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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:30.09.2016

CORAM :

**THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN**

Writ Petition (MD) No.15034 of 2015

and

M.P(MD)No.1 of 2015

S.Pathmanaman

... Petitioner

Vs.

The Government of Tamil Nadu,  
represented by its Secretary,  
Law Department,  
Fort St., George,  
Chennai 600 009.

... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the impugned order in G.O.(Ms)No.206, Law (Administration) Department, dated 26.06.2015 passed by the respondent and to quash the same.

For Petitioner : Mr.D.Srinivasaragavan  
for Mr.K.Vananan

For Respondent : Mr.R.Anandaraj,  
Government Advocate.

### ORDER

The case of the petitioner in brief is as follows:-

The petitioner is a practising Advocate Aranthangi. On 03.04.1987, the petitioner was appointed as Notary by the Government of Tamil Nadu and his Certificate of Notary has been periodically renewed and it is valid up to 26.01.2017. On 16.12.2011, the respondent issued a show cause notice calling for explanation with regard to certain misconduct. The above notice said to have been issued based on a complaint received from the Regional Passport Officer, Tiruchirappalli, dated 22.11.2011 alleging that the petitioner has put his official signature and Notary seal in an affidavit sworn to by one Mrs.Mumtaj Begum and Mr.Abubakar dated 12.10.2011 in which one of the deponents namely, Mr.Abubakar signature was not found in the first page of the affidavit. Hence, the act of the petitioner amounts to serious misconduct under the provisions of the Notaries Act, 1952. On receipt of the above show cause notice, the petitioner has filed written objections stating that both Mrs.Mumtaj Begum and Mr.Abubakar, appeared before him and put their signatures in the affidavit and in the first page of the affidavit the signature of the Mr.Abubakar was not found, the said mistake was crept in inadvertently.



2. After receipt of the above reply, not being satisfied with the same, the respondent ordered for an inquiry by the competent authority namely, the Principal District Judge, Pudukottai. In the enquiry, Mrs. Mumtaj Begum was examined and during the enquiry, she deposed that she and her husband went to the Advocate Office for attestation of affidavit for the purpose of getting passport and both of them put their signatures in the presence of Notary. But the learned Principal District Judge without considering statement made by the deponents, has filed his report holding that the charges levelled against the petitioner were proved. Thereafter, on receipt of the above report, the respondent now passed the order suspending his certificate of practice as Notary for a period of 18 months in G.O. Ms. No. 206, Law (Administration) Department, dated 26.06.2015 which is impugned in this writ petition.

3. The respondent filed a counter affidavit stating that based on a complaint filed by the Passport Officer, Tiruchirapalli alleging that the affidavit did not bear the signature of the deponent, and a Notary is supposed to see the applicant and obtain the signature on the stamp paper in his presence and the Notary has to certify in the notarial certificate that he has seen the applicant and the applicant has signed before him. On receipt of the above complaint, written statement of defence was called for from the petitioner under Rule 13 (5) of the Notaries Rules, 1956. On considering the written statement of defence filed by the petitioner, the respondent satisfied that a *prima facie* case was made out to initiate action against the petitioner and hence, an inquiry was ordered against the petitioner under Rule 13 (6) of the Notaries Rules, 1956. The Principal District Judge, Pudukottai District, was requested to conduct an inquiry into the allegations levelled against the petitioner through the Registrar General, High Court, Madras who in turn conducted inquiry and sent his report on 25.11.2014. The relevant portion of the report reads as follows:-

*"I submit that I have gone through the entire records and statements given by the persons concerned in this matter and the advocate was careless in getting signature in the 1<sup>st</sup> page of the marriage affidavit of the person applied for passport. As per rules, the Notary ought not to attest the affidavit without proper verification of the signature of deponents. As an experienced Lawyer he ought to have obtain signatures from the persons named in the affidavit. On perusal of marriage affidavit, the said Abubakar was not signed in the first page of marriage affidavit. But, he has signed in the next page ie., page 2. Further, on the statement deposed by the witness concerned, it would reveal that the Notary made attestation, affixing stamp and seal in*



the presence of the deponents ie., Abubakar and Mumtaj Begum. Apart from that the said Notary gave a "Notarial Certificate" on 12.10.2011 as the deponent Mumtaj Begum personally appeared before him, deposed before him and as if he signed his mark after knowing the contents of this affidavit. Further it reveal the same having been read over and explained to the deponent Mumtaj Begum who recorded perfectly to understand it or acknowledge that he signed the same at his will. It shows the Notary/Advocate mechanically acted under the impression that everything in the affidavit would be correct."

4.The respondent after careful consideration of the enquiry report submitted by the competent authority holding that the charges were proved, imposed the penalty of suspending the Certificate of Practice as Notary for a period of 18 months under Rule 13 (12) (b) (ii) of the Notaries Rules, 1956.

5.It is further stated in the counter affidavit that it is seen from the marriage affidavit, the deponent Thiru S.Abubakar has not signed in the first page of the said affidavit and the Notary only attested the affidavit and affixed the seal without verifying the signature in the said affidavit and the petitioner was careless in not verifying the signature of the deponent and attested the affidavit. As per Notaries Act, 1952 and the Notaries Rules 1956, a Notary ought to attest only after proper verification of the signatures of deponents. Hence, it was concluded that the allegation levelled against the petitioner was proved in the light of the observation made by the Principal District Judge, Pudukottai District.

6.Learned counsel for the petitioner would submit that the one and only allegation against the petitioner was that he did not obtain the signature of the deponent in the first page of the affidavit and he did not verify the signatures found in the affidavit filed by the deponents.

7.It is only a negligence on the part of the petitioner and at any rate, it cannot be considered as a misconduct on his part and warrants the punishment of suspension. Apart from that the respondent after obtaining the report from the competent authority failed to send a copy of the enquiry report to the petitioner enabling him to raise objection to the same and arbitrarily accepted the enquiry report and passed the impugned order in violation of principles of natural justice. Hence, the impugned order passed by the respondent is liable to be set aside. It is further submitted that the order of suspension was passed on 26.06.2015 suspending Certificate of Practice as Notary for a period of 18 months and now, almost 15 months over.



8. Learned Government Advocate appearing for the respondent would contend that the act of the petitioner clearly amounts to misconduct as contemplated under the provisions of the Notaries Act, 1952 and the Notaries Rules 1956, and thorough enquiry was conducted by the competent authority, namely, the Principal District Judge, Pudukottai and the competent authority also after giving opportunity to all the parties concerned filed his report and based on the report of the competent authority, the respondent has passed the impugned order. Therefore, there is no infirmity or irregularity in the impugned order passed by the respondent.

9. I have considered the submissions made by the learned counsel on either side and perused the records carefully.

10. The Notaries Act, 1952 was enacted to regulate the profession of Notaries. Section 3 of the Act empowers the Central Government, for the whole or any part of India, and State Government to appoint Notaries and legal practitioners or other persons who possess such qualification as may be prescribed. Section 8 of the Act prescribes functions of the Notaries. Section 10 of the Act provides removal of names of from register by the Government which reads as follows:-

*"10. Removal of names from Register:-The Government appointing any notary may, by order, remove from the Register maintained by it under Section 4, the name of the notary if he-*

- (a) makes a request to that effect; or*
- (b) has not paid any prescribed fee required to be paid by him; or*
- (c) is undischarged insolvent; or*
- (d) has been found, upon inquiry in the prescribed manner to be guilty of such professional or other misconduct as, in the opinion of the Government, renders him unfit to practise as a notary, [or]*
- [(e) is convicted by any Court for an offence involving moral turpitude; or*
- (f) does not get his certificate of practice renewed.]"*

11. Rule 13 of the Notaries Rules, 1956 prescribed for the inquiry into the allegations of professional or other misconduct of a Notary and Rule 13 (12) (b) prescribed for punishment for the misconduct after inquiry. Rule 13(12)(b) of the Rules reads as follows:-

*"13(12)(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.

12. Now, the question arises for consideration in the present case is that whether the act of the writ petitioner amounts to professional or other misconduct or not.

13. The charge against the petitioner was that the petitioner was careless in not getting signature in the 1<sup>st</sup> page of the marriage affidavit of the deponents and he made attestation, affixing stamp and seal in the presence of the deponents, without verifying the signature of the deponent in page No.1 of the affidavit. Even as per the enquiry report submitted by the competent authority, the inquiry report only states that the petitioner has mechanically acted under the impression that everything in the affidavit would be correct and the competent authority nowhere stated that the petitioner committed any professional or other misconduct as contemplated in Act. Even according to the respondent, the writ petitioner is only careless in not verifying the signature of the deponents and mechanically made attestation without exercising due verification of the parties and it is only a negligence on the part of the writ petitioner in discharging the notarial function in not obtaining signature from the deponent in the first page of the affidavit. Now the question is whether the above act of negligence amounts to misconduct warranting punishment.

14. In similar circumstances, a Division Bench of Allahabad High Court in **State Government of Uttar Pradesh Vs. Kashi Prasad Saksena, AIR 1969 Allahabad 363** held as follows:

"6. The charges against the respondent have been detailed in the judgment of the learned single Judge. Charge No.1 was to the effect that the notary made no entry in his register regarding certain affidavits. Charge No.2 was that none of the four affidavits was stamped with notarial stamp as prescribed by Article 42 of the Stamp Act. Charge No.3 was that none of the four affidavits was stamped with adhesive stamps in accordance with Sections 10 and 11 of the Stamp Act.

The question arises whether these charges were of such a nature as to lead to the conclusion that the notary was guilty of professional misconduct. According to the plan of Clause (d) of Section 10 of the Act, misconduct can be of two kinds. Some misconduct may amount to professional misconduct. There may be misconduct of another kind. Such misconduct may not amount to professional misconduct. It is clearly implied in the



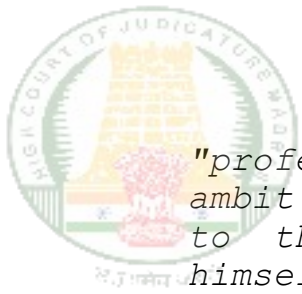
plan of Section 10 of the Act that every irregularity or negligence on the part of a notary would not amount to professional misconduct. Professional misconduct suggests dishonesty or some conduct involving moral turpitude. The charges framed against Kashi Prasad Saxena do not suggest dishonest acts or acts involving moral turpitude.

15. Unless the respondent comes to the conclusion that the petitioner has rendered himself unfit to practise as a Notary on a proved professional or other misconduct, the power under Section 10(d) of the Act cannot be invoked to punish the petitioner on the ground of negligence.

16. Apart from that before passing any order based on the report submitted by the competent authority, the respondent ought to have given opportunity to the petitioner by giving a copy of the enquiry report and an opportunity of hearing should be given before passing the impugned order. Even though Rule 13 does not provide for giving a copy of enquiry report, in order to satisfy the principles of natural justice, the respondent ought to have served a copy of the enquiry report submitted by the competent authority and should have passed orders only after getting an explanation from the petitioner.

17. In a similar circumstance, this Court in W.P.No.1607 of 1999, dated 28.02.2002 in **V.M.Chandrasekaran Vs.State of Tamil Nadu represented by its Secretary to Government Law Department, Chennai** (Justice D.Murugesan as he then was) in paragraphs 6 and 7, has held as follows:

"6. Coming to the exercise of power under Section 10 (d) of "the Act" for removing the name of the petitioner from the register maintained by the Government under section 5 of "the Act", it is to be seen that when a complaint was received by the Government, the same was forwarded to the competent authority viz., the Principal Judge, City Civil Court, Madras for enquiry. The Principal Judge after enquiry gave a categorical finding that there was no misconduct on the part of the petitioner as alleged in the complaint. However, the Principal Judge found negligence on the part of the petitioner in not verifying the discrepancy in the date in the stamp paper and the date when the affidavit was signed by the deponent. The said finding was accepted by the Government in its entirety. What is contemplated under Section 10(d) of "the Act" empowering the Government is to pass an order removing the name of the notary from the register for proved professional or negligence on the part of the notary. The words



"professional or other misconduct" cannot bring in its ambit the word "negligence". Unless the respondent comes to the conclusion that the petitioner has rendered himself unfit to practice as notary on proved professional or other misconduct, the power under Section 10(d) of "the Act" to remove the name of a notary from the register cannot be exercised by the Government only on the ground of negligence. It is not in dispute that the order removing the name of the petitioner from the register maintained by the Government was made only on the ground of negligence which in my considered view is again exceeding the power conferred on the respondent under Section 10(d) of "the Act". It is also to be seen that even though the report was called for by the Government from the competent authority, the said report was not communicated to the petitioner before the impugned order was passed. It is not the case of the respondent that proved negligence would also amount to misconduct. On the basis of negligence which was not pleaded by the respondent viz., the petitioner has been imposed with the penalty of perpetual debarment from practising as notary and removal of his name from the register maintained by the Government. When such a punishment is imposed on the petitioner, in my view, the respondent ought to have given notice to the petitioner along with the copy of the report by the competent authority and should have passed orders only after getting an explanation from the petitioner. Non compliance of the above would also render the order liable to be set aside on the ground of violation of the principles of natural justice.

7. Coming to the merits of the case, admittedly, neither the competent authority nor the Government found the petitioner guilty of misconduct as alleged by Thiru A.Venkatesan in the complaint. All that has been found against the petitioner was that he was negligent in not verifying the discrepancy in dates namely the date of the stamp paper and the date when the deponent signed the affidavit. Therefore, the question of misconduct alleged on the part of the petitioner by the complainant is also not substantiated as could be seen from the report of the competent authority and the very impugned order of the Government. Hence, for all the above conclusions arrived by me, the penalty imposed on the petitioner only on the ground of mere negligence which has not been pleaded by the respondent as amounting to professional or other misconduct cannot be sustained.



18.Hence, the petitioner is only negligent in not obtaining the signature of the deponent in the first page of the affidavit and it cannot be construed as a misconduct which warranting a punishment under Rule 13(12)(b)(ii) of the Notaries Rules, 1956, Apart from that, the petitioner also now undergone the suspension period for more than 15 months.

19.For all the foregoing reasons, the impugned order dated 26.06.2015, imposing penalty suspending the Certificate of Practice for a period of 18 months as Notary by exercising the power under Rule 13(12)(b)(ii) of the Notaries Rules, 1956 is unsustainable and accordingly, the impugned order is set aside and the writ petition is allowed. Consequently, M.P(MD)No.1 of 2015 is closed.

Sd/  
Assistant Registrar(T&P)

/TRUE COPY/

Sub Assistant Registrar

To  
The Secretary,  
Government of Tamil Nadu,  
Law Department,  
Fort St., George,  
Chennai 600 009.

+1cc to M/S.K.Vamanan, Advocate in SR.No.57571

Pre-delivery Order made in  
Writ Petition (MD) No.15034 of 2015  
and  
M.P (MD) No.1 of 2015  
30.09.2016

sms  
PA/SS-3/SAR III/30.09.2016/8P/3C