

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1010/2015**

Shri Gajanan Govind Dhumatker,
aged about 69 years, Advocate,
having his Office at Hill Top Apartments,
3 Building, Alto Betim,
Bardez, Goa 403101.

..... Petitioner.

V/s.

1. State of Goa, by Chief Secretary,
Government of Goa,
Secretariat, Porvorim, Bardez, Goa.

2. State Registrar and Competent Authority,
Under the Notaries Act, 1952 and the
Notaries Rules, 1956, having Office at
Shram Bhavan, Patto Plaza,
Panaji 403001.

..... Respondents.

Mr. J. P. Mulgaonkar, Advocate for the petitioner.

Mr. V. Rodrigues, Government Advocate for the respondents.

**CORAM :- F.M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date : - 05/04/2016.

ORAL JUDGMENT : (PER F.M. REIS, J.)

Heard Mr. J. P. Mulgaonkar, learned Counsel appearing
for the petitioner and Mr. V. Rodrigues, learned Government

Advocate appearing for the respondents.

2. Rule. Learned Government Advocate appearing for the respondents waives service. Heard forthwith, with the consent of the learned Counsel.

3. Upon hearing the learned Counsel appearing for the respective parties, it appears that the main grievance of the petitioner is that the impugned Order dated 22/08/2014, which is at Annexure A, was passed by the respondent No.1 without following the principles of natural justice, particularly Rule 13 of the Notaries Rules, 1956.

4. Mr. J.P. Mulgaonkar, learned Counsel appearing for the petitioner points out that without issuing a show cause notice nor giving a personal hearing to the petitioner in terms of the Rules, the Respondent No.1 arbitrarily passed the impugned order. The learned Counsel further points out that no inquiry was conducted by the respondent No.1 in terms of sub-Rule (4A) of Rule 13 of the Notaries Rules, 1956 whilst passing the impugned order. The learned Counsel further points out that on this ground alone the impugned order stands vitiated and deserves to be quashed and set aside.

5. On the other hand, Mr. V. Rodrigues, learned Government Advocate appearing for the respondents fairly accepts that the procedure in terms of Rule 13 of the Notaries Rules, 1956 has not been followed, but, however, submits that the respondents are entitled to justify the allegations against the petitioner in the proceedings initiated by the respondent No.1 based on the inspections which have been carried out.

6. We have considered the submissions of the learned Counsel and we have also gone through the record. Rule 13 of the Notaries Rules, 1956 reads thus :

“ 13. Inquiry into the allegations of professional or other misconduct of a notary.- (1)

An inquiry into the misconduct of a notary may be initiated either suo motu by the appropriate government or on a complaint received in Form XIII.

(2) Every such complaint shall contain the following particulars, namely,-

(a) the acts and omissions which, if proved, would render the person complained against unfit to be a notary;

(b) the oral or documentary evidence relied upon in support of the allegations made in the complaint.

(3) The appropriate government, shall return a complaint which is not in the proper form or which does not contain the aforesaid particulars to the complainant for representation after compliance with such objections and within such time as the appropriate government may specify:

Provided that if the subject matter in a complaint is, in the opinion of the said government substantially the same as or covered by, any previous complaint and if there is no additional ground, the said government shall file the said complaint

without any further action and inform the complainant accordingly.

(4) Within sixty days ordinarily of the receipt of complaint, the appropriate government shall send a copy thereof to the notary at his address as entered in the Register of Notaries.

(4-a) Where an inquiry is initiated, *suo motu* by the appropriate government, the appropriate government shall send to the notary a statement specifying the charge or charges against him, together with particulars of the oral or documentary evidence relied upon in support of such charge or charges.

(5) A notary against whom an inquiry has been initiated may, within fourteen days of the service on him of a copy of the complaint under sub-rule (4) or of the statement of the charges under sub-rule (4a), as the case may be, or within such time as may be extended by the appropriate government, forward to that government a written statement in his defence verified in the same manner as a pleading in a civil court.

(6) If on a perusal of the written statement, if any, of the notary concerned and other relevant documents and papers, the appropriate Government considers that there is a prima facie case against such notary, the appropriate Government shall cause an inquiry to be made in the matter by the competent authority. If the appropriate government is of the opinion that there is no prima facie case against the notary concerned, the complaint or charge shall be filed and the complainant and the notary concerned shall be informed accordingly.

[(7) Every notice issued to a notary under this rule shall be sent to him by registered post. If any such notice is returned unserved with an endorsement indicating that the addressee has refused to accept the notice or the notice is not returned unserved within a period of thirty days from the date of its dispatch, the notice shall be deemed to have been duly served upon the notary.]

(8) It shall be the duty of the appropriate Government to place before the competent authority all facts brought to its knowledge which are relevant for the purpose of an inquiry by the competent authority.

(9) A notary who is proceeded against shall have right to defend himself before the competent authority either in person or through a legal practitioner or any other notary.

(10) Except as otherwise provided in these rules, the competent authority shall have the power to regulate his procedure relating to the inquiry in such manner as he considers necessary and during the course of inquiry, may examine witnesses and receive any other oral or documentary evidence.

(11) The competent authority shall submit his report to the government entrusting him with the inquiry.

(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 the 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”

On plain reading of the said Rule, we find that the procedure contemplated therein has not been followed by the respondent No.1 whilst proceeding to pass the impugned order. The impugned order, as such, stands vitiated for gross breach of the principles of natural justice as, admittedly, no inquiry was conducted, nor any opportunity given to the petitioner to present his case, in accordance with the Rules.

7. Without going into the merits of the rival contentions, we find that on this ground alone the impugned order stands vitiated and deserves to be quashed and set aside.

8. In view of the above, we pass the following :

ORDER

- (I) The impugned order dated 22/08/2014 passed by the respondent No.1 is quashed and set aside.
- (II) Rule is made absolute in the above terms.

NUTAN D. SARDESSAI, J.

F.M. REIS, J.

ssm.