



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.10.2019

DATE OF DECISION : 15.11.2019

WEB COPY

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P. (MD) Nos.4692, 6192, 6193, 16903, 17892 and 17937 of 2019
and
W.M.P. (MD) Nos.3742, 3743, 13488, 13489, 14404 and 14406 of 2019

W.P. (MD) Nos.4692 and 17937 of 2019 :

R.Ravikumar ..Petitioner in
W.P.(MD)No.4692 of 2019

S.Mayalagu .. Petitioner in
W.P.(MD)No.17937 of 2019

Vs.

The Government of India,
Ministry of Law and Justice,
Department of Legal Affairs (Notary Cell),
Shastri Bhavan, New Delhi-110 001
represented by the Joint Secretary and
Legal Adviser .. Respondents in
both writ petitions

W.P. (MD) Nos.6192 and 6193 of 2019 :

S.Vijayakumar .. Petitioner in
W.P.(MD)No.6192 of 2019

P.Amirtharaj .. Petitioner in
W.P.(MD)No.6193 of 2019

Vs.

1.The Secretary,
Department of Legal Affairs,
Ministry of Law & Justice,
Government of India,
4th Floor A-Wing,
Shastri Bhavan,
New Delhi-110 001.



2.The Deputy Legal Adviser and
Competent Authority,
Department of Legal Affairs,
Ministry of Law & Justice,
Government of India Notary Cell
4th Floor A-Wing, Shastri Bhavan,
New Delhi-110 001.

.. Respondents in
both writ petitions

W.P. (MD) No.16903 of 2019 :

R.Jeyaram

.. Petitioner

Vs.

The Government of India,
Ministry of Law and Justice,
rep by its Competent Authority
Department of Legal Affairs (Notary Cell)
Shastri Bhavan,
New Delhi-110 001
represented by the Joint Secretary and
Legal Advisor.

.. Respondent

W.P. (MD) No.17892 of 2019 :

L.Asokan

.. Petitioner

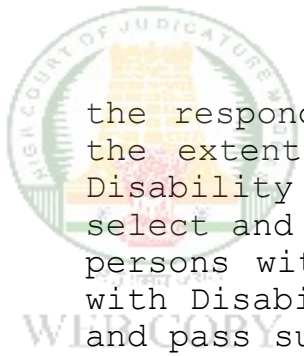
Vs.

1.The Government of India,
through its Secretary,
Ministry of Law and Justice,
Department of Legal Affairs (Notary cell),
Shastri Bhavan, New Delhi.

2.The Director,
Department of Legal Affairs (Notary cell)
Ministry of Law and Justice,
Shastri Bhavan,
Nungambakkam, Chennai.

3.The Principal District & Sessions Judge,
Tiruchirapalli
Tiruchirapalli District. .. Respondents

W.P. (MD) Nos.4692, 16903 and 17937 of 2019 are filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order dated 21.02.2019 with names of candidates for appointment as Notaries for the State of Tamil Nadu on the file of



the respondent and quash the same as illegal / unconstitutional to the extent of non selection of the candidates under Persons with Disability category and consequently to direct the respondent to select and appoint the petitioner by following 4% reservation to the persons with disability as per Section 34 of the Rights of Persons with Disabilities Act, 2016 within the time stipulated by this Court and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

W.P. (MD) No. 6192 of 2019 is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus or any other appropriate writ or order or direction in the nature of writ by directing the second respondent Deputy legal Adviser and Competent authority to issue appointment letter to the petitioner F.No.N-11013/2091/2018-NC/Interview Sr.No.850 for appointment as Notary for entire Tamil Nadu and pass other order as this Hon'ble Court may be pleased to deem fit and proper in the circumstances of the case and thus render justice.

W.P. (MD) No. 6193 of 2019 is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus or any other appropriate writ or order or direction in the nature of writ by directing the second respondent Deputy legal Adviser and Competent authority to issue appointment letter to the petitioner F.No.N-11013/2202/2018-NC/Interview Sr.No.961 for appointment as Notary for entire Tamil Nadu and pass other order as this Hon'ble Court may be pleased to deem fit and proper in the circumstances of the case and thus render justice.

W.P. (MD) No. 17892 of 2019 is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus or any other writ, order or direction in the nature of writ directing the first respondent to appoint the petitioner as one of the Notaries as recommended by third respondent to the Pettavaithalai area within a stipulated time as fixed by this Hon'ble High Court and pass such further or other orders as this Hon'ble High Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioners : Mr.S.Louis in W.P.(MD)No.4692/2019
and Mr.R.Chockalingam
in W.P.(MD)No.6192 / 2019
Mr.S.Vijayakumar in W.P.(MD)No.6193/2019
Mr.A.C.Asaithambi in WP(MD)No.16903/2019
Mr.K.K.Samy in W.P.(MD)No.17892 of 2019
Mr.B.Arun for Mr.J.Sivaram
in W.P.(MD)No.17937 of 2019

For Respondents : Mr.G.Rajagopalan,
Additional Solicitor General
assisted by
Mr.V.Kathirvelu, Assistant Solicitor General



WEB COPY

assisted / instructed by
Ms.S.Ragaventhre, CGSC for R-1
in W.P.(MD)No.4692 of 2019
Mr.J.Alaguram Jothi, Standing Counsel
for RR1 and 2 in WP(MD)Nos.6192 & 6193/2019
Mr.P.Subbiah, Standing Counsel
for RR1 and 2 in WP(MD)No.17892 of 2019
Ms.B.Deepa, Standing counsel
in W.P.(MD)No.17937 of 2019
Mr.M.Karthikeya Venkitachalapathy
in W.P.(MD)No.16903 of 2019
Mr.N.Tamilmani for R-3
in WP(MD)No.17892 of 2019

COMMON ORDER

This common order will dispose of these six writ petitions.

2 All these six writ petitions have been filed by individuals who were unsuccessful in getting themselves appointed as Notaries for the State of Tamil Nadu by the Central Government.

3 Such appointment of Notaries for States (in this case, State of Tamil Nadu) by Central Government is under section 3 of 'The Notaries Act, 1952 (53 of 1952)' (hereinafter referred to as 'Notaries Act' for the sake of brevity and convenience) and The Notaries Rules, 1956 being subordinate legislation made by the Central Government in exercise of Rule making powers under section 15 of Notaries Act. 'The Notaries Rules, 1956' shall hereinafter be referred to as 'Notaries rules' for the sake of brevity and convenience.

4 Of the six writ petitioners, five have different disabilities within the meaning of 'Rights of Persons with Disabilities Act, 2016 (49/2016)' (hereinafter 'RPD Act' for brevity). Therefore, prayers in five out of these six writ petitions turn on RPD Act.

5 Undisputed facts are that instant cases pertain to a notice dated 16.8.2018 bearing reference N-11013/1229/2018-NC issued by Government of India, Ministry of Law and Justice, Department of Legal Affairs (Notary Cell) regarding applications for appointment of Notaries, in response to which there were 2603 applications. Ultimately, 2308 appeared for interview (295 absentees) out of which 748 were appointed. In this regard, number of Notaries that can be appointed by Central Government for various States have been limited by prescribing maximum number under Schedule to Notaries rules under the Notaries Act. On and from 28.8.2018, the maximum number of notaries who can be appointed for Tamil Nadu is 1700. There is no dispute that 1631 have been appointed as of today and there are 69
<https://hcservices.court.gov.in/hcservices/> vacant.

6 Crux and gravamen of the complaint of writ petitioners in these writ petitions is twofold. One is that the process of interview and selection is flawed, it was an eyewash and they are entitled to be appointed. The second aspect is some of the writ petitioners being persons with disability, they should have been accommodated by providing reservation in tune with section 34 of RPD Act. In this regard, earlier proceedings of this court are of relevance. Proceedings dated 19.8.2019 made by learned Predecessor Judge reads as follows :

'Pursuant to the directives issued by this Court, by order dated 05.08.2019, where the following had been asked by this Court,

"2.After having heard them, this Court is of the view that since in the selection process, under Rule 7A, the Interview Board was constituted before whom the applicants appeared on call letter and based on which selection has been made and the selected list with recommendations has been sent to the Ministry/ Central Government for appointment, this Court wants the following particulars / relevant files for perusal:

- The mode of selection or the method of selection, that means, as to whether any prescribed procedure or guidelines have been given to the Interview Board to be followed, for selecting the candidates to testify their caliber and if so, the details;
- If any marks awarded to each of the candidates on that intention, and if so, the final selection list recommended by the Interview Board to the Ministry / Central Government; and
- The process and mode of final selection and appointment made by the Central Government.

3. The above details shall be produced before this Court during the next hearing. Post on 19.08.2019".

today, the learned Assistant Solicitor General for the respondents has produced two list of candidates; One is selected and another one is non-selected. In the list of selected candidates, 748 candidates have been given. In the list of non selected candidates, names of 1562 candidates are found.

3. By relying upon these two list of candidates, the learned Assistant Solicitor General submits that, since the Government of India, Ministry of Law and Justice, decided to conduct interview to select the Notaries, an Interview Board was constituted, before whom the candidates, who applied before the cut



off date appeared, based on the cumulative marks obtained by the candidates, a final selection list, recommended by the Interview Board had been sent to the Ministry, based on which appointments had been made.

4. He would also submit that, those who scored 60 and above out of 100 marks in the interview alone had been selected and those who failed to obtain 60 and above, that means, those who got less than 60 marks, have not been recommended nor been selected.

5. On hearing the learned Assistant Solicitor General and having perused the two list of candidates, when this Court posed a question as to the maximum marks prescribed in the interview to be conducted for the candidates, the learned Assistant Solicitor General, on getting instant instructions from the Officer concerned, who is present before this Court on behalf of the Law Ministry, submits that, the maximum marks to be awarded was 100 and out of that 100 marks, whoever was able to get 60 and above were selected.

6. Then further question was raised by this Court that, whether any guidelines or instructions had been given by the Ministry with regard to the maximum marks to be awarded in the interview and the method of interview to be made, ie., the mode of conducting the interview to pose questions and awarding marks to the candidates, who appear before the interview Board, the learned Assistant Solicitor General would submit that, at present, documents are not available and the relevant records would be filed before this Court, during the next hearing.

7. In that view of the matter, this Court gives the following directions to the respondents:

- That the respondent, ie., the Law Ministry shall produce the contents, details as to the decision taken by the Law Ministry to conduct the interview for selecting the Notary Public not only in the State of Tamil Nadu, but throughout the Country, as has been mentioned in their notice dated 16.08.2018 in N11013/1229/2018-NC issued by the Government of India, Ministry of Law and Justice, Department of Legal Affairs (Notary Cell) and also the relevant documents/file, under which, the Ministry had given definite guidelines to the Interview Board as to how to conduct the interview, and the awarding of marks to the extent of maximum (as in this case, as claimed by the learned Assistant Solicitor General the 100 marks) and the minimum. Also whether any written instructions had been given by the Ministry



WEB COPY

to the Interview Board shall also be produced before this Court.

- That apart, the recommendatory report of the interview Board recommending the candidates, who obtained 60 and above marks for the purpose of selection for Notary Public by the respondents, insofar as the State of Tamil Nadu is concerned, shall also be filed before this Court.

8. The aforesaid documents shall be filed before this Court during the next hearing without fail.

9. For the aforesaid purpose, post this matter on 28.08.2019.

10. Post these Writ Petitions along with W.P.(MD) No.17892 of 2019.'

7 Proceedings made by this court on 16.9.2019 and 26.9.2019 read as follows:

Proceedings dated 16.09.2019 :

Mr.S.Louis and Mr.J.Sivaram, learned Counsel on record for the writ petitioners and the Additional Solicitor General of India Mr.G.Rajagopalan on behalf of the respondents in all five writ petitions are before this Court.

2.Read this in conjunction with and in continuation of earlier proceedings made by my Honourable Predecessor Judge on 19.08.2019 and 28.08.2019.

3.Today, learned Additional Solicitor General of India submits that pursuant to aforementioned earlier proceedings the records are before the Court.

4.However, there is one other preliminary aspect of the matter which has cropped up today. The central theme of these writ petitions is whether the provisions of the 'Rights of Persons with Disability Act 2016 (49 of 2016)', (hereinafter 'Disability Act' for brevity) would apply to appointment of Notaries under the Notaries Act 1952 (53 of 1952) (hereinafter Notaries Act for brevity).

5.Adverting to Section 34 of the Disability Act, it is submitted that the reservation provided under the Disability Act read in the context of Schedule to the Notaries Act, it is submitted that the maximum number of Notaries to be appointed by the Central Government for the State of Tamil Nadu is 1700, this is in vogue with effect from 28.08.2018 and therefore 4 percent reservation under Disabilities Act, in terms of numbers means 68. There is no disputation that the present appointment of Notaries which forms subject matter of these five writ petitions and the process for the same commenced post 28.08.2018.

<https://hcservices.ecourts.gov.in/hcservices> Therefore, the preliminary question is whether



the central theme can be decided without putting on notice the existing / appointed Notaries or atleast a representative of them. The answer to this lies in the number of Notaries now functioning in the State of Tamil Nadu under the Notaries Act. If it is 1632 or lesser, the central theme can be decided without disturbing the existing Notaries, whereas if the number of Notaries now functioning is more than 1632, it may be necessary to device a mechanism in this regard.

7. In this backdrop, Ms. Raghaventhra who is instructing learned Additional Solicitor General of India seeks time to produce records regarding the number of Notaries appointed / now functioning in the State of Tamil Nadu under the Notaries Act.

8. At request, list on 26.09.2019.'

Proceedings dated 26.09.2019 :

'Read this in conjunction with and in continuation of earlier proceedings of this Court dated 16.09.2019.

2. Mr. Vijaykumar and Mr. K.K. Samy, learned Counsel on record for the writ petitioners, Additional Solicitor General of India Mr. G. Rajagopalan; Mr. V. Kathirvelu, Assistant Solicitor General of India, instructed by Ms. S. Ragaventhra, Mr. P. Subbiah, Ms. B. Deepa and Mr. J. Alaguram Jothi, on behalf of the respondents in all five writ petitions are before this Court.

3. Pursuant to earlier proceedings dated 16.09.2019, after taking instructions, learned Additional Solicitor General of India submitted that as of today, 1631 Notaries appointed under the Notaries Act 1952 (53 of 1952) (hereinafter 'said Act' for brevity) by the Central Government for Tamil Nadu are functioning today. Therefore, in the light of the schedule to said Act, which provides for a maximum number of 1700 Notaries to be appointed by Central Government for the State of Tamil Nadu, there are 69 slots available as of today. In the light of earlier proceedings dated 16.09.2019, as the number of slots is more than 68, with the consent of both sides, this Court proceeds with the hearing.

4. On behalf of Mr. S. Louis, an adjournment was sought stating that learned Counsel's mother is unwell.

5. Therefore, this matter is being adjourned / re-scheduled at request of Counsel for writ petitioner in W.P. (MD) No. 4692 of 2019.

6. In the light of the proceedings thus far, the respondents shall ensure that not less than 68 slots continue to remain vacant till the disposal of these writ petitions.

<https://hcservices.ecourts.gov.in/hcservices/> list on 15.10.2019. '



8 Pursuant to the aforesaid proceedings, it is submitted that no guidelines have been issued, but a three member selection committee constituted by one Additional Secretary to the Government of India, two Deputy Legal Advisors in the Ministry of Law interviewed the aspirants / applicants from 19.9.2018 to 11.10.2018 at the rate of roughly 150 per day, 75 in the forenoon and 75 in the afternoon. Candidates who scored more than 60 marks, out of 100 marks were selected (748) and the others were not selected.

9 Though there were no guidelines, it was submitted that certain questions pertaining to legal aspects were put to the aspirants / applicants. However, it is disputed by petitioners by saying that no questions on legal aspects were put to them, in some cases, they merely asked their names and in some cases, after ascertaining whether they had applied earlier, they were sent away.

10 In this regard, advertng to the challenge to the selection list, learned Solicitor made a reference to Rule 2-A of Rules to Regulate Proceedings under Article 226 of the Constitution of India made by this Court under Article 225 of the Constitution of India, which reads as follows :

'R.2-A. Where there are numerous persons who may be affected in the event of the petitioner succeeding in a writ petition or whose addresses for effective service of notice in the writ petition is not known to the writ petitioner, or where the court considers that having regard to the need for a quick decision and avoidance of delay, it is necessary to grant such permission, the writ petitioner may, with the permission of court, file a single petition against one or more of such persons who may be affected, designating and describing him or them, as representing all such persons:

Provided that while granting permission to the petitioner to implead a respondent or respondents in a representative capacity, the court may direct publication of a notice in the prescribed form so that every person likely to be affected will have an opportunity of coming on record if he so chooses.'

11 It was submitted that at least recourse to Rule 2-A should have been taken.

12 With regard to RPD Act and reservation under section 34 of RPD Act, submissions on behalf of State are threefold and the same are as follows:

(a) Appointment of a Notary is not appointment to a post, but it is a privilege conferred under Notaries Act and therefore, there can be no reservation under section 34 of RPD Act;

(b) The selection committee has not rejected any candidate on account of disability and therefore, no complaint can be made in this regard. There should be a

<https://hcservices.ecourts.gov.in/hcservices> for writ petitioners to claim mandamus;



(c) Writ petitioners are all legal professionals who are practicing and therefore, they do not need rehabilitation which is the object of RPD Act.

13 This court now carefully examines the submissions made. With regard to the argument that Notary is not a post and it is a privilege conferred under Notaries Act and Notaries Rules, a judgment rendered by Hon'ble Mr. Justice Arijit Pasayat, presiding over a Division Bench of Orissa High Court (as His Lordship then was), reported in **AIR 1997 Orissa 1** was pressed into service. This case is **Nityananda Behera Vs. State of Orissa**.

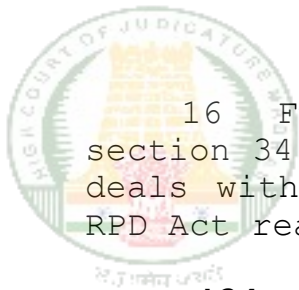
14 It was submitted that this Nityananda Behera case was followed by a Division Bench of Andhra Pradesh High Court in **Sambasiva Rao Vs. Union of India** reported in **AIR 2007 AP 320**. Relevant paragraphs in Nityananda Behera case are paragraphs 6 and 7 which read as follows:

'6. The power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion and payment from out of Government revenues are important factors in determining whether that person is holding an office of profit under the Government. (See Abdul Shakur v. Rikhabchand, AIR 1958 SC 51 (sic). An office has to be held under someone for it is impossible to conceive of an office held under no one, For holding an office of profit under the Government a person need not be in the service of the Government and there need not be any relationship of master and servant between them. (See Gurgobinda Basu v. Sankari Prasad Ghosal, AIR 1964 SC 254. The office in question must be held under a Government and to that some salary, emoluments or other allowance are attached. For finding out whether an office in question is an office under a Government and whether it is an office of profit, the relevant tests would be (1) Whether the Government makes the appointment? (2) Whether the Government has the right to remove or dismiss the holder? (3) Whether the Government pays the remuneration? (4) What are the functions of the holder? Does he perform them for the Government? and (5) Does the Government exercise any control over the performance of those functions? This test was indicated by the apex Court in Shivamurthy Swami v. Sangamna Andanappa, (1971) 3 SCC 870. The word 'profit' connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount would not be material; but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carried any profit. (See Rarbhari Bhimaji Rohamare v. Shanker Rao Genji Kolhe, AIR 1975 SC 575).

Stat

'4. It has been brought to the notice of this Court by Sri M. Panduranga Rao, the learned Counsel for the petitioner, that 'Notary' as such is not a post, as held by Their Lordships of the Orissa High Court in Nityananda Behera v. State of Orissa, AIR 1997 Orissa 1 as well as the Allahabad High Court in Kashi Prasad v. State, AIR 1967 All 173 (V 54 C 55) Lucknow Bench that the prerequisite for appointment of a 'Notary' is -- one must be an Advocate by profession with prescribed experience at Bar. Such appointment can be made under the Notaries Act, 1952 (for brevity "the Notaries Act").

legal practitioner from functioning as a Notary. '



16 Furthering his submissions in this direction, adverting to section 34 of RPD Act, it was submitted by learned Solicitor that it deals with appointments in Government establishment. Section 34 of RPD Act reads as follows :

'34.Reservation.- (1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:--

- (a) blindness and low vision;
- (b) deaf and hard of hearing;
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) autism, intellectual disability, specific learning disability and mental illness;
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an

establishment is such that a given category of person



cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit. '

17 'Government establishment' has been defined in section 2(k) of RPD Act and the same reads as follows :

'2.Definitions.-- In this Act, unless the context otherwise requires,--

(a) to (j)

(k) "Government establishment" means a corporation established by or under a Central Act or State Act or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 2 of the Companies Act, 2013 (18 of 2013) and includes a Department of the Government;'

18 With regard to the second argument that no candidate was rejected on the ground of disability, in the considered view of this court this is no answer to the plea seeking implementation of section 34 of RPD Act as section 34 of RPD Act is clearly akin to affirmative action. With regard to the third submission regarding rehabilitation, RPD Act aims to give effect to United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto and eight broad principles laid down by said Convention are as follows :

'(a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

(b) non-discrimination;

(c) full and effective participation and inclusion in society;

(d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

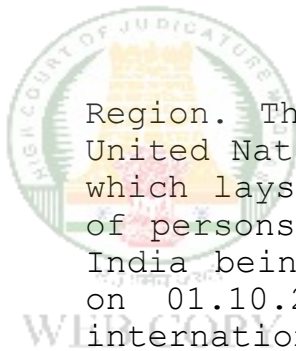
(e) equality of opportunity;

(f) accessibility;

(g) equality between men and women;

(h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;'

19 A perusal of aforesaid adumbration will reveal that rehabilitation is not the only objective of RPD Act as contended. Further more, a perusal of the 'Statement of Objects and Reasons' ('SOR' for brevity) of RPD Act reveals that the statute itself was enacted to give effect to a Proclamation on the Full Participation and Equality of People with Disabilities in the Asia and Pacific



Region. The SOR also makes it clear that India is a signatory to United Nations Convention on the Rights of Persons with Disabilities which lays down principles to be followed by States for empowerment of persons with disabilities. The SOR also further articulates that India being a signatory to this convention which was also ratified on 01.10.2007, RPD Act was put in place to comply with this international obligation.

20 Adverting to qualifications for Notaries, attention of this court was drawn to Rules 3 and 7(3) of Notaries Rules which read as follows :

"Rule 3:

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 practicing at least for ten years, or

(aa) a person belonging to Scheduled Caste/Scheduled Tribes and other backward classes had been practicing at least for seven years, or

(ab) a woman who had been practicing 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 enrolment as an advocate; or

(iii) held an office in the department of Judge Advocate General or in the legal department of the armed forces.]

Rule 7(3) :

7.Recommendation of the competent authority.-

(1)

(2)

(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 proposes to practise as a notary;

(b) whether, having regard to the commercial importance of the area in which the applicant proposes to practise and the number of existing notaries practising in the area, 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 the case of a legal practitioner



also to the extent of his practice, the applicant is fit to be appointed as a notary;

(d) where 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:]

[Provided that in respect of categories (b) and (c), if the memorial in Form II is found to be in order, the competent authority may issue certificate of practice as Notary directly by exempting appearance before the Interview Board.]"

21 It was also pointed out that a list has to be forwarded through the court concerned which means applicants are in active law practice and they do not need rehabilitation. As already alluded to supra, rehabilitation is not the only objective of RPD Act and therefore, this court is of the considered view that this argument does not hold water.

22 Section 34, as it exists today, as pointed out by learned Solicitor, provides for appointment in a Government establishment and the term 'Government establishment' has been defined in Section 2(k) of RPD Act. Section 34 also refers to total number of vacancies, i.e., cadre strength in each group of posts meant to be filled. Therefore, two prerequisites for application of section 34 are that the appointment should be to a post and that it should be in a Government establishment. This is how the problem presents itself for the petitioners in cases on hand as far as petitioners with disabilities are concerned.

23 Besides *Nityananda Behera* case and *Sambasiva Rao* case, a Hon'ble Division Bench of our High Court in the case of one of the writ petitioners, namely, S.Vijayakumar in W.P.No.6192 of 2019 with regard to previous selection of Notaries had held that Notary is not a post, but it is a privilege conferred under said Act. Paragraph 5 of the aforesaid order made in W.A.(MD)No.1260 of 2014 vide order dated 12.01.2016 reads as follows :

"5.Unfortunately, for the respondent, the interview for selection and appointment of Notary Public, was already over on 29.09.2014. Though the respondent has sent it even before the date of interview, the fact remains that a team from Delhi came to Chennai and made the selection. Therefore the only relief that could be granted is to allow him to apply next time. This is not an appointment to any post where a selection committee can be directed to hold special sittings. It is a privilege conferred under the Notaries Act, 1952. Therefore, the writ appeal is disposed of, permitting the respondent to apply afresh in the next selection and



directing the appellants to consider the same in accordance with law. The appellants shall take note of the observations of the learned Judge and point out the defects, if any, in the application in advance. No costs. "

WEB COPY

24 With regard to the position that appointment of Notaries is a privilege conferred by Statute in contradistinction to a post, another privilege conferred by statute was highlighted to say that all privileges conferred by statute do not stand on the same footing. Section 16 of Advocates Act is also a privilege conferred by Statute albeit with the consent of the advocate concerned. That is also a privilege conferred on practicing advocates as in the case of notaries. However, it was highlighted and submitted that the two cannot be considered to be falling in the same basket. To put it differently, they may be co-equal but not equal.

25 This court does not have much difficulty in accepting the submission that all privileges conferred by Statute do not stand in the same footing / pedestal when it comes to applying section 34 of RPD Act which as mentioned above is akin to affirmative action. Notaries though a privilege has all the trappings of appointment to a post. The reason is, a candidate has to apply and attend an interview, where marks are awarded by the panel which interviews the candidate. Be that as it may, owing to appointment as Notary having trappings of seeking an appointment or seeking a post, the same viewed in the context of the salutary principle, sublime philosophy and lofty objective underlying RPD Act, this court is left with the considered view that 4% reservation provided under section 34 of RPD Act should be read into and should be made available for appointment as Notaries also. One more reason as to why this has the trappings of a post is that the number of Notaries who can be appointed for a particular State has been statutorily specified by way of a Schedule to the Act, which is akin to cadre strength.

26 This takes us to the next limb of discussion touching upon section 34, i.e., that the appointment should be in a Government establishment within the meaning of section 2(k) of RPD Act. In this regard, Section 35 says that appropriate government and local authorities shall provide incentives to employers in private sector to ensure that at least 5% of their work force is composed of persons with benchmark disability. To be noted, 'person with benchmark disability' is a defined term under RPD Act and it is defined under section 2(r) of RPD Act which reads as follows :

'2.Definitions.--In this Act, unless the context otherwise requires,--

(a) to (q)

(r) "person with benchmark disability" means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with



in measurable terms, as certified by the certifying authority;'

27 Therefore, it cannot be gainsaid that the scheme of Act visualizes reservation for appointment in Government establishments alone.

28 This takes us to the discussion to reading into principle. This court is conscious and clear in its mind that it is a well settled principle in law that the Court cannot read anything into statutory provision which is plain and unambiguous, language in which the statute is couched being the determinative factor qua legislative intent. This Court is also conscious of the rule that it must deduce the intention of Parliament from the words used in the Act. All this in effect means that when a provision in a statute is clear, explicit, unambiguous, not needing a qualification or incapable of admitting an exception, then the court will not read into it. It follows as a corollary that when a provision of law is not such that it needs no qualification and does not admit of any exception, it is well open to the court to fall back on social dynamics of interpretation. In other words, a schematic and teleological method of interpretation is permissible.

29 In the instant case, in the considered view of this court, terms 'appoint' and 'appointment' on one side and expression 'privilege conferred by Statute' on the other have not been defined in both the Acts we are concerned with as well as the Rules thereunder, namely Notaries Act and Notaries Rules and RPD Act and Rules thereunder. This is because the all too crucial and critical provisions in the RPD Act, namely, section 34 uses the term 'appoint'. The question is whether this term 'appoint' occurring in section 34 of RPD Act can be construed as including a privilege conferred by Statute. Section 34 of RPD Act has already been extracted and reproduced supra. The most crucial set of words in section 34 occur in sub section (1), namely 'Every appropriate Government shall appoint in every Government establishment, not less than four per cent.....'. In this crucial line consisting of 15 words, 'appropriate Government' and 'Government establishment' have been defined in sections 2(b) and 2(k) of RPD Act respectively. Also to be noted, 'establishment' has also been independently defined in section 2(i) of RPD Act which talks about private establishment and 'private establishment' in turn has been defined in section 2(v) of RPD Act. Therefore, what is left is the term 'appoint'.

30 A perusal of the General Clauses Act, 1897 (10 of 1897) reveals that the term 'appoint' does not find place in the adumbration of definitions in section 3 thereat. Therefore, this court takes recourse to Oxford Dictionary, P.Ramanatha Aiyar's Law Lexicon and Wharton's Law Lexicon. The term 'appoint' in Oxford Dictionary and P.Ramanatha Aiyar's Law Lexicon reads as follows :

'Oxford Advanced Learner's Dictionary :

appoint *əˈpɔɪnt/ verb 1* to choose sb for a job or position of responsibility: ~sb They have appointed a new head teacher at my son's school. ◊ ~sb to sth She has recently been appointed to the committee. ◊ ~sb + noun ~sb as sth They appointed him as captain of the English team. ◊ ~sb to do sth A lawyer was appointed to represent the child. ◊ WORDFINDER NOTE AT APPLY, EMPLOY 2 [usually passive] ~sth (formal) to arrange or decide on a time or place for doing sth: A date for the meeting is still to be appointed. ◊ Everyone was assembled at the appointed time.

WEB COPY

P.Ramanatha Aiyar's Advanced Law Lexicon :

Appoint. (See APPOINTMENT). A power to "appoint" to such persons as the donee may think fit enables him to appoint himself or wife. (*Sug. Pow.* 25)

The regular employment of a person in a particular function, is equivalent to his being "appointed" to it, unless some special mode of appointment is prescribed (*Frost v. Ballant*, 5 B & C 611)

The word 'appoint' according to *corpus juris*, Volume IV, 1916, Edition, page 1402, *inter alia*, means designate or to nominate. *Kalyan Singh v. Baldev Singh*, AIR 1961 HP 2, 4, [CPC (5 of 1908) O. IV, R. 1(1)]

Appointment under Section 492 requires not only executive decision but also executive action of appointment. *V.K. Goudharani v. State of West Bengal*, AIR 1965 Cal 79, 86, [CrPc (5 of 1898), S. 4(1)(e), 492 and 494]

"Means to ordain or nominate to an office", (and even if the arbitrator or the umpire as such does not accept then also the fact of appointment has happened and is independent of the subsequent acceptance or refusal of the arbitrator or the umpire as such). *Keshavalingh Devarakadav v. Indian Engineering Co.* AIR 1969 Bom 227, 229, [Arbitration Act (10 of 1940), S. 8(1)(b)]

To designate a person to discharge the duties of an office or trust; to nominate; to fix by a decree, order, command, resolve, decision or mutual agreement, to settle.

It is a fundamental principle of interpretation that unless a contrary intention appears from the context, a power to appoint should include a power to terminate the appointment, including termination of the person appointed by his compulsory retirement in accordance with the terms and conditions of the service. This fundamental principle underlies Section 16 of the General Clauses Act. *State of Tamil Nadu v. M.N. Sundararajan*, AIR 1980 SC 2084, [Fundamental Rules, Rule 56(d)]

The term 'appointee' in Wharton's Law Lexicon reads as follows :

'Appointee, a person selected for a particular purpose; also the person in whose favour a power of appointment is executed.'

31 From the above tomes, this court is left with the considered view that there is no impediment in construing the term 'appoint' occurring in section 34 of RPD Act to include a privilege conferred by statute as far as Notaries Act and Notaries Rules thereunder are concerned.



32 Let us now look at the definition of 'appropriate Government' in section 2(b) of RPD Act. In the instant case, sub-clause (i) is of relevance and the same reads as follows :

'2.Definitions.--In this Act, unless the context otherwise requires,

(a)

(b) "appropriate Government" means.--

(i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonments Act, 2006 (41 of 2006), the Central Government;'

33 Definition of 'Government establishment' in section 2(k) has been extracted and reproduced supra.

34 Definition of 'establishment' in section 2(i) reads as follows :

'2.Definitions.--In this Act, unless the context otherwise requires,

(a) to (h)

(i) "establishment" includes a Government establishment and private establishment;'

35 The term 'private establishment' in section 2(v) of RPD Act reads as follows :

'2.Definitions.--In this Act, unless the context otherwise requires,

(a) to (u)

(v) "private establishment" means a company, firm, co-operative or other society, associations, trust, agency, institution, organisation, union, factory or such other establishment as the appropriate Government may, by notification, specify;'

36 Reverting to the aforesaid crucial components of section 34 in the instant case, Notaries Act clearly talks about power to appoint a Notary under section 3 and it also talks about qualification for appointment as a notary, application for appointment as a notary in Rules 3 and 4 respectively of Notaries Rules. Rule 8 of Notaries Rule also talks about appointment of a Notary. In other words, Notaries Act and Notaries Rules clearly talk about appointment of a notary. Appropriate Government is the Central Government and there is no difficulty on this in the light of 'appropriate Government' which is also defined under the Notaries Rules vide Rule 2(a), which reads as follows :

'2.Definitions.-- In these rules, unless the context otherwise requires,--

(a) "appropriate Government" means, 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;'

37 Therefore, Notaries are clearly appointed by the Central Government. This leaves us with the issue as to whether the appointment is in Government establishment.

38 With regard to Government establishment, a careful perusal of the scheme of RPD Act will reveal that the statute and the reservation provided thereunder is not restricted to Government establishments, but the Act endeavours to ensure section 34 reservation in private sector also. This is evident from section 35 of RPD Act which reads as follows :

'35.Incentives to employers in private sector.--The appropriate Government and the local authorities shall, within the limit of their economic capacity and development, provide incentives to employer in private sector to ensure that at least five per cent, of their work force is composed of persons with benchmark disability.'

39 A plain reading of section 35 will reveal that the scheme of the Act is such that reservation for those with benchmark disability is not restricted to appointment in government establishments, but there is endeavour to make it available in private establishments also. To be noted, 'establishment' and 'private establishment' are also terms which are defined under RPD Act, the same have been extracted and reproduced supra. Not only does the Act provide for reservation in private sector, but it also provides for incentive for employer in private sector who make this 4% reservation available to persons with benchmark disability. In this regard, it is deemed relevant to record that 'person with benchmark disability' is also a defined term and the same is defined in section 2(r) of RPD Act. Therefore, this court is of the considered view that 4% reservation under section 34 should be made available to appointment of notaries under Notaries Act and Notaries Rules thereunder also by reading into section 34. In doing so, this court draws inspiration from Lord Denning's 'The Discipline of the Law', where there is a reference to Portia's plea for pound of flesh but not a drop of blood. To be noted, this schematic and teleological method of interpretation in Lord Denning's delightful diction has been extracted by Hon'ble Supreme Court in **Fazlunbi Vs. K.Khader Vali and another** reported in **AIR 1980 SC 1730**. Relevant paragraph is paragraph 13 and the same reads as follows :

"13.Even the literal and the purposive approaches may sometimes concur, once we grasp the social dynamics of interpretation, as serving the cause of truth and justice. We are reminded of Lord Denning's fascinating reference in his "*The Discipline of the Law*" to Portia's plea for the pound of flesh but not a drop of blood! The traditional English view is yielding to the pressure of the modern European view (which is also the American view) expressed by Lord Denning in delightful



diction as [Lord Denning : The Discipline of Law, pp. 20-21]

"the 'schematic and teleological' method of interpretation. It is not really so alarming as it sounds. All it means is that the Judges do not go by the literal meaning of the words or by the grammatical structure of the sentence. They go by the design or purpose which lies behind it. When they come upon a situation which is to their minds within the spirit - but not the letter - of the legislation, they solve the problem by looking at the design and purpose of the legislature - at the effect which it was sought to achieve. They then interpret the legislation so as to produce the desired effect. This means that they fill in gaps, quite unashamedly, without hesitation. They ask simply: What is the sensible way of dealing with this situation so as to give effect to the presumed purpose of the legislation? They lay down the law accordingly. If you study the decisions of the European Court, you will see that they do it every day. To our eyes - shortsighted by tradition - it is legislation, pure and simple. But, to their eyes, it is fulfilling the true role of the courts. They are giving effect to what the legislature intended, or may be presumed to have intended. I see nothing wrong in this quite the contrary.""

40 Two other relevant judgments of Hon'ble Supreme Court with regard to this interpretation (from which this court has drawn inspiration) are *M.Pentiah* case being ***M.Pentiah and others Vs. Muddala Veeramallappa and others*** reported in ***AIR 1961 SC 1107*** and *Lalit Mohan Pandey* case being ***Lalit Mohan Pandey Vs. Pooran Singh and others*** reported in ***(2004) 6 SCC 626***. Relevant paragraphs are paragraph 6 in *N.Pentiah's* case and paragraphs 62 to 68 in *Lalit Mohan Pandey* case which are as follows :

"Paragraph 6 in N.Pentiah's case :

6.Before we consider this argument in some detail, it will be convenient at this stage to notice some of the well established rules of Construction which would help us to steer clear of the complications created by the Act. *Maxwell on the Interpretation of Statutes*, 10th Edn., says at p. 7 thus:

"... if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept



the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result".

It is said in *Craies on Statute Law*, 5th Edn., at p. 82—

"Manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly to be avoided."

Lord Davey in *Canada Sugar Refining Co. v. R.* [(1898) AC 735] provides another useful guide of correct perspective to such a problem in the following words:

"Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter."

Paragraphs 62 to 68 in *Lalit Mohan Pandey* case :

62.It must also be borne in mind that electors' votes are not to be wasted. The possibility of a tie would be very high if strict interpretation of the rule is resorted to. For proper construction of a statute the courts must also take into consideration the social milieu. The courts cannot ignore that local, caste and political affinity play a major role in our electoral system.

63.It is furthermore that unreasonable result or result which creates uncertainty has to be eschewed.

64.In *Mahadeo Oil Mills v. Sub-Divisional Magistrate* [AIR 1978 Pat 86] it was held: (AIR p. 90, para 5)

"It was stated in this way by Parke, B.: 'It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further.' 'If,' said Brett, L.J. 'the inconvenience is not only great, but what I may call an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if you read it in a manner in which it is capable though not its ordinary sense, there would not be any inconvenience at all, there would be reason why you should not read it according to its ordinary grammatical meaning'."



65. Even a construction which would make the provisions more effective and workable must be adopted and to see if it is possible to be done without doing too much violence to the language used.

66. Every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute.

67. This would be more so if literal construction of a particular clause leads to manifest absurdity or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in *Artemiou v. Procopiou* [(1966) 1 QB 878 : (1965) 3 All ER 539 : (1965) 3 WLR 1011 (CA)] (All ER p. 544 I) "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction.

How should we interpret

68. Interpretation of a provision as regards electoral process framed to make certain conditions requires construction of principles having regard to the backdrop thereof."

41 In this regard, this court finds it appropriate to scan and reproduce the kind of disability of one of the writ petitioners and his 90% disability certificate as can be culled out from the case file:





WEB COPY

UNIT-5
15-6-05

Government Institute of Notary Education, Chennai-600 003.

INVESTIGATION - PRELIMINARY CERTIFICATE

(To be filled up by the Notary after the investigation and to be sent to the Notary for the purpose of the investigation)

1. Name of the Notary: R. Teyaram 28 yrs.

2. Name of the Notary's Office: S. Rajagopal

3. Name of the Notary's Office: 645/105

4. Name of the Notary's Office: 645/105

5. Name of the Notary's Office: 645/105

6. Name of the Notary's Office: 645/105

7. Name of the Notary's Office: 645/105

8. Name of the Notary's Office: 645/105

9. Name of the Notary's Office: 645/105

10. Name of the Notary's Office: 645/105

11. Name of the Notary's Office: 645/105

12. Name of the Notary's Office: 645/105

13. Name of the Notary's Office: 645/105

14. Name of the Notary's Office: 645/105

15. Name of the Notary's Office: 645/105

16. Name of the Notary's Office: 645/105

17. Name of the Notary's Office: 645/105

18. Name of the Notary's Office: 645/105

19. Name of the Notary's Office: 645/105

20. Name of the Notary's Office: 645/105

21. Name of the Notary's Office: 645/105

22. Name of the Notary's Office: 645/105

23. Name of the Notary's Office: 645/105

24. Name of the Notary's Office: 645/105

25. Name of the Notary's Office: 645/105

26. Name of the Notary's Office: 645/105

27. Name of the Notary's Office: 645/105

28. Name of the Notary's Office: 645/105

29. Name of the Notary's Office: 645/105

30. Name of the Notary's Office: 645/105

31. Name of the Notary's Office: 645/105

32. Name of the Notary's Office: 645/105

33. Name of the Notary's Office: 645/105

34. Name of the Notary's Office: 645/105

35. Name of the Notary's Office: 645/105

36. Name of the Notary's Office: 645/105

37. Name of the Notary's Office: 645/105

38. Name of the Notary's Office: 645/105

39. Name of the Notary's Office: 645/105

40. Name of the Notary's Office: 645/105

41. Name of the Notary's Office: 645/105

42. Name of the Notary's Office: 645/105

43. Name of the Notary's Office: 645/105

44. Name of the Notary's Office: 645/105

45. Name of the Notary's Office: 645/105

46. Name of the Notary's Office: 645/105

47. Name of the Notary's Office: 645/105

48. Name of the Notary's Office: 645/105

49. Name of the Notary's Office: 645/105

50. Name of the Notary's Office: 645/105

51. Name of the Notary's Office: 645/105

52. Name of the Notary's Office: 645/105

53. Name of the Notary's Office: 645/105

54. Name of the Notary's Office: 645/105

55. Name of the Notary's Office: 645/105

56. Name of the Notary's Office: 645/105

57. Name of the Notary's Office: 645/105

58. Name of the Notary's Office: 645/105

59. Name of the Notary's Office: 645/105

60. Name of the Notary's Office: 645/105

61. Name of the Notary's Office: 645/105

62. Name of the Notary's Office: 645/105

63. Name of the Notary's Office: 645/105

64. Name of the Notary's Office: 645/105

65. Name of the Notary's Office: 645/105

66. Name of the Notary's Office: 645/105

67. Name of the Notary's Office: 645/105

68. Name of the Notary's Office: 645/105

69. Name of the Notary's Office: 645/105

70. Name of the Notary's Office: 645/105

71. Name of the Notary's Office: 645/105

72. Name of the Notary's Office: 645/105

73. Name of the Notary's Office: 645/105

74. Name of the Notary's Office: 645/105

75. Name of the Notary's Office: 645/105

76. Name of the Notary's Office: 645/105

77. Name of the Notary's Office: 645/105

78. Name of the Notary's Office: 645/105

79. Name of the Notary's Office: 645/105

80. Name of the Notary's Office: 645/105

81. Name of the Notary's Office: 645/105

82. Name of the Notary's Office: 645/105

83. Name of the Notary's Office: 645/105

84. Name of the Notary's Office: 645/105

85. Name of the Notary's Office: 645/105

86. Name of the Notary's Office: 645/105

87. Name of the Notary's Office: 645/105

88. Name of the Notary's Office: 645/105

89. Name of the Notary's Office: 645/105

90. Name of the Notary's Office: 645/105

91. Name of the Notary's Office: 645/105

92. Name of the Notary's Office: 645/105

93. Name of the Notary's Office: 645/105

94. Name of the Notary's Office: 645/105

95. Name of the Notary's Office: 645/105

96. Name of the Notary's Office: 645/105

97. Name of the Notary's Office: 645/105

98. Name of the Notary's Office: 645/105

99. Name of the Notary's Office: 645/105

100. Name of the Notary's Office: 645/105

(The face of the writ petitioner is covered while scanning to protect identity)

42 There is one other interesting aspect of the matter. A perusal of Rule 3 of Notaries rules reveals that it is not as if there is no reservation at all for appointment as notaries. Rule 3 of Notaries Rules reads as follows :

"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 practicing 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

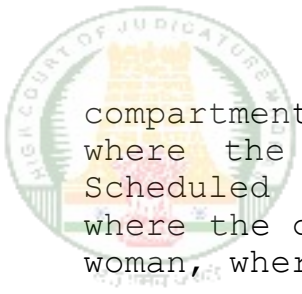
(c)he had been at least for ten years,--

(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 enrolment as an advocate; or

(iii)held an office in a department of Judge Advocate General or in the legal department of the armed forces.]"

43 A careful perusal of sub clauses (aa) and (ab) of Rule 3 reveals that qualification to be appointed as notary itself has been



compartmentalized into three categories. One is general category where the requirement is 10 years of practice. Second is, for Scheduled Caste and Scheduled Tribe and other Backward Classes, where the qualification is 7 years of practice and the third is, for woman, where again qualification is 7 years of practice.

WEB COPY

44 From the aforesaid provisions of Notaries Act and Notaries Rules read in conjunction with RPD Act as a conflation, the following conclusions can be arrived at:

(a) Notary is a privilege conferred by Statute. Notary, though a privilege conferred by Statute, is an appointment made by the Central Government (within the meaning of section 3 of Notaries Act and section 2(b)(i) of RPD Act) with an upper limit on the number of notaries per State akin to cadre strength;

(b) Reservation under section 34 of RPD Act being akin to affirmative action is such that there is no impediment in the same being extended to appointment of Notaries within the meaning of section 3 of Notaries Act read with Notaries Rules;

(c) Besides appointment by Central Government ('Central Government' within the meaning of section 3 of Notaries Act and section 2(b)(i) of RPD Act), there being an upper limit akin to cadre strength and invitation of applications followed by interview (trappings of appointment);

(d) In the light of avowed objectives of RPD Act, it is appropriate to read into and hold that 4% reservation under section 34 of RPD Act should be made available to appointment of Notaries also;

(e) As Notary is an appointment by Central Government, there is nothing in section 34 which suggest that there is a bar / legal impediment for extending the benefit to a privilege conferred by Statute insofar as Notaries are concerned;

(f) All privileges conferred by Statute do not fall in the same category. In the peculiar nature of appointment of notaries, details of which have been alluded to elsewhere in this order, 4% reservation under section 34 of RPD Act is extended to notaries.

45 A perusal of selection list which has been challenged in one of the writ petitions on hand reveals that respondents themselves have given category in which each candidate falls. For an illustration, two or three pages of typical selection list read like



WEB COPY

SLNO	Interview SLNo.	Name	Category	Date Of App'n	Area Of Practice	File No.	Father's Name	Address	Enrol. No.
1	1	A.Annadakum ar	OBC	23.03.14	Tirupur	N-11013/1242/2018-NC	Annadurai	S.No. C-555, Kumaran 6th Street, S.R.Nagar (North) Andapalayam, Mangalam Road Tirupur - 641687	1082/2014 DL 14.08.02
2	5	Kalinuthu K.A	SC	08.06.14	Dividigal	N-11013/1246/2018-NC	Alagan	Dice No. 97/5, Periyakottai Periyakottai (PO), Chirappatti (Vill) Oidanchattram (TK) Dividigal (DI) Tamil Nadu	203/2003 DL 27.02.03
3	12	G.K.Loganathan	SC	29.04.14	Chengalpattu Kanchipuram Distt.	N-11013/1253/2018-NC	Krishnan	Flat No A2, Lakshmi Gerulaa Apartments, Pilsagar Koil Street, Vayambhupuram, Gundarancheri, Chengalpattu Taluk, Kanchipuram Distt Tamilnadu -603202	842/1993 DL 13.10.93
4	24	T.Aravind	OBC	12.06.14	Salem Distt.	N-11013/1265/2018-NC	M.Thangarajan	56-D, Saranyasi Gurdas Extension Road Kitchipalayam Salem Tamilnadu -636015	737/2007 DL 25.04.07
5	29	Ms. L. Meenakshi Devi	OBC	03.09.12	Nagore	N-11013/1270/2018-NC	R.Lakshmi Narayan	20, Velhailanur Street, Nagore-611002, Nagapattinam, Tamil Nadu	844/1993 DL 13.10.93
6	30	A.Mohan	BC	25.04.14	Kotagiri	N-11013/1271/2018-NC	K.R.Arundha Gowder	1/108/B, Pandiyar Park, Nilung Road, Kotagiri, The Nilgiris Tamilnadu-643217	168/1990 DL 28.02.90
7	31	K.Venkatashanthan	OBC	20.06.14	Salem Distt.	N-11013/1272/2018-NC	S.Krishnan	4-1-45 Sundaram Cetty Street, Jalakantapuram (PO), Salem Distt. Tamilnadu -636501	432/2002 DL 27.03.02



WEB COPY

8	94	Ganesh Muguman.A.	Gen	Nil	Dindigul Dist.	N- 11013/1285/2018- NC	G.Aruman- m	82/10, Valluvar 1st Street, West Ashok Nagar Extn, Vijaya Clinic Block, Side Dindigul Dist.Tamilnadu-624001	1409/2003 Dt.23.10.03
9	58	A.Saravanan	AMC	30.07.14	Dist.Court Salem	N- 11013/1259/2018- NC	A.Angam- m	Podilagalam Village, Vedappady Pst & Taluk, Salem Dist.Tamilnadu- 636114	1115/1998 Dt.15.10.98
10	89	P.Shanmugas- an	MSC	30.07.14	Dist Court Salem	N- 11013/1307/2018- NC	n.Po.Lumit- m	Korattal Kottai, 3rd Cross, S.Vedappady Post, Vedappady Taluk, Salem Dist. Tamilnadu- 636115	435/2003 Dt.13.03.03
11	41	V.Herthaman	SC	Nil	Tadivanku Taluk Vellore Dist.	N- 11013/1309/2018- NC	Venugopal	Athur Village & Post, Thuduvanna Taluk, VPM Dist.Tamilnadu-604002	1788/2005 Dt.23.11.05
12	64	M.Balaji	Gen	Nil	Kallakurichi Vellore Dist.	N- 11013/1305/2018- NC	K.Madha- m	No.87/16, Kottanur Street, L.F.Road, Kachiyayyalagam & Po Chinnasaleen Taluk, Villupuram Dist. Tamilnadu-605207	1385/1999 Dt.08.09.99
13	65	S.Madayaram	OGC	11.08.14	Kanchipuram Revenue Dist.	N- 11013/1306/2018- NC	J.Rangan- am	43/107, Lingappa Street, Kanchipuram Town, Tamilnadu- 631502	1261/1996 Dt.07.11.96
14	56	G.Prasanna- m	SC	02.08.14	Sankaranthi Town Tirunelveli Dist.	N- 11013/1307/2018- NC	G.Aruman- m	67, Gemenchypuram New 1st Street, Sankaranthi Tirunelveli Dist. Tamilnadu-627796	506/2000 Dt.12.04.2000
15	38	Veerapathirajan, V.S.	OGC	02.08.14	Sankaranthi Taluk	N- 11013/1309/2018- NC	Sankaran- am	27, Railway Terminus Road, Sankaranthi Tamilnadu-627756	289/2003 Dt.03.09.03

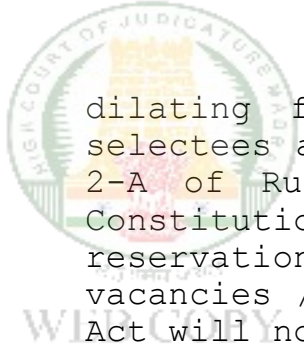
WEB COPY

16	81	G. Anjil Kumar	Gen	24.07.14	Chennai	N-11013/1322/2018-NC	G. Hanumantha Rao	F-4, 1st Floor, Block C Vignesh Apartments Phase-1 Velur Colony East, Nanganallur Chennai Tamil Nadu 600061	226/1986 Dt. 28.07.86
17	89	G. Gembhary	SC	20.08.14	Tiruchirappalli	N-11013/1330/2018-NC	G. Gopal Kumar	No. 30, Meriamal Estate, 8th Cross Gandhi Salai, Kollesh Nagar, Tiruchirappalli Tamil Nadu 620019	16/2003 Dt. 06.01.03
18	90	Subbiah Sanku	OPC	NIL	Tiruchirappalli	N-11013/1331/2018-NC	Subbiah	C-142 Korbar Street, Arava Nagar Thiruvallur Trichirappalli Tamil Nadu 620017	1472/2007 Dt. 10.10.07
19	102	P. Thamarasimha Edison	MNC	18.08.14	Sethumangalam Irude Dist.	N-11013/1343/2018-NC	M.P. Palanisamy	No. 14, Asath Street, P. Velur Colony, Sethumangalam Taluk, Erode District Tamil Nadu 638439	588/1995 Dt. 26.04.95
20	108	V. Vamsi Suresh	OPC	23.08.14	Tiruchirappalli Dist.	N-11013/1350/2018-NC	B. V. Sankararaman	Medu, Sethumangalam Post, Selgudi Taluk, Tiruchirappalli Dist. Tamil Nadu 621705	1220/1999 Dt. 25.08.99
21	121	S. Suresh Sankar	OPC	25.08.14	Perambalur	N-11013/1362/2018-NC	P. Subashini	Singampet-60 A105 ur, Thiruk Perambalur Dist. Tamil Nadu 621113	568/2004 Dt. 31.03.04
22	134	K. Sundararam	OPC	13.09.14	Tiruchirappalli Dist.	N-11013/1375/2018-NC	T. Krishnamoorthy	39F, Gandhi Nagar, Trichy Road, Thiruvallur Dist. Tamil Nadu 621010	1080/1995 Dt. 11.10.95

Fourth column is of important.

46 Though this may not be reservation in every sense of the term, when there is such compartmentalization and when different qualifications have been prescribed for different categories, there is no reason why reservation adumbrated in section 34 of RPD Act should not be extended to notaries. Another facet of reservation is, section 34 of RPD Act as alluded to supra being akin to affirmative action, would necessarily come into play whenever there is merit based selection. In the instant case, there is no dispute or disagreement that there was an interview which was conducted by interview board. It follows as a sequiter that reservation akin to affirmative action is inevitable.

47 A caveat. This argument that reservation will come into play when there is merit based selection cannot be gone into by



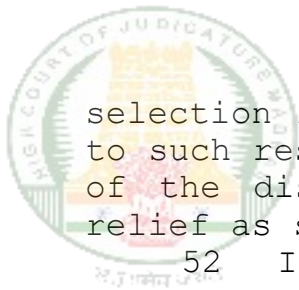
dilating further on this aspect of the matter as neither the selectees are before this Court nor recourse has been taken to Rule 2-A of Rules to Regulate Proceedings under Article 226 of the Constitution of India. To be noted, this will not apply to 4% reservation under RPD Act as there are already more than 4% vacancies / slots and this order providing 4% reservation under RPD Act will not impact the selectees.

48 With regard to challenge to the selection list, it is predicated mainly on two grounds. One ground is that interview was an eyewash, that the list of selectees was finalised through different sources and the interview was used only as an eyewash. The other ground on which challenge to the selection list is predicated is that communal reservation is imperative. The second ground has already been discussed and answered in the negative supra. With regard to the first ground, the allegations of the interview being an eyewash are all in the realm of factual disputes which cannot be gone into in a writ petition.

49 From the undisputed records before this Court, it comes to light that 2308 candidates were interviewed at the rate of 75 candidates in Forenoon and 75 candidates in the Afternoon per day. This undisputed position reveals that each candidate could have made maximum interface of 2.50 minutes with the selection committee. However, this Court refrains itself from entering into this arena of disputation, i.e., the writ petitioners' allegation that interview was an eyewash for two reasons. One reason is, while the select list of 748 candidates has been challenged, resort to Rule 2-A of Rules to Regulate Proceedings under Article 226 of the Constitution of India has not been made and the select list cannot be lightly disturbed when the selectees / appointees are not before this court. The second reason is, these are in the realm of disputed facts and these being writ petitions, this court refrains itself from entering into that arena. Be that as it may, this court considers it appropriate to make a recommendation for the days to come. Considering the number of aspirants and the ceiling qua number of notaries who can be appointed for each State, it may well be desirable to consider the option of conducting a written examination wherein better and more dependable scrutiny of candidates' basic knowledge can be tested. The written examination can be used as a filtering process and limited number of candidates can be called for viva or interview where their acumen can be put to test by providing reasonable time for interface with selection committee for each candidate. To be noted, though this order proceeds on the basis that notary is a privilege conferred by Statute, with regard to reservation under section 34 of RPD Act, an interpretative approach has been taken and that is in the light of special objectives of RPD Act.

50 Therefore, of the six writ petitions, one writ petition where mandamus is sought to appoint the writ petitioner as notary by a person to whom RPD Act is not applicable, the prayer is negatived.

51 With regard to other writ petitions, where 4% reservation within the meaning of section 34 of RPD Act is sought for /



selection list is assailed or where the writ petitioner is entitled to such reservation on account of benchmark disability, in the light of the discussion, dispositive reasoning and narrative thus far, relief as set out infra is granted.

52 In the result, the following order is passed :

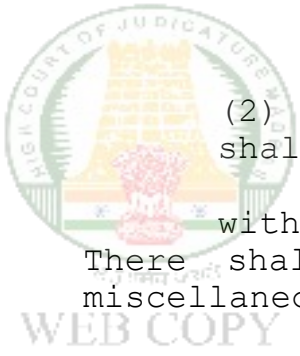
(a) W.P.(MD)Nos.4692, 6193, 16903, 17892 and 17937 of 2019 are disposed of, directing respondents to provide 4% reservation for persons with benchmark disabilities within the meaning of section 34 of RPD Act.

(b) For the purpose of aforesaid 4% reservation, as already mentioned above, out of total permissible 1700 notaries for Tamil Nadu, only 1631 are now functioning and there are 69 vacant slots. With regard to 2308 applicants, who appeared for interview (excluding 295 absentees from and out of total 2603 applicants), 748 were selected and 1560 were not. From and out of this 1560, those who qualify as persons with benchmark disabilities within the meaning of section 2(r) of RPD Act, shall now be called for interview and 68 (4% of 1700) of them shall be appointed in the vacant slots. To be noted, if there are already persons with benchmark disabilities in the 748 selectees, as they have got selection dehors the disability, they will remain selected as this is a one time measure.

(c) If 68 candidates with benchmark disability under RPD Act are not available from and out of this 1560, it is open to respondents to appoint Notaries in accordance with Notaries Act for the vacant slots that remain. If there are more than 68 candidates with benchmark disabilities from and out of these 1560, there shall be an inter-se selection by adopting the same methodology that was adopted earlier. To be noted, in the proceedings of this court dated 19.8.2019 made by learned Predecessor Judge which has been extracted and reproduced supra, there is a reference to a list of 1562 candidates who have not been selected, but it is now submitted by Solicitor adverting to records that candidates not selected from and out of 2308 who appeared for interview is 1560.

(d) Respondents shall complete the aforesaid exercise in (a) to (c) supra within a period of twelve (12) weeks from the date of receipt of a copy of this order.

(e) The aforesaid direction is a one time measure for this appointment and in all future appointments, respondents shall ensure that 4% reservation for persons with benchmark disabilities in accordance with section 34 of RPD Act is provided and for this purpose the application itself as in Form-I (Rule 4



(2) of Notaries Rules) which is known as 'MEMORIAL' shall be suitably amended.

(f) W.P.(MD)No.6192 of 2019 is dismissed albeit with the observations contained in this order.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

Vvk

To

- 1.The Joint Secretary and Legal Adviser,
The Government of India,
Ministry of Law and Justice,
Department of Legal Affairs (Notary Cell),
Shastri Bhavan, New Delhi-110 001
- 2.The Secretary,
Department of Legal Affairs,
Ministry of Law & Justice,
Government of India,
4th Floor A-Wing,
Shastri Bhavan, New Delhi-110 001.
- 3.The Deputy Legal Adviser and
Competent Authority,
Department of Legal Affairs,
Ministry of Law & Justice,
Government of India Notary Cell
4th Floor A-Wing, Shastri Bhavan,
New Delhi-110 001.
- 4.The Director,
Department of Legal Affairs (Notary cell)
Ministry of Law and Justice,
Shastri Bhavan,
Nungambakkam, Chennai.
- 5.The Principal District & Sessions Judge,
Tiruchirapalli
Tiruchirapalli District.



+1 CC to M/s.S.LOUIS, Advocate (SR-98771[F] dated 15/11/2019)
+1cc to Mr.M.Karthikeya venkitachalapathy, Advocate Sr.No.99447
+1cc to Mr.P.Subbiah, Advocate, Sr.No.98788
+1cc to Mr.A.C.Asaitambi, Advocate, Sr.No.98653
+1cc to Mr.R.Chockalingam, Advocate, Sr.No.98982
+1cc to Mr.K.K.Samy, Advocate, Sr.No.98926
+2cc to Mr.S.vijayakumar, Advocate, Sr.No.98981

order in
W.P.(MD) Nos.4692, 6192, 6193,
16903, 17892 and 17937 of 2019
15.11.2019

VB(27.11.2019) 32P 14C