

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.480 of 2017

Tejram Rai, S/o Late Hira Lal Rai, aged about 70 years,
Advocate, R/o Village Semara, Post Nagpur, District Korea
(C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Law & Legislative
Affairs Department, Mantralaya, Mahanadi Bhawan, Neya
Raipur (C.G.)
2. Deputy Secretary, State of Chhattisgarh, Law & Legislative
Affairs Department, Raipur (C.G.)
3. District and Sessions Judge, Office of District and Sessions
Court, Baikunthpur, District Korea (C.G.)

---- Respondents

For Petitioner: Mrs. Meena Shastri, Advocate.

For State/Respondents No.1 and 2: -

Mr. Arun Sao, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

05/07/2017

1. The petitioner is a practicing Advocate. He has been
appointed Notary for Janakpur, District Korea and necessary
certificate by the Department of Law & Legislative Affairs was
issued on 6-10-2008 for a period of five years and upon
completion of five years, his certificate was renewed for a
further period of five years with effect from 6-10-2013 and
thus, it would have expired on 5-10-2018, but meanwhile, an

order dated 28-11-2016 was passed holding that the State Government has decided not to renew the Notary certificate of the petitioner and thereafter, order of striking of his name from the register of Notary was passed under Section 10 (d) of the Notaries Act, 1952. Feeling aggrieved against that order, this writ petition under Article 226 of the Constitution of India has been filed.

2. Mrs. Meena Shastri, learned counsel appearing for the petitioner, would submit that the order passed by the State Government runs contrary to Rule 13 (4-a) of the Notaries Rules, 1956. Neither opportunity of hearing was granted nor any material was supplied to the petitioner before striking out his name from the register of Notary when he is continuing as Notary for Janakpur. Therefore, the order impugned deserves to be set aside on this count alone.
3. Mr. Arun Sao, learned Deputy Advocate General appearing on behalf of the State/respondents No.1 and 2, would submit that a report from the District & Sessions Judge was called and finding the petitioner's work unsatisfactory as he was not found in the working place where he was authorised to work as Notary, and, therefore, strictly in accordance with law, the order impugned has been passed.
4. Rejoinder has been filed converting the allegations made in the return.

5. I have heard learned counsel for the parties, considered their rival submissions and also gone through the record with utmost circumspection.
6. The Notaries Rules, 1956 (for short, 'the Rules, 1956') has been made by the Central Government in exercise of powers conferred by Section 15 of the Notaries Act, 1952. A proper procedure has been prescribed for inquiry into the allegations of professional misconduct or other misconduct under the provisions of Rule 13 of the Rules, 1956, which reads as under: -

“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 (4-a), 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 consider 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 despatch, 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 a 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.”

7. A careful perusal of the aforesaid Rule would show that an inquiry into the misconduct of a notary may be initiated either *suo motu* by the appropriate Government or on a complaint received in prescribed form and on the complaint so made, a copy of the complaint shall be sent to the notary in the given address and thereafter, the notary has to forward a written statement in his defence verified in the same manner as a pleading in a civil court and if prima facie case is found against the notary on perusal of the written statement, the appropriate Government shall make inquiry and if no prima facie case is found, the case shall be filed and the complainant and the notary shall be informed accordingly. The manner of sending notice has also been prescribed in the Rules. Sub-rule (9) of Rule 13 of the Rules, 1956 clearly prescribes that notary shall have a right to defend himself before the competent authority either in person or through a legal practitioner or any other notary and also by virtue of sub-rule (10), he is entitled to examine witnesses and adduce evidence.

8. A careful perusal of the return filed by the State and the order passed by the State Government would show that none of the rules stated herein-above in Rule 13 was followed by the State while passing the impugned order. Merely on the report of the District Judge which was called by the State

Government, the petitioner's notary certificate has been cancelled which runs contrary to Rule 13 of the Rules, 1956, as neither the complaint was forwarded nor the defence was called, even no inquiry was made and the petitioner was not given opportunity to defend himself and the complaint was not in prescribed form. Therefore, the order passed by the State Government is in teeth of the provisions contained in Rule 13 of the Rules, 1956 (see for support **S.L. Gupta v. State of Chhattisgarh**¹). Accordingly, the impugned order is quashed. However, this will not bar the respondents to proceed in accordance with law.

9. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma