

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 7015 of 2010****Order Reserved on 11.12.2017****Order Passed on 02.01.2018**

Rajendra Kumar Sarwa, Son of Late Shri Makhanlal Sarwa, aged about 47 years, Occupation Advocate, R/o Village and Post Kareli Chhoti, Tahsil Magarlod, District Dhamtari (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through: The Secretary / Additional Secretary, Law & Legislative Affairs Department, D.K.S. Bhawan, Raipur (C.G.)
2. The Court Superintendent Office of District and Sessions Judge, District Court Dhamtari, District Dhamtari (C.G.)
3. Indramani Parmar, Son of Dhruv Narayan Parmar, aged about 47 years, R/o Kareli Chowk, Megha Road, Ward No. 15, Post and Tahsil Kurud, District Dhamtari (C.G.)

---- Respondents

For Petitioner : Mr. R.S. Patel, Advocate.
 For State : Mr. Arun Sao, Deputy Advocate General.
 For Respondent No. 3 : Mr. Vishnu Kosta, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**ORDER [C.A.V.]**

(1) The State of Chhattisgarh invited applications from the eligible Advocates for appointment of Notary for Tahsil Kurud and Magarlod. The petitioner applied for the appointment on the post of Notary for village Magarlod *whereas* respondents No. 3 & 4 applied for the appointment on the post of Notary for Tahsil Kurud and Magarlod.

(2) Respondents No. 3 & 4 were appointed on the post of Notary for Tahsil Magarlod, but the petitioner was not appointed on the said post

leading to filing of instant writ petition. Earlier, Writ Petition (C) No. 5635/2008 was filed by the petitioner which was disposed of by this Court on 18th June, 2010 directing the State Government to decide the representation filed by the petitioner. By order dated 8.7.2010, petitioner's representation has been rejected holding that provisions contained in Section 7(3)(a) of the Notary Rules, 1956 (henceforth 'Rules, 1956') is directory in nature.

(4) Feeling aggrieved and dissatisfied with the order dated 8.7.2010, instant writ petition has been filed questioning the same.

(5) During pendency of the writ petition, respondent No. 4 has died and, as such, name of respondent No. 4 has been deleted from the cause title of memo of petition.

(6) Respondents have filed their return stating *inter alia* that provisions of Section 7(3)(a) of the Rules, 1956 is directory in nature and the petitioner's candidature has rightly been rejected for post of Notary of village Magarlod.

(7) Mr. R.S. Patel, counsel for the petitioner would submit that the State Government is absolutely unjustified in holding that Rules 7(3)(a) of the Rules, 1956 is directory in nature, in fact it is mandatory in nature, therefore, impugned order rejecting his claim is liable to be set aside.

(8) Per contra, counsel for the respondents would oppose the writ petition and would support the impugned order.

(9) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

(10) At this stage, it would be appropriate to notice Rule 7 of the Notary Rule, 1956, which reads as under:-

“Rule 7. Recommendations of the competent authority- (1) the competent authority shall, after holding such inquiry as he thinks fit and after giving the applicant an opportunity of making his representations against the objections, if any, received within the time fixed under sub-rule (2) of Rule 6, make a report to the appropriate Government recommending either that the application may be allowed for the whole or any part of the area to which the application relates or that it may be rejected.

(2) The competent authority shall also make his recommendation in the report under sub-rule (1) regarding the persons by whom the whole or any part of the costs of the application including cost of hearing, if any, shall be borne.

(3) In making his recommendation under sub-rule (1), the competent authority shall have due regard to the following matters, namely:-

(a) whether the applicant ordinarily resides in the area in which he propose to practise as a notary;

(b) whether, having regard to the commercial importance of the area in which the applicant proposes to practise and number of existing notaries practising in the areas it is necessary to appoint any additional notaries for the area;

(c) whether, having regard to his knowledge and experience of commercial law and the nature of the objections, if any, raised in respect of his appointment as a notary and in case of a legal practitioner also to the extent of his practice, the applicant is fit to be appointed as a notary;

(d) whether the applicant belongs to a firm of legal

practitioners, whether having regard to the number of existing notaries in that firm, it is proper and necessary to appoint any additional notary from that firm, and

(e) where applications from other applicants in respect of the area are pending whether the applicant is more suitable than such other applicants.”

(4) A careful perusal of the Rule 7(3)(a) of the Rules, 2005 would show that competent authority shall have due regard to the fact as to whether the applicant ordinarily resides in the area in which he propose to practice as a notary.

(5) The word 'ordinarily resides' has been defined by the Supreme Court in the matter of **Union of India Vs. Dudh Nath Prasad**¹, their Lordships examined the meaning of the word “reside” and “residence” and concluded as under:-

“If the two meaning referred to above are to be read along with the word “ordinarily”, it becomes clear that a person, before he can be said to be 'ordinarily residing' at a particular place, has to have an intention to stay at that place for a considerably long time. It would not include a flying visit of a short or casual presence at that place.”

After laying down the aforesaid legal principle then their Lordships while examining the facts as under:-

“We have already explained the meanings of the words “ordinarily resident” and have found that notwithstanding that the warrants or the respondent lived at one time in a village of District Siwan in the State of Bihar and that they owned some property also there, they had shifted to the State of West Bengal long ago and had been living there since then. For, all

¹ AIR 2000 SC 525

intents and purposes, therefore, they be treated to be “ordinarily residing in the State of West Bengal, the President in exercise of his powers under Article 341(1) read with Article 366 (24) had already declared “*Nuniya*” Caste as a Scheduled Caste candidate and was rightly appointed against a Reserved vacancy, after being declared successful at the examination held by the UPSC for the Indian Administrative and Allied Services in 1960.”

(6) Reverting back to the facts of the case, it would appear that respondent No. 3 is the ordinarily resident of Kurud, which is apparent from the copy of voter list filed along with the writ petition as Annexure P-7 and he is not the ordinarily resident of village Magarlod, for which he has been appointed as a Notary *likewise* respondent No. 4 was also appointed as Notary for the period of five years though the petitioner is ordinarily resident of village Magarlod but his case has not been considered for the post of Notary.

(7) It is stated at the bar that now on sad demise of respondent No. 4, one post of Notary at village Magarlod has fallen vacant, therefore, without disturbing the appointment of respondent No. 3 as Notary of Village Magarlod, the State Government is directed to consider the case of the petitioner strictly in accordance with Rules within a period of 45 days from the date of receipt of certified copy of this order keeping in view that petitioner is ordinarily resident of Village and Tahsil Magarlod.

(8) Accordingly, the writ petition is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

(Sanjay K. Agrawal)
Judge

D/-