ petitioner has no consistent case at all. In any view of the matter, the fact remains that the alleged attestation/subscribing signature with seal and affixing notarial stamp, without the signature of the deponent on the affidavit, stands admitted and this admitted fact does not require to be proved any further, by virtue of Section 58 of the Evidence Act.

15. With regard to the scope and sustainability of Ext. P-11/P-11(a), the learned Single Judge intercepted the same, observing that the act on the part of the respondent/writ petitioner did not constitute professional/other misconduct, as there was no "wrongful intent" or "corrupt motive", without which the action could not have been sustained in the light of the ruling reported in 2003 (1) KLT 174 (cited supra) and AIR 1969 Allahabad 363 (cited supra).

16. The case dealt with in 2003 (1) KLT 174 (cited supra) stands on a different footing. It was a case where, the affidavit was signed by the deponent in presence of the Notary, who attested the same, affixing notarial stamp and seal. The deponent had also subscribed her signature to the relevant Register (maintained as prescribed under the relevant Rules) and left the place, though the party who accompanied the deponent was waiting to obtain the receipt of payment. When the receipt was prepared, the receipt book was signed, not by the deponent, but by the companion and this fact was conceded, when confronted with the difference in signature of the deponent in the Register and the Fee receipt book. Observing that this was a professional misconduct, the

licence of the petitioner to practise as a Notary was suspended for a period of one year, which was subjected to challenge before this Court, contending that it was not an instance of misconduct, that neither the Act nor the Rules prescribes that the deponent herself had to sign the "fee receipt book" as well and that the mandatory requirement was only to have the signature in the relevant "Register", after executing the document before the Notary and the attestation thereof. The learned Judge observed that the allegation of forgery in the fee receipt book was quite wrong and unfounded, as forgery presupposed fraudulent and dishonest intention on the part of the person committing the act, which was conspicuously absent in the said case. The fee receipt book was meant for disclosing the amounts received by the Notary and also for the purpose of proper accounting. The case projected by the writ petitioner/Notary in his explanation was that, the party who signed the Register, against the relevant entry (Entry Nos. 155 and 156 dated 23-9-1997), was a lady who was in the advanced stage of pregnancy; that after signing the affidavit and the Notarial Register, she went down the stairs of his office, while the petitioner was engaged in preparing the receipt. The person, who accompanied the lady was waiting and that in such an exhausted condition, instead of asking the lady to climb the steep staircase once again, the writ petitioner obtained the signature of her companion in the receipt book. Similarly, the explanation regarding Entry No. 45 dated 21-3-1997 was that, though the signature in the Register and the receipt book were slightly different, it was signed by the same party. The above plea was accepted, in so far as, no law was brought to the notice of the Court to hold the contrary, that fee receipt book also should contain signature of the deponent. It was further observed that the respondents did not have a case that the signature in the receipt book was not that of the person accompanying the executant. Accordingly, making relevant observations in paragraph 8, it was held in paragraph 9, that the Court was of the view, that the respondents were not justified in proceeding against the petitioner and in issuing the order suspending him from practising as Notary for one year.

17. The observations of the learned Judge in paragraphs 10 and 11 in support of the above finding are also relevant, which are extracted below:

10. It is necessary to consider another aspect also. The relevant provisions of the Act and the Rules have already been referred. The Act does not specifically provide for maintaining any register by a Notary appointed under the Act. However, S. 15 of the Act which confers power on the Central Government to make rules to carry out the purposes of the Act, inter alia, provides for the forms of registers and the particulars to be entered therein [R. 15 (2)(e)]. R. 11 of the Rules which deals with the transaction of business by a Notary provides for the forms and registers to be maintained. Sub-r. (2) provides for maintaining a Notarial Register in Form XV. Sub-r. (9) provides that every Notary shall grant a receipt for the fees and charges realised by him and maintain a register showing all the fees and charges realised. Here it must be noted no register for the said purpose is prescribed. In the absence of any prescribed form what is required

under the Rules is only to issue a receipt for the fees and the charges realised by the notary and to maintain the register showing the charges realised. This has been done by the petitioner. There is no case that the petitioner did not comply with the above. The rule does not provide for getting the signature of the executant of the affidavit in the register maintained under R. 11 (9) of the Rules unlike in Form XV prescribed under sub-r. (2) of R. 11 which provides for obtaining the signature of the concerned person.

11. Here it must be noted that Form XV Register is a statutorily prescribed one and the said register has to be scrupulously maintained, for in case of any dispute regarding the notarial acts done in any proceedings before a court of law or any other authorities the notarial register can be summoned or authenticated extracts of the register can be obtained and produced in evidence. So if any irregularities are committed in maintaining the said register such act will prejudicially affect the party to the notarial act or other third parties. The same may amount to a professional misconduct. But so far as the register contemplated under sub-r. (9) in the absence of prescription regarding the signature of the executant of the document the said register does not become part of the notarial act. Nobody is being prejudicially affected for not obtaining the signature of the executant in the receipt book. The said register is required to be maintained only to verify whether the notary has realised any fees in excess of what is provided under R. 10 of the Rules.

From the above, it is quite evident that the finding is well supported by the reasons stated and as such, the further observations with regard to meaning of the term "misconduct" as given in the different Dictionaries and the analysis given in paragraphs 14 and 15 were not essential. But since there is a specific reference to the nature of misconduct, so as to sustain the action u/s 10/Rule 13, it becomes necessary for this Court to examine the rationale in this regard as well.

18. The term "misconduct" in its general parlance denotes something unbecoming of the person in doing or abstaining from doing something which is reasonably expected of him. It is a relative term, the gravity of which may differ from person to person or from case to case, depending upon the facts and circumstances. It is not something which can be kept or analysed in water-tight compartments or within the hold of specified parameters. The more relevant or crucial question in the present case is, whether any "wrongful intention or corrupt motive" should be there, to constitute a "misconduct" on the part of a person practising as "Notary", or is not enough that such person has pursued some act unworthy of continuing in such profession, by virtue of such conduct.

19. It is settled law that "motive" is irrelevant, even in criminal cases and it can only be a supporting/connecting link to establish the guilt. Coming to the field of disciplinary proceedings, in the words of his Lordship Justice V. R. Krishna Iyer, (as he then was), there is "no allergy even to "hear-say evidence" in the disciplinary proceedings", provided it has a reasonable nexus and credibility and

that preponderance of probability is enough to sustain the charge, as made clear by the Apex Court in *State of Haryana and another and Rattan Singh* 1982(1) L.L.J. 46.

20. "Wrongful intention or corrupt motive" cannot be an essential ingredient to constitute a misconduct, which can be explained in the following terms:

Let us assume the case of a well-qualified and well-trained Nurse, who administers an "intramuscular" injection by mere inadvertence, as "intravenous", thereby taking the medicine directly to the heart and causing instantaneous death of the patient. There is no wrongful intention or corrupt motive at all, but such person cannot but be proceeded against serious misconduct, which very much relates to her/his commitment and duty.

Similarly, a Station Master of a Railway Station waves a "green flag" to the incoming train, permitting to come to the same railway track, without noting another train halted at some distance on the same track, causing the former train to come and collide with the halted train, resulting in loss of lives and limbs of several persons or damage to property. Here also, there is no wrongful intention or any wrong motive, but the seriousness of the misconduct is glaring and liable to be acted upon.

21. Coming to the nature of misconduct in the instant case, the learned Single Judge has placed reliance also on the decision rendered by a Division Bench of the Allahabad High Court in AIR 1969 Allahabad 363 (cited supra), highlighting the necessity to have the ingredients of wilful intention/ wrong motive. In AIR 1969 Allahabad 363 (cited supra), the specific charges levelled against the concerned Notary, as dealt with in paragraph 6, were to the effect that the Notary had not made any entry in the Register regarding certain affidavits; that none of the four affidavits was stamped with notarial stamps as prescribed under Article 42 of the Stamp Act and further that, none of the four affidavits was stamped with adhesive stamps in accordance with Sections 10 and 22 of the Stamp Act. It was with reference to the factual position dealt with by the learned Single Judge, that the Division Bench observed, that all irregularities or instances of negligence cannot constitute professional misconduct, to sustain the action u/s 10/Rule 13, except the one as specified u/s 10 (d) referring to such misconduct as in the opinion of the Government renders him unfit to practise as Notary. With regard to the observations of the Bench in paragraph 6, that, to constitute a professional misconduct, it should suggest dishonesty or some conduct involving moral turpitude, we respectfully disagree to accept the said proposition, for the reasons stated hereinbefore and also for the reason that such interpretation will amount to adding something more into the Statute, when Section 10 (d) of the Act only prescribes that the action/omission should be one, as in the opinion of the Government render him unfit to practise as Notary. The provision is wide enough to include both "professional misconduct" as well as such other "misconduct" as in the opinion of the Government renders the person unfit to practise as a Notary. When the provisions in the statute are quite unambiguous,

it is not for the Court to rewrite/add/ delete something else; more so, applying the principles of "casus omissus" as explained by the Apex Court time and again, including the one in Smt. Kanta Devi Vs. Union of India (UOI) and Another, .

22. Coming to the instant case, the learned Single Judge has observed in paragraph 8, that, apart from the solitary act of misconduct which forms the foundation for the impugned orders, no other previous instance of misconduct in discharging of duties has been placed on record or referred to therein. This observation also does not appear to be fully correct, in view of the materials on record. On serving Ext. P-4 notice dated 17-1-2008 seeking for explanation, the petitioner preferred Ext. P-5 reply, virtually admitting the attestation made by him, affixing the notarial stamp and seal on the concerned affidavit, without having it signed by the deponent, who had proceeded to attend the college on that day. Such an act was done by the writ petitioner on the request of the mother of the person concerned, who was stated as having acquaintance with the petitioner for quite long. Such signing of affidavits by the writ petitioner in his capacity as Notary, discharging the notarial act, without insisting the presence of the deponent and without signature on such affidavit/documents, as a matter of Course (in respect of the persons having acquaintance with the writ petitioner), is well conceded in paragraph 5 of Ext. P-5, the relevant portion of which is extracted below:

Due to several compelling reasons, I was forced to attest affidavit of reliable persons like friends, relatives sick and persons holding high office etc. on condition to sign by them. In all cases, they would sign also. Normally these affidavits are intended for their personal needs and not for using any conflicting interests. Here, due to the ignorance of the deponent aged only 21, failed to sign, which is made use by the Passport Officer against me. I fully understand the seriousness of the affidavits to be signed by the deponents. In some cases, I used to do the same as stated above, not motivated by any undue material gain, but only with a view to help persons.

From the above, it is crystal-clear that, it was never a case of solitary instance, but was a matter of course, as far as the writ petitioner was concerned.

23. Whether the writ petitioner was having any material benefit or was it due to some philanthropic exercise is not the concern of the Court, more so, when the writ petitioner, who is given licence to practise as "Notary" is vested with certain functions/duties as prescribed u/s 8 of the Notaries Act. Such documents are to be made use of/accepted by various authorities in different contexts, by virtue of relevant provisions of law, as discussed herein before, particularly with reference to Section 297 of the Code of Criminal Procedure, 1973, Clause (aa) of Section 139 of the Code of Civil Procedure, 1908, Section 78 of the Indian Evidence Act, 1872 etc. It was in the above circumstance, that the entire materials were considered by the Government, when it was found in the opinion of the Government that the writ petitioner was guilty of the "misconduct" of such extent so as to render him unfit to practise as a "Notary", as contemplated u/s

10 (d) of the Notaries Act. In the above facts and circumstances, we find that the finding and reasoning given by the learned Single Judge do not reflect the correct position of law. The judgment is set aside and Ext P-11/P-11(a) stand restored. The observation in Mohandas's case (cited supra) to the effect that there must be a "wrongful intention or corrupt motive" to sustain the finding on "misconduct" u/s 10 of the Notaries Act is not correct and stands overruled.

The Writ Appeal is allowed. No cost.