
(2011) 07 CHH CK 0073
In the Chhattisgarh High Court
Case No : Writ Petition C. No. 6594 of 2008

Subhro Chakravorty

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Notaries Act, 1952 — Section 15, 4, 5(2)
Notaries Rules, 1956 — Rule 3, 4, 6, 6(1), 6(2)

Citation : AIR 2011 Chh 163 : (2011) 3 CG.L.R.W. 40 : (2011) 4 MPJR 56

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—Heard learned Counsel for the parties.

2. By this petition, the Petitioner seeks to challenge the legality and validity of the order dated 10-10-2008 (Annexure - P/1) passed by the Respondent No. 2 whereby the Respondents No. 3 to 6 have been decided to be appointed as Notaries for the District Headquarter, Durg.

3. Learned Counsel appearing for the Petitioner submits that the Petitioner submitted his candidature for appointment as Notary Public, pursuant to the advertisement. The committee of two senior Judges, constituted by the District & Sessions Judge, Durg, submitted a panel list wherein the name of the Petitioner was recommended. Accordingly, the District Judge sent the recommendation to the Respondent No. 1. However, the Respondent No. 1 acting in an illegal manner directed the District Judge to forward all the applications. Accordingly, all the applications were forwarded to the Respondent No. 1. Thereafter, the Respondent No. 2 issued the impugned order dated 10-10-2008, whereby, the Respondents No. 3 to 6 were appointed as Notaries notwithstanding the fact that there was no recommendation in their favour by the competent authority i.e. District Judge in the instant case. The said appointments were absolutely illegal, arbitrary and contrary to the statutory scheme. Hence, this petition.

4. The State in its return contended that the names of the Respondents No. 3 to 6 were not included in the panel of 14 Advocates, whose names were recommended initially. However, in reply to paras 8.10 & 8.11, the State contended that the appointment of Notaries is a matter of discretion of the State Government. Even otherwise, the applications of the Respondents No. 3 to 6 were complete in all respects and the State has not committed any illegality in granting appointments.

5. In recommendation dated 6/7.8.2008, names of Smt. Laxmi Singh and Smt. Laxmi Sahu, were recommended against woman category. Names of Shri Subhro Chakraborty (the Petitioner) and Shri Manik Mishra, were recommended against disability category. Names of Shri Gorelal Thakur and Shri Daneshwar Singh Dhruw were recommended against Schedule Tribe category. Names of Shri Santram Patel, Shri Dhanushram Dewangan, Shri Bharatdas Vaishnav and Shri Domar Singh Sahu were recommended against the post reserved for Other Backward Class and names of Shri Ajay Kumar Mishra, Shri Suryaranjan Agrawal, Shri Santosh Kumar Goutam and Shri Devendra Kumar Yadav were recommended against one post of general category. The names of Respondents No. 3 to 6 did not find place in the panel recommended by the District & Sessions Judge, Durg. Thereafter, on 5.9.2008 (Annexure P-7), the District & Sessions Judge, Durg, was asked to submit all the applications received for appointment of notaries against five posts in Durg. A list was submitted on 27.9.2008 without any recommendation. Now the question arises as to whether without recommendation of the District & Sessions Judge, the State can appoint the notaries on scrutiny. The first recommendation was made on the basis of the report of the committee of two Judges, wherein, indisputably the Respondents No. 3 to 6 were not recommended.

6. Rule 4 of the Notaries Rules, 1956 (for short "the Rules, 1956"), provides for scrutiny of applications for appointment as Notaries through the District Judge or the presiding officer of the Court or Tribunal and Rule 7 of the Rules, 1956, provides for recommendation of the competent authority i.e. the District & Sessions Judge of the concerned District. Rule 4, 7 & 8 of the Rules, 1956, reads as under:

4. Application for appointment as a notary -(1) A person may make an application for appointment as a notary (hereinafter called "the applicant"), through the concerned District Judge or the Presiding Officer of the Court or Tribunal where he practices as an Advocate, in the Form of a memorial addressed to such officer or authority (hereinafter referred to as the "competent authority") of the appropriate Government as that Government may, by notification in the Official Gazette, designate in this behalf.

(2) The memorial shall be drawn by a person referred to in Clause (a) of Rule 3 in accordance with Form I and by a person referred to in Clauses (b) and (c) of the said rule in accordance with Form II.

(2A) A person applying in Form II for appointment as a notary may submit the memorial direct to the Competent Authority of the Appropriate Government.

(3) The memorial of a person referred to in Clause (a) of Rule 3 shall be signed by the applicant and shall be countersigned by the following persons:

(a) a Magistrate,

(b) a Manager of a nationalised bank;

(c) a merchant; and

(d) two prominent inhabitants of the local area within which the applicant intends to practise as a notary.

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

(2) The competent authority shall also make his recommendation in the report under Sub-rule (1) regarding the persons by whom the whole or any part of the costs of the application including the cost of hearing, if any, shall be borne.

(3) In making his recommendation under Sub-rule (1), the competent authority shall have due regard to the following matters, namely:

(a) whether the applicant ordinarily resides in the area in which he proposes to practise as a notary;

(b) whether, having regard to the commercial importance of the area in which the applicant proposes to practise and the number of existing notaries practising in the area, it is necessary to appoint any additional notaries for the area;

(c) whether, having regard to his knowledge and experience of commercial law and the nature of the objections, if any, raised in respect of his appointment as a notary, and in the case of a legal practitioner also to the extent of his practise, the applicant is fit to be appointed as a notary;

(d) where the applicant belongs to a firm of legal practitioners, whether, having regard to the number of existing notaries in that firm, it is proper and necessary to appoint any additional notary from that firm; and

(e) where applications from other applicants in respect of the area are pending, whether the applicant is more suitable than such other applicants.)

8. Appointment of a notary -

(1) On receipt of the recommendations of the interview board, the appropriate Government shall consider the recommendation and shall -

- (a) allow the application in respect of the whole of the area to which it relates; or
- (b) allow the application in respect of any part of the area to which it relates; or
- (c) reject the application;

and shall also make such orders as the government thinks fit regarding the persons by whom the whole or any part of the costs of the application including the cost of hearing, if any, shall be borne.

(2) An applicant shall be informed of every order passed by the appropriate government under Sub-rule (1).

(3) Any applicant whose application has been rejected or allowed in respect of only a part of the area to which it relates or against whom an order as to costs has been made under Sub-rule (1) may, within sixty days of the date of the order apply to the appropriate Government for reviewing the order and that Government may, after making such further inquiry as it thinks fit pass such order as it considers necessary.

(4) Where the application is allowed, the appropriate Government shall appoint the applicant as a notary and direct his name to be entered in the Register of Notaries maintained by that Government u/s 4 of the Act and issue to him a certificate on payment of prescribed fees authorizing him to practise in the area to which the application relates or in such part thereof as the appropriate Government may specify in the certificate, as a notary for a period of five years from the date on which the certificate is issued to him.

(4A) The appropriate Government may on and after the ninth day of May, 2001, appoint notaries in a State or Union Territory, as the case may be, not exceeding the number of notaries specified in the Schedule:

Provided that the number of notaries whose certificate of practice has been renewed under Sub-section (2) of Section 5 of the Act shall be included in the total number of notaries appointed for the purpose of counting the total number of notaries specified in the Schedule.

Provided further that if in a State or Union territory the number of notaries appointed before the ninth day of May, 2001, exceeds the number of notaries specified in the Schedule, such notaries shall continue to be so appointed in that State or Union territory, as the case may be.;

(5) The Register of Notaries shall be in Form IIA and the certificate of practice shall be in Form IIB.

7. From bare perusal of the relevant provisions of law, it is clear that the applications for appointment of notary has to be made through the concerned District Judge, in the Form of memorial addressed to such officer or authority of the appropriate Government. Under provisions of Rule 7, the competent authority i.e. District Judge in the instant case, after holding such enquiry shall

prepare a panel of applicants with recommendation for appointment on the post of notary by the appropriate Government.

8. In the case on hand, the District Judge, Durg, in order to have proper scrutiny appointed a committee of two Additional District Judges for scrutinizing all the applications received by him. The committee prepared panel and the same was sent to the State Government for appointment of notary from the panel. It is not a case, that the State Government wanted fresh scrutiny of the applications or preparation of the fresh panel on account of any grievance or complaint by the applicants, but the State Government asked the District Judge to send all the applications by communication dated 5.9.2008 (Annexure P-7). Thereafter, all the applications were sent without making any recommendation. It is not disputable that the name of the Petitioner was duly recommended in the panel for appointment as notary and the names of Respondents No. 3 to 6 was never recommended by the committee or the District Judge for appointment. Thus, the due process before appointing the notaries under provisions of law have not been followed. The compliance of the due process is a substantial requirement to ensure transparency and to weed out nepotism and other irregularities.

9. The contention of learned Counsel appearing for the State that the State has discretion to appoint the notary is misplaced. The State can exercise the discretion only among the applicants in the panel list, who have been recommended for appointment not beyond that. Exercise of discretion, should not be arbitrary, discriminatory and injudicious. On perusal of the documents, it is not found that the State Government had exercised his discretion judiciously and had chosen Advocates on the post of notaries only from the panel of Advocates who were recommended by the competent authority i.e. the District Judge for appointment. Thus, the entire exercise is arbitrary, discretionary and illegal.

10. The Supreme Court in S.D. Chaddha v. State of U.P. and Ors. has held as under:

The District Judge shall independently consider the applications in accordance with Rules 6 and 7 of the Notaries Rules, 1956 framed u/s 15 of the Notaries Act, 1952 and make appropriate recommendations to the Government

11. On perusal of the impugned order, it is apparent that the appointment of Notaries has been done on the instructions of the State Government without following the due process of law. All the appointments are illegal and vitiated.

12. For the reasons mentioned hereinabove, the appointment of Respondents No. 3 to 6 as notaries by the impugned order dated 10.10.2008 (Annexure P-1) are quashed. Liberty is reserved to the State Government to invite fresh applications to fill up the vacancies available for appointment of notaries, in accordance with law, following the legal procedure, as provided under the provisions of Rules 4, 7 & 8 of the Rules, 1956.

13. As a result, the writ petition is allowed to the above extent. No order as to costs.