
(2010) 02 RAJ CK 0064
In the Rajasthan High Court

Tarun Mehta and Others

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 22-02-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Negotiable Instruments Act, 1881 (NI) — Section 138
Notaries Act, 1952 — Section 10, 15, 3, 4, 5

Citation : AIR 2010 Raj 106 : (2010) 3 RCR(Civil) 785 : (2010) 3 RLW 2309

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sangeet Lodha, J.—These writ petitions involve a common question of law as regards to petitioners' legal right for renewal of the certificate of practice as a Notary, therefore, the same were heard together and are being disposed of by this common judgment.

2. The facts of writ petition No. 10569/09 "Tarun Mehta and Ors. v. State of Rajasthan and Ors." which was taken as a lead case by the learned Counsel for the parties for the purpose of arguments are being taken into consideration.

3. The petitioners were appointed as notaries under the provisions of Notaries Act, 1952 (in short "the Act") and the Rules made thereunder namely, Notaries Rules, 1956 (in short "the Rules") by the State Government by a common order dated 14.11.02. The petitioners were authorised to practice as notary in Pali, District Pali for a period of five years from the date of issuance of certificate in this regard. The certificates in terms of Sub-rule (4) of Rule 8 of the Rules were issued in their favour on 26.11.02. Before the expiry of the period fixed in the order dated 14.11.02, the petitioners preferred applications for renewal of their certificates of practice after payment of prescribed fee. The petitioners in the writ petition namely Tarun Mehta, Om Prakash Kachhwaha and Mangi Lal Choudhary applied for renewal on 25.10.07, 3.10.07 and 25.10.07 respectively. On the

petitioners submitting the application for renewal as aforesaid, the Deputy Secretary, Law & Parliamentary Affairs Department, Government of Rajasthan requisitioned the report regarding the petitioners working as notaries during the preceding five years vide communication dated 21.8.08 from the District & Sessions Judge, Pali. Pursuant to communication dated 21.8.08, the Chief Judicial Magistrate, Pali called the petitioners for furnishing the relevant record and registers maintained by them for inspection. However, all of a sudden, the petitioners have received the communications dated 29.10.09 intimating that as per the decision taken by the State Government under the provisions of the Act and the Rules as amended, their certificates authorising them to practice as a notary are not renewed and therefore, they may stop working as a notary forthwith under the said certificate of authorisation. Hence, these petitions.

4. Learned Counsel for the petitioners Mr. M.S. Singhvi submitted that the communications intimating refusal to renew the certificate of authorisation and directing the petitioners to stop working as notaries are illegal inasmuch as, the same have been issued in gross violation of the provisions of the Rules which govern the renewal as also the basic principles of natural justice. Learned Counsel submitted that under the Act or the Rules, there is no provision authorising the State Government to refuse the renewal, on the contrary, the scheme of the Act and the Rules clearly envisages that the renewal of certificate of authorisation has to be granted as of right subject to the conditions of submissions of the applications and payment of the prescribed fees. Learned Counsel submitted that the circumstances under which the name of appointed notary could be removed from the register maintained by the State Government u/s 4, are clearly mentioned u/s 10 of the Act. It is submitted that none of these conditions mentioned stand satisfied in the instant cases and therefore, it was not open for the State Government to have refused renewal to the petitioners.

5. It is next contended by the learned Counsel that the petitioners continued to discharge the duties of the notary pending consideration of their applications for renewal and the same having not been granted or refused by the State Government within the reasonable time, their renewal shall be deemed to have been granted. Learned Counsel submitted that the renewal has been refused in the garb of the provisions of the Act and the Rules as amended but the Rules as amended prescribes a different procedure than existing for appointment of notary and not for renewal of the certificates of authorisation already issued. It is further submitted by the learned Counsel that even if the power vested in the State Government in the matter of renewal of the certificate of authorisation as per Sub-section (2) of Section 5 as substituted by Act 36 of 99 w.e.f. 17.12.99 is taken to be discretionary, the discretion vested has to be exercised judicially and for the said purpose, the circumstances enumerated u/s 10 of the Act for removal of names of the practising notaries from Register maintained by the State Government u/s 4 can be read as guidelines. Learned Counsel submitted that admittedly, the renewal has been refused by the State Government without giving an opportunity of hearing to the petitioners and therefore, the order

impugned being passed in violation of the principles of natural justice deserves to be quashed and set aside on this count alone. In this regard, the learned Counsel has relied upon a decision of the Hon'ble Supreme Court in the matter of Raj Restaurant and Another Vs. Municipal Corporation of Delhi, . Lastly, it is submitted by the learned Counsel that as a matter of fact, the controversy involved in these petitions stands settled by a Jaipur Bench of this Court vide judgment dated 18.12.09 rendered in the matter of Smt. Asha Bhansali v. State of Rajasthan and Ors. (S.B. Civil Writ Petition No. 15119/09) and other connected writ petitions.

6. The other counsels appearing for the respective petitioners in other writ petitions have adopted the arguments advanced by learned Counsel Mr. M.S. Singhvi.

7. On the other hand, Mr. R.L. Jangid, learned Additional Advocate General submitted that vide notification dated 24.2.09 issued by the Central Government in exercise of the power conferred by Section 15 of the Act, some material amendments have been made in the Rules which have come into force w.e.f. 1.3.09 and thereby a complete new procedure has been laid down for the appointment of the notaries therefore, the State Government has taken a policy decision that all appointments as a Notary shall be made in accordance with the amended provision of Rules so as to extend equal opportunity to all the advocates in consonance with Article 14 of the Constitution of India and therefore, the certificates of authorisation of the existing notaries have not been renewed. It is submitted by the learned Additional Advocate General that while providing a new procedure for appointment of the notaries by amending Rule 6 and 7 and inserting a new Rule 7A, a transitional provision in terms of Rule 7B has also been incorporated which provides that all memorials received by the competent authority, which are pending shall be processed/examined in accordance with the provisions of the Rules as amended by the Notaries (Amendment) Rules, 2009, therefore, the policy decision taken by the State Government cannot be faulted with. It is submitted that the appointment as a notary did not confer any accrued or vested right on the petitioners and therefore, the State Government is not precluded from taking a decision not to renew the certificate of authorisation issued. In support of the contention, the learned Additional Advocate General has relied upon a decision of the Hon'ble Supreme Court in Kuldeep Singh Vs. Govt. of NCT of Delhi,

8. Learned Additional Advocate General vehemently contended that the petitioners are not entitled to claim renewal of certificates as a matter of right . It is submitted that before the amendment introduced w.e.f. 17.12.99 , the renewal of the certificate of authorisation on submission of the application and payment of prescribed fee was as a matter of right but after substitution of the word "shall" by the word "may" by way of amendment of Sub-section(2) of Section 5 of the Act, makes the provision directory and discretionary and therefore, the State Government is well within its right to refuse the renewal.

9. Learned Additional Advocate General further submitted that no person is entitled to practice as a Notary unless he possesses a valid certificate issued by the State Government/Central Government authorising him to practice as such. It is submitted that the petitioners were authorised to practice as a Notary for a period of five years and their certificate of authorisation having already expired , they cannot be permitted to practice as a Notary in violation of the provisions of the Act and the Rules. It is submitted by the learned Additional Advocate General that the petitioners in some of the writ petitions did not submit their applications for renewal before the expiry of the period of certificate of authorisation therefore, in terms of provisions of Rule 8-B of the Rules, their claim for renewal was liable to be rejected on this count alone.

10. Learned Additional Advocate General urged that Section 10 of the Act deals with the removal of the notaries appointed from the Register maintained u/s 4 of the Act on the existence of circumstances enumerated in no manner regulates the grant or refusal of the renewal. It is submitted that as a matter of fact, in terms of Clause (f) of Section 10 non renewal of the certificate of practice is a ground for removal of the name of the appointed notaries from the Register, therefore, it is misconceived to contend that Section 10 provides guidelines for consideration of the matter of renewal of the certificate of authorisation.

11. Lastly, it is submitted by learned Additional Advocate General that the Act or the Rules does not envisage any opportunity of hearing to the applicants before refusal of the renewal and therefore, the petitioners were not entitled to any opportunity of hearing and therefore, the decision taken by the State Government exercising discretion vested in it cannot be said to be illegal , arbitrary and without jurisdiction warranting interference by this Court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India.

12. I have given my thoughtful considerations to the rival submissions and perused the material on record.

13. Before proceeding to consider the rival contentions of the parties, it will be beneficial to have a glance at the scheme of the Act and the Rules.

14. By virtue of provisions of Section 138 of the Negotiable Instruments Act, 1881, the Government of India had the power to appoint notary public only for the limited purpose of performing function under that Act and therefore, so as to empower the Central and State Governments to appoint notaries generally for all recognised notarial purposes and to regulate the profession of notaries , the Act was enacted which has come into force w.e.f. 14.2.56.

15. Section 3 of the Act deals with power to appoint notaries . The Central Government is empowered to appoint as notaries any legal practitioners or the persons who possesses such qualification as may be prescribed for whole or any part of India whereas, the State Government has such powers for whole or any part of the State. As per Sub-section (1) of Section 4, the names of the persons

appointed as notaries and the necessary particulars about them as specified under Sub-section (2) of Section 4 are required to be entered in a Register of notaries to be maintained by the Central Government and the State Government in such form as may be prescribed. Sub-section (1) of Section 5 provides that every notary who intends to practise as such may on payment to the Government appointing him of the prescribed fee , if any, be entitled to have his name entered in the register maintained by the Government u/s 4. The person appointed as a notary becomes entitled to a certificate authorising him to practise for a period of five years from the date on which the certificate is issued to him.

16. The renewal of the certificate issued is dealt with by Sub-section (2) of Section 5. As per Sub-section (2) of Section 5 as originally framed, the State Government was under an obligation to renew the certificate of practise of any notary for a period of five years on receipt of the application in the prescribed fee. But after the amendment introduced by Act 36 of 1999 w.e.f. 17.12.99 , the word "shall" employed in Sub-section (2) of Section 5 stands substituted by the word "may" and therefore, now a discretion is vested in the State Government to refuse the renewal, obviously for the valid reasons.

17. Section 6 of the Act provides that the Central Government or every State Government shall during the month of January of each year, publish in official gazette a list of notaries appointed by the Government in practise at the beginning of that year with such detail pertaining to them as may be prescribed. Section 8 defines function of the notaries and Section 9 put a bar on any person to practise as a notary unless he holds a certificate of practice in force issued to him u/s 5. Section 10 delineates the circumstances under which the Government appointing any notary may by order remove his name from the register maintained by it in terms of Section 4 of the Act. Section 15 empowers the Central Government to frame Rules to carry out purposes of the Act by notification in the official gazette.

18. In exercise of the powers conferred by Section 15 of the Act, the Central Government has framed the Rules which have come into force w.e.f. 15.2.56. The Rules framed regulates the qualification for appointment as notary , number of notaries to be appointed in each State or union territory by the appropriate Government, the procedure for such appointments , certificate of authorisation, fee for issue and renewal of certificate of practice , inquiry into allegations of professional or other misconduct of a notary, submission of returns, annual publication of list of notaries etc.

19. It will be beneficial to notice the provisions contained in the Rules relevant for adjudication of the controversy involved in these petitions. Rule 3 of the Rules lays down qualification for appointment as notary . As per Rule 4 a person holding the qualification for appointment as notary is entitled to make an application for appointment as such in the Form of Memorial addressed to such officer or authority of the appropriate Government as the Government may by

publication of the notification in the official gazette designate in this behalf. Rule 6 which deals with preliminary action on application , provides that if the competent authority after examining the application received by him is satisfied that the application is not complete in all respect or the applicant does not possess the qualification specified in Rule 3 or that any previous application of the applicant for appointment was rejected within six months before the date of application, shall reject it summarily and inform the applicant accordingly. If the application is not rejected summarily, the competent authority may requisition the information/objection if any, regarding the appointment of applicant as a notary from Bar Council, Bar Association incorporated Law Society or other Authority in the area where the applicant proposes to practice. Rule 7 provides that the competent authority shall make the recommendations after holding such inquiry as he thinks fit having regard to the matters namely, whether the applicant ordinarily resides in the area in which he proposes to practice as notary , the commercial importance of the area in which the applicant proposes to practise and number of existing notaries practicing in area and whether it is necessary to appoint any additional notaries for the area and further the knowledge and experience of the applicant of commercial law , the nature of objection if any raised in respect of his appointment as notary, regarding the comparative suitability of the applicant where application from other applicants in respect of the area are pending etc. The applicant is entitled to an opportunity of hearing to make his representation against the objections, if any. Thereafter, as per Rule 7A inserted vide notification dated 24.2.09 which has come into force from 1.3.09, if the appropriate government allows , the applicant shall be asked to appear before the Interview Board to be constituted by the appropriate Government from amongst its officers dealing with the legal matters, to judge the competency of the applicant for being appointed as notary. A transitional provision in terms of Rule 7B has been incorporated to deal with the applications pending upto 28.2.09 which provides that the same shall be processed/examined in accordance with the provisions of the Rules as amended by Notaries (Amendment) Rules, 2009. Rule 8 provides that on the receipt of the recommendations of the Interview Board , the appropriate Government may allow the application in respect of the whole of the area to which it relates or in respect of any part of area to which it relates and may also reject the application. As per sub- rule (2) of Rule 8, the applicants are required to be informed of every order passed by the appropriate Government under Sub-rule(1) and further as per Sub-rule (3), the applicant whose application has been rejected or allowed in respect of only part of the area or against whom an order as to cost has been made may within 60 days of the date of the order apply to the Government for reviewing the order and thereupon the Government shall pass such order as considered it necessary after making such further inquiry as it thinks fit. Sub-rule (4) of Rule 4 puts a ceiling on number of notaries to be appointed by the appropriate Government in State or Union Territory as specified in the Schedule. The said provision inserted w.e.f. 10.5.01 further provides that the notaries whose certificates have been renewed under Sub-section (2) of

Section 5 shall be included for the purpose of counting in the total number of notaries specified in the Schedule. As per Rule 8A inserted vide notification dated 8.7.97 provides for extension of the area of practice on the application being made by a notary public who is already in possession of the certificate of practice.

20. Rule 8 B which has been inserted vide notification dated 31.10.07 with immediate effect provides that a certificate of practice issued under Sub-rule (4) of Rule 8 may be renewed for a further period of five years on payment of prescribed fee. The application for renewal is required to be made to the appropriate Government before three months from the date of expiry of its period of validity. However, as per proviso thereto, after considering the reasons stated in the applications, the appropriate Government may relax the condition of submission of application for renewal for practice before the above specific period. Rule 9 prescribes for issue and renewal of certificate of practice and Rule 13 provides the procedure to be followed in respect of the inquiry into the allegations of professional or other misconduct of a notary.

21. Thus, the scheme of the Act and the Rules as noticed above makes it abundantly clear that the qualification, disqualification , the procedure for appointment , issuance of the certificate authorising to practise as a notary , renewal of the certificate, removal of the person appointed as a notary are governed by the specific provisions incorporated and the State Government repository of the limited power has to exercise it strictly within the framework of the Rules framed by the Central Government in this regard in exercise of the power conferred by Section 15 of the Act. Suffice it to say that in the garb of the policy decision or by an executive fiat , the State Government cannot enlarge the ambit and scope of its power, by adding the functions which are not contemplated under the Act or the Rules.

22. Adverting to the facts of the present case, indisputably, the petitioners were appointed as notary after following the procedure laid down on being found fit for such appointment . It is also not in dispute that the certificates of authorisation of some of the petitioners have been renewed from time to time in the preceding years. It is also the common ground between the parties that the applications preferred by the petitioners remained pending consideration of the State Government in some of the cases for years together.

23. Admittedly, the applications for renewal of certificates for authorisation filed by the petitioners have been rejected by passing identical orders giving a common reason in terms that as per the decision taken by the State Government under the provisions of the Act and the Rules as amended, their certificates authorising them to practice as a notary are not renewed and therefore, they should stop working as a notary forthwith under the said certificate of authorisation.

24. It is to be noticed that as per Sub-section (2) of Section 5 as it was existing before the amendment introduced by Act 36 of 1999 w.e.f. 17.12.99 substituting

the word "shall" employed therein by word "may" , the entitlement of a person appointed as a notary public once registered as such was automatic on making an application and payment of fee. It is true that after the amendment introduced as aforesaid, a discretion is vested with the State Government to grant the renewal or refuse it. But then, such discretion vested is not absolute and the same has to be exercised judicially . In considered opinion of this Court, having regard to the scheme of the Act, even after the amendment introduced as aforesaid, the grant of renewal of the license for authorisation is a rule and the rejection an exception. Therefore, ordinarily, if there is nothing adverse against the person seeking renewal of the certificate of authorisation to practice as notary then the same would not be refused.

25. It is pertinent to note that under the scheme of the Act and the Rules , the procedure for minute scrutiny of the application and to judge the suitability of a person to be appointed as a notary has been prescribed at the time of initial appointment. The Rules do not provide for any detailed procedure to be adopted while considering an application for renewal of the license, obviously for the reason that the suitability of the person is judge at the point of entry and further the specific provision has been incorporated for removal of the person appointed as notary on existence of any of the circumstances delineated u/s 10 of the Act. Of course, it cannot be said that a renewal can be refused only on the existence of any of the circumstances enumerated in Section 10 inasmuch as, there may be many more circumstances such as incapacity of the person appointed to discharge his duties as notaries, the irregularities or illegalities committed by him in maintaining the record as provided for under Rule 11 of the Rules etc. necessitating refusal of the renewal.

26. It is argued by the learned Additional Advocate General that by virtue of Rule 7B of the Rules all pending applications including the application for renewal has to be dealt with according to the amended provisions and therefore, the policy decision taken by the Government to reject all the applications for renewal cannot be faulted with. It is to be noticed that by way of amendment a procedure different than existing procedure has been introduced for the purpose of initial appointment as a notary. By way of amended Rules, neither any change is brought in the procedure to be followed for consideration of the application for renewal nor the right to renewal of the certificate of authorisation of the notaries already appointed is restricted in any manner. It is settled law that the State Government repository of the power circumscribed by statutory provision cannot take any policy decision or issue an executive fiat which is beyond the ambit, scope and spirit of the relevant Statute. In this regard, it will be apposite to refer to a decision of Kerala High Court in the matter of A. A. Gourisankar Vs. The State of Kerala, wherein while examining the validity of a policy decision taken by the State Government with regard to renewal of the certificate for practicing as notary, restricting the maximum period of practice to six years i.e. two terms of three years each , the court observed:

13. The State Government is a functionary of limited power under the scheme of the Act. The exercise of its powers is conditioned by the statutory provision. It is not a free agent either in relation to the appointment or as regards the termination of notaries' status. It has to function within the frame-work of the rules framed by the Central Government. Policy consideration are already taken care of when Parliament passed the law. Even subsidiary details got covered by the rules. The State Government cannot therefore inject into the system something which according to its notion, is a better nutrient.

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16. The present is a case where a direct and daring aggression has been directed against the core scheme of the Notaries Act. That cannot be permitted having regard to the limited leverage and State Government enjoys under the statutory scheme. Imposing a restrictive period for practising as a notary- a six year period is unduly restrictive- is on the face of it arbitrary and uncalled for. Experience in relation to the functioning of notaries will show that there have been reputed legal firms which have, from generation to generation carried on with great credit and honour the onerous and responsible duties to be discharged by a notary public. It will be manifestly against public interest if one who has an accumulated experience of a sizeable six years is scuttled merely for giving another a new "job opportunity". An advanced age is only an added advantage for performing the duties of an ancient legal institution. "Age, "Samuel Johnson said," will perform the promises of youth.

27. Thus, for the parity of reasons, in considered opinion of this Court, in the garb of the Act and Rules as amended, the alleged policy decision taken by the State Government beyond the ambit and scope of statutory provisions governing the field is *ex facie*, illegal and unconstitutional. In this view of the matter, the decision of the Hon'ble Supreme Court in the matter of Kuldeep Singh's case (*supra*) also does not help the respondents in any manner whatsoever.

28. Coming to the contention of the learned Additional Advocate General that the applications preferred by many applicants are liable to be rejected inasmuch as the same have not been filed before the expiry of period of three months as envisaged by Rule 8-B of the Rules, it is pertinent to note that Rule 8-B in its present form has been incorporated by way of amendment w.e.f. 31.10.07 and therefore, the said provision cannot be made applicable to the applications which were already pending consideration. Further, by virtue of proviso to Rule 8-B, the appropriate Government is empowered to relax the condition of submitting the application before three months from the date of expiry of period of validity of the certificate of authorisation. Therefore, if the application for renewal has been preferred by any of the petitioners belatedly for bona fide reasons then, the matter regarding condonation of delay in filing the application needs to be considered by the State Government sympathetically. As a matter of fact, the respondents are even not entitled to raise this question inasmuch as, it is settled law that when a statutory functionary makes an order based on certain grounds,

its validity must be judged by the reasons so mentioned and cannot be permitted to be supplemented by fresh reasons in the shape of affidavit or otherwise. (vide *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, Indisputably, the application seeking renewal preferred by none of the petitioners has been rejected on the ground that the renewal was not sought for before the expiry of the period of certificate of authorisation therefore, the respondents cannot be permitted to justify the rejection of renewal on such ground.

29. The last contention of the learned Additional Advocate General that since the Act and the Rules does not envisage any opportunity of hearing before rejecting their applications for renewal therefore, the petitioners are not entitled for any opportunity of hearing, to say the least, is absolutely devoid of any merit. It is to be noticed that Rule 7 of the Rules provides for an opportunity of making representation to the applicant if any objections are raised against his appointment and further where the application for appointment as a notary is rejected, the applicant has right to make an application for review of the order in terms of the provisions of Sub-rule (3) of Rule 8 of the Rules. It is strange to suggest that a person shall be entitled for opportunity of hearing if his application for appointment is rejected but he shall not be entitled for an opportunity of hearing if the application for renewal is rejected. As noticed above, unless, there exists a valid reason for rejection, the renewal has to be granted as a matter of course and therefore, it is all the more necessary to extend an opportunity of hearing if the application for renewal of certificate of authorisation is proposed to be rejected. Needless to say that before taking any action having civil and legal consequences, the statutory authority is under an obligation to give an opportunity of hearing to the person affected. Thus, the order impugned passed by the respondents rejecting the applications of the petitioners for renewal of their certificate of authorisation without giving an opportunity of hearing to them is violative of elementary principles of natural justice and therefore, deserves to be quashed for this reason also.

30. In the result, the writ petitions succeed, the same are hereby allowed. The impugned decision of the State Government rejecting the applications of the petitioners for renewal of their certificates of authorisation to practice as a Notary and directing them to stop working as Notary are quashed and set aside. The State Government is directed to consider and decide the applications for renewal preferred by the petitioners on merits afresh, keeping in view the position of law discussed above, within a period of three months from the date of this order. It is made clear that if the State Government proposes to reject the applications of any of the applicants for renewal of their certificates of authorisation then, no such order shall be passed by the State Government without giving an opportunity of hearing to such applicants. No order as to costs.