

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.107 OF 2017

Mr Lalit Doshi	... Petitioner
v/s	
The Union of India and another	... Respondents

*Mr Aspi Chinoy, Sr. Counsel with Mr Tushar Bhavsar and Mr Jarin Doshi
 for Petitioner.*

Mr Jaydeep Deo for Respondent Nos.1 and 2.

**CORAM : SHANTANU S. KEMKAR &
 B.P. COLABAWALLA, JJ.**

DATE : APRIL 3, 2017

Oral Judgement [B. P. COLABAWALLA] :-

1. Rule. Respondents waive service. By consent of parties, rule made returnable forthwith and heard finally.

2. By this Writ Petition filed under Article 226 of the Constitution of India, the Petitioner seeks a writ of certiorari calling for the records and papers pertaining to the impugned order dated 15th December, 2016 and after considering the legality and propriety

thereof, to quash the same.

3. The Petitioner is a practicing Advocate of this Court since 1971 and is also a Notary Public since 2004 appointed by the Central Government of India. Respondent No.1 is the Government of India, Ministry of Law and Justice. Respondent No.2 is the Deputy Legal Advisor, Government of India, Ministry of Law and Justice, Department of Legal Affairs (Notary Cell) and is the authority that has passed the impugned order cancelling the Petitioner's "Certificate of Practice as Notary". It is the case of the Petitioner that this impugned order is in clear violation of the provisions of the Notaries Act, 1952 and the Notaries Rules, 1956.

4. It is the case of the Petitioner that he was enrolled as an Advocate of the Bar Council of Maharashtra and Goa on 24th March 1971. On 27th January 2004, the Petitioner was appointed as a Notary Public by the Joint Secretary to the Government of India, Ministry of Law and Justice, Department of Legal Affairs, New Delhi. Thereafter, the Petitioner's Certificate of Practice as Notary was renewed in 2009 and later in 2014 for a period of five years each.

5. On 1st April 2014, one Mr Hubert Fonseca, Mrs Faustya

Satyasilan and Mr Anil Kumar approached the Petitioner and requested him to notarize an Agreement for Sale dated 1st April, 2014. According to the Petitioner, he verified the identities and the photos from the original PAN cards produced for his scrutiny of these persons and thereafter notarized the said Agreement dated 1st April, 2014 by affixing his seal and signature thereon. The Petitioner also arranged for the details to be entered in the Notary Register and obtained the signatures of the parties in the Notary Register. It is the case of the Petitioner that due to an inadvertent mistake, the Petitioner's intern entered the same No.2043 as that of the earlier entry in the page and also incorrectly entered the date as 1.4.2015 instead of 1.4.2014. Thereafter, the entry number was corrected by adding "A" i.e. "2043-A".

6. Be that as it may, in March 2016 the Petitioner was visited by the said Mr Hubert J. Fonseca alongwith a lady friend Savita Burges at his residence asking him to furnish an affidavit stating that the aforesaid Agreement for Sale dated 1st April, 2014 was a fabricated document. The said Mr Fonseca threatened the Petitioner that he would file a Police Complaint against the Petitioner if he failed to give him an affidavit as required by him. According to the Petitioner, he refused to give such affidavit and

pointed out that the parties to the said Agreement for Sale had approached him on 1st April, 2014 to notarize the said Agreement which was already executed by the parties and that after verifying the identity of the parties, he had notarized the said Agreement for Sale.

7. Thereafter, on 21st July 2016, a Police Officer from Bandra Police Station handed over to the Petitioner a notice dated 20th July, 2016 which informed the Petitioner that the said Mr Fonseca had filed a complaint against the said Mr Anil Kumar Janardhan Prasad and Fausta Sathyasilan regarding the Agreement for Sale dated 1st April, 2014. The Police Officer called upon the Petitioner to provide him a true copy of the Notary Entry No.2043-A relating to the said Agreement.

8. Be that as it may, on 12th September, 2016 the Petitioner received a notice dated 1st September, 2016 from Respondent No.2 stating therein that a complaint had been received from the said Hubert Fonseca making serious allegations against the Petitioner and therefore called upon him to submit his explanation within 14 days. By his letter dated 16th September, 2016, the Petitioner sent his reply to the Respondent No.2 and provided his explanation. The

Petitioner pointed out that the allegations against him were false and baseless and that the said Mr Fonseca was trying to take false advantage of the incorrect date in the Notarial Register. According to the Petitioner, thereafter, no hearing was ever given to the Petitioner and on 19th December 2016, the Petitioner received the impugned order from Respondent No.2 stating that the Government had considered the facts and material and had purportedly concluded that there was a prima facie case of professional misconduct committed by the Petitioner. In these circumstances, the Government had found the Petitioner unfit to continue as a Notary and therefore his "Certificate of Practice as Notary" was cancelled and his name was removed from the Register of Notaries.

9. Thereafter, the Petitioner made several representations not only to Respondent No.2 but also to the Hon'ble Law Minister and other Departments in the Government but to no avail. It is in these circumstances that the Petitioner is before us in our equitable, extraordinary and discretionary jurisdiction under Article 226 of the Constitution of India.

10. In this factual backdrop, Mr Chinoy, learned Sr. Counsel appearing on behalf of the Petitioner, raised only one contention

before us and which was purely a legal contention. Mr Chinoy, placing reliance on Rule 13 of the Notaries Rules 1956, submitted that there has been a complete non-application of mind on the part of the authorities as well as a clear breach of the principles of natural justice. Over and above this, Mr Chinoy submitted that Rule 13 itself contemplates that a hearing be given to the Petitioner before he could be penalized. Admittedly, this was not done and hence there was a clear breach of the statutory provisions of Rule 13.

11. In this regard, Mr Chinoy brought to our attention Rule 13 relating to an inquiry into the allegations of professional or other mis-conduct of a Notary. Mr Chinoy submitted that Rule 13 along with its 13 sub-rules contemplate a two-stage inquiry. Firstly, sub-rules (1) to (5) of Rule 13 provide that the appropriate Government may, on receipt of a complaint or suo motu forward the same to the Notary together with documentary and other evidence and call upon the Notary to submit his written statement in his defense. Thereafter, sub-rule (6) stipulates that if on a perusal of the written statement, if any, and other relevant documents and papers, the appropriate Government considers that there is a prima facie case against such Notary, then it 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, then the complainant and Notary concerned are informed accordingly. Mr Chinoy submitted that if the appropriate Government causes an inquiry to be made by the Competent authority, then it is the duty of the appropriate Government to place before the Competent Authority all facts which are relevant for the purpose of the inquiry. In this inquiry before the Competent Authority, the Notary has a right to defend himself either in person or through a legal practitioner or any other Notary. Once the Competent Authority finishes its inquiry, it shall submit its report to the Government and thereafter, considering this report, the appropriate Government may take action as contemplated in Rule 13(12). Mr Chinoy submitted that this is the entire scheme under Rule 13 before penal action of either cancelling the Certificate of Notary or suspending him or letting him off with a warning, is to be followed.

12. Mr. Chinoy submitted that in the facts of the present case, admittedly this has not been done. In the facts of the present case, Mr Chinoy submitted that on 12th September 2016, the Petitioner received a notice from Respondent No.2 date 1st September 2016 informing him that a complaint has been filed against him in which serious allegations have been made. The

Petitioner replied to this notice by his letter dated 16th September 2016. Thereafter, straightaway the impugned order was passed. This, according to Mr Chinoy was a clear breach of the statutory provisions contained in Rule 13 and therefore, the impugned order could not be sustained. It is in these circumstances that he prayed that the impugned order has to be set aside leaving the appropriate Government to scrupulously follow the provisions of Rule 13 if it chooses to take any fresh action on the complaint filed by Mr Hubert Fonseca.

13. In addition to this, Mr Chinoy submitted that in any event, the impugned order has been passed by the Competent Authority and not by the appropriate Government as required by Rule 13. In this regard, Mr Chinoy brought to our attention paragraph 2 of the affidavit in reply filed on behalf of Respondent Nos.1 and 2 wherein it is categorically stated that the Central Government has designated Respondent No.2 as the Competent Authority for the purposes of the Notaries Rules, 1956 (in relation to Notaries appointed by the Central Government). This was an additional ground on which Mr Chinoy submitted that the impugned order cannot be sustained as it is passed by the wrong authority and therefore has to be set aside.

14. On the other hand, Mr Jaydeep Deo, learned counsel appearing on behalf of the Respondents, submitted that the procedure under the Notaries Rules, 1956 has been scrupulously followed and the impugned order is passed after due application of mind and does not require any interference under Article 226 of the Constitution of India. Mr Deo submitted that looking to the grave allegations that have been made against the Petitioner, which according to Mr Deo were prima facie proved, the appropriate Government thought it fit in its discretion to cancel the Certificate of the Petitioner. Mr Deo submitted that this discretion has been validly exercised and cannot be termed as perverse or suffering from any error of law on the face of the record, requiring any interference by us in our equitable, extraordinary and discretionary jurisdiction under Article 226 of the Constitution of India. Consequently, he submitted that the Writ petition is devoid of any merit and the same ought to be dismissed with costs.

15. We have heard the learned counsel for the parties at length and perused the papers and proceedings in the Writ Petition. We have also given our anxious consideration to the impugned order dated 15th December, 2016 (Exh. 'A' to the Petition). In this matter,

we are not really concerned with the merits of the allegations made against the Petitioner. We are only called upon Mr. Chinoy only to examine whether Rule 13 has been complied with at least in substance. If we find that Rule 13 has been complied with, then there is no question of interfering with the impugned order as we are not examining the merits of the matter. On the other hand, if Rule 13 has not been complied with, it would be a clear breach of the statutory provisions and the impugned order would have to go.

16. As the statement of object and reasons suggest, the Notaries Act, 1952 was brought into force because the Government felt that it was essential to empower the Central and State Governments to appoint Notaries, not only for the limited purposes of the Negotiable Instruments Act, 1881 but generally for all recognised notarial purposes, and to regulate the profession of such Notaries. It was in these circumstances that the Notaries Act, 1952 was enacted. Section 15 of this Act gives power to Central Government to make Rules. It is pursuant to this power that the Notaries Rules, 1956 were brought into force vide SRO 324 dated 14th February 1956 published in the Gazette of India ENT.OT.II.SJ-P-191 dated 15th February, 1956.

17. Since the present controversy revolves around Rule 13, it would be apposite to reproduce the same.

"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 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.

(13) Notification of removal – The removal of the name of any notary from the Register of Notaries from practice, as the case may be, shall be notified in Official Gazette and shall also be communicated in writing to the notary concerned."

18. As can be seen from Rule 13(1), an inquiry into the misconduct of the Notary may be initiated either suo motu by the appropriate Government or on a complaint received in Form XIII. The appropriate Government has been defined in Rule 2(a) to mean in relation to a Notary appointed by the Central Government, the Central Government and in relation to a Notary appointed by the State Government, the State Government. It is not in dispute before us that in the facts of the present case, the appropriate Government is the Central Government. Thereafter, sub-rule (2) of Rule 13 sets out what the complaint shall contain. Thereafter, Rule 13(4) stipulates that within sixty days of the receipt of complaint, the appropriate Government shall send a copy thereof to the Notary who shall then within 14 days of service on him of the complaint, forward to that Government a written statement in his defence verified in the same manner as the pleadings in the Civil Court. Thereafter, Sub-rule (6) of Rule 13 provides that 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 made out against such Notary, then it shall cause an inquiry to be made in the matter by the Competent Authority. Naturally, if no prima facie case is made out, then the complaint is simply filed and the complainant and the Notary concerned are informed accordingly. If a prima facie case is made out as contemplated under Rule 13(6), then it is 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 inquiry by the Competent Authority. This provision can be found in Rule 13(8). Thereafter, Rule 13(9) stipulates that 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. What Rule 13(9) therefore contemplates is that once the Competent Authority is holding an inquiry pursuant to Rule 13(6), a personal hearing ought to be given to the Notary either in person or through a legal practitioner or any other Notary. Once this inquiry is complete, the Competent Authority shall submit its report to the Government entrusting him with the inquiry [Rule 13(11)]. Thereafter, Rule 13(12) contemplates that the appropriate Government would consider the report of the Competent Authority and may even cause a further inquiry to be made and a further

report to be submitted. On the other hand, after considering the report of the Competent Authority, the appropriate Government may make an order cancelling the Certificate of Practice and perpetually debar the Notary from practice; or suspending him from practice for a specified period; or letting him off with a warning, depending on the nature and gravity of the misconduct proved. Thereafter, Rule 13(13) provides for removal of the Notary from the Register of Notaries and the procedure to be followed for that purpose.

19. What we find in the Scheme of Rule 13 is that there are two stages. In the first stage, once the complaint is received by the appropriate Government, it forwards that complaint to the Notary and calls upon him to file a written statement in his defence to the charges levelled against him in the complaint. If on a perusal of this written statement as well other relevant documents and papers, the appropriate Government is of the view that a prima facie case is made out, then it causes an inquiry to be made in the matter by the Competent Authority. This is the first stage. Thereafter, in the second stage, the appropriate Government places before the Competent authority all the facts which are relevant for the purpose of the inquiry. Once that is done, the Competent Authority hears the

Notary either in person or through a legal practitioner or any other Notary. After this process is complete, the Competent Authority submits its report to the appropriate Government and thereupon a decision is taken by the appropriate Government on what action it should take in terms of Rule 13(12). This is the second stage.

20. In the facts of the present case, we find that the impugned order has been passed in complete breach of the statutory provisions as set out in Rule 13. In the facts of the present case, once a complaint was received by the Respondents against the Petitioner, the Respondent No.2 by its letter dated 1st September 2016 called upon the Petitioner to submit its statement of defence. This was done by the Petitioner by his letter dated 16th September 2016. Thereafter and without following procedure as set out in Rules 13(6) to 13(12), the impugned order was passed. It is not in dispute before us that no inquiry was caused to be made as contemplated under Rule 13(6) and neither was the Petitioner given a right to defend himself before the Competent Authority either in person or through a legal practitioner or any other Notary. We therefore find that there has been a clear breach of the statutory provisions of Rule 13 whilst passing the impugned order dated 15th December, 2016. In these circumstances, we have no hesitation in

holding that the impugned order cannot be sustained and has to go.

21. In view of the foregoing discussion, we hereby quash and set aside the impugned order dated 15th December, 2016. Rule is accordingly made absolute and the Writ Petition is granted in terms of prayer clause (a). We however clarify that the Respondents are free to initiate fresh action against the Petitioner by scrupulously following the mandate of Rule 13 of the Notaries Rules, 1956. However, there shall be no order as to costs. We must clarify that we have not opined on the merits of the allegations made against the Petitioner and the contentions of all parties in that regard are kept expressly open.

(B.P. COLABAWALLA, J.)

(SHANTANU S. KEMKAR, J.)