



BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED: 22.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

WEB COPY

W.P. (MD)No.8588 of 2021
(Through Video Conferencing)

1.G.Kesavan

2.A.Thirunavukkarasu

... Petitioners

Vs.

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

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondent, "the Secretary, Department of Legal Affairs Ministry of Law and Justice, Government of India, New Delhi to issue appointment letter to the 1st petitioner F.No.N-11013/2617/2018 NC/Interview Sr.No.1376 and to the 2nd petitioner F.No.N-11013/2659/2018-NC/Interview Sr.No.1418 as Notary on the basis of the common order passed by this Court in W.P.(MD) Nos.4692, 6193, 16903, 24283, 17892 and 17937 of 2019 dated 15.11.2019.

For Petitioners : Mr.S.Vijayakumar
For Respondents : Mr.J.Alaguramjothi

ORDER

This writ petition has been filed for the issue of a writ of mandamus directing the respondents to appoint the petitioners as Notary based on the earlier orders passed by this Court.

2.The case of the petitioners is that they are practising Advocates and both of them face disability. According to the petitioners, they are entitled to be considered under reservation under Section 34(1) of the Right of Persons with Disabilities Act, 2016 (hereinafter referred to as 'the Disabilities Act'). According to the petitioners, if 4% reservation is made, 69 vacant slots will be available and the petitioners can be accommodated.



3.The learned standing counsel appearing on behalf of the respondents brought to the notice of this Court the order passed by the Division Bench in W.A(MD) Nos.1124 to 1134 of 2020 dated 10.02.2021. By citing this order, the learned counsel submitted that the Disabilities Act can never be applied since appointing an Advocate as Notary is only a privilege and the reservation under the Act cannot be applied.

4.This Court has carefully considered the submissions made on either side and the materials available on record.

5.The issue raised by the petitioners has been considered by the Division Bench in the order referred supra and the relevant portions of the order are extracted hereunder:

"The appellant has raised a legal issue before us, namely, the application of Section 34 of the Right of Persons with Disabilities Act to a decision, making a Lawyer as a Notary.

2. The learned Assistant Solicitor General of India appearing for the appellant submitted that it is a privilege that is being conferred on a Lawyer and therefore, the provision, which is otherwise applicable to a public servant, cannot be extended.

3. The respective learned Counsel appearing for the writ petitioners submitted that factually there is no dispute with respect to the disability suffered by the writ petitioners and therefore, to this extent, this Court will have to consider that appointing them as Notaries would help to sustain and improve their career.

4. Though, *prima facie*, we concur with the submission made by the learned Assistant Solicitor General of India, considering the facts and circumstances of the case, especially the fact that the writ petitioners are suffering from disabilities, we do not wish to interfere with the ultimate finding, while setting aside the reasoning of the learned Single Judge with respect to the scope and applicability of the provisions of the Act to the case of appointment of Notaries.

5. In such view of the matter, the appeals stand allowed in part, with respect to the findings rendered by the learned Single Judge on the scope and applicability of Section 34 of the Right of Persons with Disabilities Act to the case on hand. Resultantly, the relief granted to the writ petitioners stand confirmed. The appellant is



directed to give effect to the order of the learned Single Judge within a period of eight weeks from the date of receipt of a copy of this judgment.

6. The question of law as to the applicability of the Act will be considered at the appropriate time, as we have recorded only our *prima facie* view. We further make it clear that this is a one time measurement only and therefore, this order cannot be quoted as a precedent."

6.The order under challenge before the Division Bench was the order passed by the learned single Judge, wherein, it was held that the 4% reservation that is provided under the Disabilities Act will also apply while appointing Notaries. The Division Bench did not want to take away the benefit of appointment that was already made pursuant to the order passed by the learned single Judge. However, the Division Bench came to a *prima facie* conclusion that the Disabilities Act will not apply in cases of appointment of Notaries. To that effect, the Division Bench has made it clear that they are concurring with the submissions made by the learned Assistant Solicitor General.

7. In the considered view of this Court, appointing an Advocate as a Notary is a privilege provided under the relevant enactment and it cannot be considered to be a public appointment in order to extend the benefits of the Disabilities Act. The petitioners do not have the legal right to seek for reservation under the Disabilities Act and they must participate in the selection with the other Advocates and the appointment has to be made in accordance with the relevant enactment.

8. In view of the above, the relief as sought for by the petitioners cannot be granted by this Court and it is left open to the petitioners to participate in the selection and establish their eligibility.

9. This writ petition is disposed of accordingly. No costs.

Sd/-

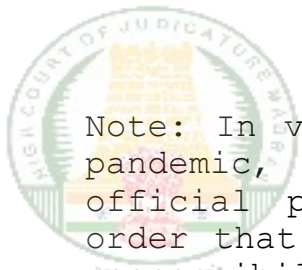
Assistant Registrar(CS-I)

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/ /2021

Sub Assistant Registrar(CS)

RR



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

WEB COPY

To
The Secretary
Department of Legal Affairs,
Ministry of Law & Justice
Government of India
4th Floor, A wing
Shastri Bhavan
New Delhi 110 001

+2 CC to M/s.S.VIJAYA KUMAR, Advocate SR-19986[F] dated 23/06/2021

W.P. (MD)No.8588 of 2021
22.06.2021

PK(CO)
TR(02.07.2021) 4P 4C