

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 27.09.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No.34044 of 2016
and
WMP.No.29403 of 2016

P.L.Rengaraj

.. Petitioner

Versus

The Secretary to Government,
Law (ADMN) Department,
Secretariat, Cheapuk,
Chennai 600 009.

.. Respondent

Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorari calling for the records of the respondent in the impugned order dated 02.09.2016 in G.O. (Ms).No.428 passed by the respondent and quash the same.

For Petitioner : Mr. S.R.Rajagopal
For Respondent : Mr. S.V. Durai Solaimalai
Special Government Pleader

O R D E R

This Writ Petition has been filed by the petitioner challenging the validity of the order passed in G.O.(Ms).No.428 dated 02.09.2016 on the file of the respondent herein. By the said order, the respondent, in exercise of powers conferred under clause (d) of Section 10 of the Notaries Act, 1962 (Central Act LIII of 1952) read with sub-rule (13) of Rule 13 of the Notaries Rules, 1956, removed the name of the petitioner from the list of Notary Public maintained in Pudukottai District and Tirupattur Taluk in Sivaganga District.

2. The petitioner is an advocate by profession having been enrolled as an advocate in the year 1977 with Bar Council of Tamil Nadu and Pondicherry bearing enrolment No. 558/77 and he had been practicing as an advocate from then onwards. By G.O. (Ms) No.539, Law Department dated 11.11.1994, a certificate of practice was issued by the Government whereby the petitioner was appointed as a Notary Public in Pudukottai District. According to the petitioner, when he was discharging his duties

as a Notary Public, during the year 2011, two persons approached him for drafting an affidavit to obtain passport by submitting requisite documents including family ration card. As per their instruction, the petitioner prepared an affidavit in the name of one Prabhu and instructed the persons to produce photograph of the deponent and also to ensure the presence of the deponent before him to sign the affidavit. After the discussion was over and after preparation of the affidavit, the petitioner kept the affidavit and other documents as also his mobile phone in a bag, left the bag in the Pudukottai Bar Association room to attend a case in the Court. Later, the bag kept by him was missing from the Bar Association Room and in spite of his diligent search, he could not trace it. In this connection, the petitioner also given a complaint to the Pudukottai Bar Association on the hope that some of his colleagues would have mistakenly taken his and it would be returned to him.

3. While so, on 21.12.2012, the petitioner received a notice dated 16.12.2011 enclosing the complaint lodged by the Regional Passport Officer, Tiruchirapalli dated 22.11.2011 seeking revocation of the notary licence granted to the petitioner. The petitioner submitted his reply dated 27.01.2012 narrating the above facts. It was specifically stated that his signature was forged and the seals were fabricated and sought for initiating criminal action against the said Prabhu. An enquiry was also conducted in connection with the alleged irregularity committed by the petitioner by the Principal District Judge, Pudukottai. While the petitioner was expecting that the allegations made against him would be withdrawn on appreciation of his explanation, he was shocked to receive the impugned order passed by the respondent removed the name of the petitioner from the list of Notary Public maintained in Pudukottai District and Tirupattur Taluk in Sivaganga District.

4. The learned counsel for the petitioner would contend that even assuming that the petitioner has committed any violation of the terms and conditions of the certificate of practice, it does not warrant a harsh punishment of removal of his name from the list of Notary Public maintained in Pudukottai District and Tirupathur Taluk in Sivaganga District. At best, the mistake committed by the petitioner can be construed as a negligence. Further, the respondent did not consider the documents produced by the petitioner during the course of the enquiry before the learned Principal District Judge, Sivagangai. The respondent did not furnish a copy of the report sent by the learned Principal District Judge, Sivagangai however, it was relied on for the purpose of imposing the punishment on him. The petitioner did not notarise the affidavit prepared by him on behalf of the said Prabhu inasmuch as the said Prabhu did not appear before him to sign the affidavit. Therefore, the learned counsel for the petitioner would contend that the petitioner is

innocent and he has not committed the alleged lapse warranting interference by this Court.

5. The learned Special Government appearing for the respondent vehemently contended that even though the petitioner claimed that the affidavit prepared by him in the name of Prabhu along with other documents were kept in a room and it was missing, the petitioner, as an advocate, has not chosen to lodge any complaint before the police at the relevant point of time. The petitioner was given adequate opportunity to defend his case and an enquiry was conducted by the learned Principal District Judge, Pudukottai. The impugned order has been passed by the respondent after adhering to the procedures contemplated under law and therefore, according to the learned Special Government Pleader, the impugned order does not call for any interference by this Court.

6. I heard the learned counsel for both sides and perused the materials placed on record. Admittedly, an affidavit was filed by one Prabhu, which was notarised by the petitioner, before the Regional Passport Officer, Tiruchirapalli. In the said affidavit, the deponents have not signed in the relevant place. The affidavit contains only the seal and signature of the petitioner as a notary public. In this connection, a complaint was given by the Regional Passport Officer, Tiruchirapalli which formed the basis for initiating an enquiry against the petitioner. In his explanation, the petitioner has submitted that the bag containing the affidavit prepared by him along with other documents were kept in the bar association room but when he returned from the Court, he could not find the bag. However, as rightly pointed out by the respondent, the petitioner, as an advocate, has not chosen to give a police complaint in connection with the missing of the bag. The petitioner merely avers that the seal and his signature were forged. In the enquiry conducted by the learned Principal District Judge, Pudukottai, has stated in the copy of the complaint produced by the petitioner, which he alleges to have been given before the Bar Association, Pudukottai relating to missing of his bag, there was no date or seal for having given the complaint to the Bar Association. Therefore, it was concluded that the petitioner would not have given such a complaint on the date and time alleged by him to the Bar Association, Pudukottai and such a complaint made only for the purpose of this case. The learned Principal District Judge, Pudukottai also examined the claim of the petitioner with regard to fabrication of his seal and signature and concluded that on comparison of the signature of the petitioner in the affidavit along with other admitted signatures, no variations could be found and therefore it was concluded that it is the petitioner who has signed the affidavit which was submitted before the Regional Passport Officer, Tiruchirapalli.

7. The respondent, on receipt of the report from the learned Principal District Judge, Pudukottai has examined the same and also considered the submissions made by the petitioner herein in extenso. In effect, the respondent concluded that the petitioner has committed a misconduct as contemplated under the Notary Rules and he deserves initiation of action for non-compliance of and violation of the procedures laid down in the Notaries Rules. Ultimately, the respondent has passed the order dated 02.09.2016, which is impugned in this writ petition, removing the name of the petitioner from the list of Notary Public maintained in Pudukottai District and Tirupattur Taluk in Sivaganga District.

8. Having regard to the conclusion arrived at by the learned Principal District Judge, Pudukottai in his report and the order passed by the respondent, I find see no reason to interfere with such well considered and reasoned order passed by the respondent. Accordingly, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

kkd/rsh

To

The Secretary to Government,
Law (ADMN) Department,
Secretariat, Cheapuk,
Chennai 600 009.

+1 cc to Mr.S.R.Rajagopal Advocate sr 55236

+1 cc to the special Government Pleader sr 55410

W.P.No.34044 of 2016

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