IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.1201 OF 2018

Sushil s/o. Khemraj Chaurasia … Petitioner

Vs

Union of India & anr. … Respondents

Mr.Murtaza Najmi with Ms.S. Khan for the Petitioner

Mr.Rajiv Chavan, Senior Advocate with Mr.Y.S. Bhate and Mr.Anand Singh for Respondent No.1

Mr.Hemant Haryan, AGP, for Responent No.2 – State

CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATED: AUGUST 27, 2019

P.C.:

1. This petition is filed by an advocate, who aspires to be a notary public. He has challenged Rule 4(3) of the Notaries Rules, 1956 (‘the said Rules’ for short) and Form I appended thereto.

2. The learned Counsel for the petitioner drew our attention to various provisions contained in the Notaries Act, 1962 (for short, “the Act”) and the Rules framed by the Government of India in exercise of powers under section 15 of the said Act. He contended

that sub-rule (3) of rule 4 makes special requirement from a person, who is practising as an advocate and who wishes to be registered as a notary public. Such requirement is not imposed in relation to the persons referred to in clauses (b) and (c) of rule 3 prescribing qualifications for appointment as a notary. In the opinion of the learned Counsel, this is wholly discriminatory and arbitrary. He drew our attention to Forms I and II prescribed under rule 4(2) of the said rules meant for the persons referred to in clause (a); and clauses (b) and (c) respectively of rule 3. He submitted that Form I would apply to an advocate, who has to make a declaration of number of notaries practising in the local area whether it is insufficient for the requirements thereof. It is pointed out that in Form I and Form II, no such details are required to be provided.

3. In our opinion, there is no merit in the challenge. Section 3 of the Act pertains to power to appoint notaries and provides that the Central Government for the whole or any part of India and the State Government for the whole or any part of the State, may appoint as notaries any legal practitioners or other persons who possess such qualifications as may be prescribed. Section 15 of

the Act is a rule making power of the Government. Sub-section (1) of section 15 provides that the Central Government may by notification in the official gazette make rules to carry out the purposes of the said Act. Sub-section (2) of section 15 provides that in particular and without prejudice to the generality of the sub-section (1), such rules may provide for any of the matters contained in clauses (a) to (i) below the said rule. Clause (a) pertains to qualifications of the notary, the form and manner in which the applications for appointment as a notary may be made and the disposal of such applications. Clause (b) pertains to certificates, testimonials or proofs as to character, integrity, ability and competence which any person applying for appointment as a notary may be required to furnish.

4. In exercise of such powers, the Central Government framed the said rules. Rule 3 pertains to qualifications for appointment as notary and reads as under:

> "3. Qualifications for appointment as a notary. - No person shall be eligible for appointment as a notary unless on the date of the application for such appointment,-
> (a) a person had been practising at least for ten years, or
> (aa) a person belonging to Scheduled Castes/Scheduled Tribes and other Backward Classes had been practising at least for seven years, or

(ab) a woman who had been practising at least for seven years, as a legal practitioner, or
(b) he had been a member of the Indian Legal Service under the Central Government, or
(c) he had been at least for ten years, -
(i) a member of Judicial Service; or
(ii) held an office under the Central Government or a State Government requiring special knowledge of law after enrollment as an advocate; or
(iii) held an office in a department of Judge Advocate General or in the legal department of the armed forces."

5. Rule 4 pertains to application for appointment as a notary and retads as under:

"4. Application for appointment as a notary. - (1) A person may make an application for appointment as a notary (hereinafter called "the applicant"), through the concerned District Judge or the Presiding Officer of the Court or Tribunal where he practises as an Advocate, in the Form of memorial addressed to such officer or authority (hereinafter referred to as the "competent authority") of the appropriate Government as that Government may, by notification in the Official Gazette, designate in this behalf.
(2) The memorial shall be drawn by a person referred to in clause (a) of rule 3 in accordance with Form I and by a person referred to in clauses (b) and (c) of the said rule in accordance with Form II.
(2-A) A person applying in Form II for appointment as a notary may submit the memorial direct to the Competent Authority of the Appropriate Government.
(3) The memorial of a person referred to in clause (a) of rule 3 shall be signed by the applicant and shall be countersigned by the following person:-
(a) a Magistrate;
(b) a Manager of a nationalised bank;
(c) a merchant; and

(d) two prominent inhabitants of the local area within which the applicant intends to practise as a notary."

6. Under sub-rule (1) of rule 7, the competent authority would after holding such enquiry as he thinks fit and after giving the applicant an opportunity of making his representations against the objections, if any, received, make a report to the appropriate Government recommending that the applicant may be allowed to appear before the Interview Board. Sub-rule (1) of rule 8 provides that on receipt of the recommendations of the Interview Board, the appropriate Government shall consider the recommendation and shall allow the application in respect of the whole of the area to which it relates or allow the application in respect of any part of the area to which it relates or reject the application.

7. It can thus, be seen that in exercise of powers under section 15 and in particular clauses (a) and (b) of sub-section (1) of section 15, the Central Government has framed comprehensive rules prescribing the qualifications for appointment of a person as a notary, the manner in which applications for such purpose shall be made, scrutiny of such applications and the recommendation by competent authority, interview and recommendations by the Board

and consideration thereof by the Government either appointing the person as a public notary or rejecting such an application.

8. Sub-rule (3) of rule 4 which is under challenge before us requires the person referred to in clause (a) of rule 3 i.e., a person who is practising for a minimum of 10 years, to have his memorial counter signed by the following persons:

> a) a Magistrate
> (b) a Manager of a nationalised bank;
> (c) a merchant; and
> (d) two prominent inhabitants of the local area within which the applicant intends to practise as a notary."

9. We do not find that these requirements create an artificial discrimination. Clause (a) of rule 3 as noted, applies to a person who has been practising at least for 10 years. In comparison, clauses (b) and (c) pertain to a member of Indian Legal Service under the Central Government and a person who has for at least 10 years been a Member of Judicial Service or held an office under the Central Government or a State requiring special knowledge of law after enrollment as an advocate, respectively. In case of persons referred to in clauses (b) and (c) of rule 3, obviously, their testimonials would have been sufficiently examined and verified at

the time of their appointment in the judicial service or at the time of appointment to an office under the Government requiring special knowledge of law. In case of an advocate, this would be conspicuous by absence. It is in this respect, therefore, that the rules require an advocate aspiring to be appointed as a public notary to have his memorial counter signed by persons mentioned above. We do not find anything discriminatory by this special requirement imposed in case of an advocate applicant. As is well known, there is presumption of constitutionality to statutory provisions even framed by subordinate legislature. It is for one, who challenges it, to establish by producing the necessary material demonstrating that the same are discriminatory or violative of Article 14 of the Constitution of India or in any other manner can be declared as unconstitutional or ultra vires.

10. Form I pertains to memorial which an advocate has to fill up. Clause 3 of paragraph 10 requires that such applicant would make a declaration that the number of notaries practising in the local area is insufficient for the requirements thereof. We have noted that no such declaration is required to be made by the persons referred to in clauses (b) and (c) of rule 3 and who would have to

fill up memorandum as in Form II. However, this does not mean that no such requirement is to be verified before allowing application of such persons. The requirement of a declaration in paragraph 10 of Form I is only for collecting information. This is not to suggest that in absence of any such declaration required to be made under Form II, no such requirement exists. It is always open for the Government to verify necessary details before granting any such application even in respect of the persons belonging to clauses (b) and (c) of rule 3.

11. Under the circumstances, petition is dismissed.

(S.J. KATHAWALLA, J.) **(AKIL KURESHI, J.)**