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W.P.No.3186 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2022

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THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.3186 of 2020
and
W.M.P.No.3698 of 2020

S. Prabakar

... Petitioner

Vs.

Secretary to Government (FAC),
Government of Tamil Nadu
Law (Administration) Department,
Secretariat,
Chennai – 600 009.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, calling for the records of the case relating to the Impugned Order in G.O.(Ms).No.293 dated 31.12.2019 passed by the Respondent and to quash the said Impugned Order in G.O.(Ms).No.293 dated 31.12.2019.

For Petitioner : Mr.T.Ramesh

For Respondent : Mrs.P.Rajarajeswari
Government Advocate



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ORDER

WEB COPY This writ petition has been filed for the issuance of a Writ of Certiorari to call for the records of the case relating to the Impugned Order in G.O.(Ms).No.293 dated 31.12.2019 passed by the Respondent and to quash the said Impugned Order in G.O.(Ms).No.293 dated 31.12.2019.

2. By the impugned order, the certificate of practice issued to the petitioner as a notary has been with drawn. The relevant portion of the order dated 31.12.2019 reads as under:

“8. The Government, after careful consideration of the report of the Competent Authority i.e. Principal District Judge, Salem District, is of the opinion that action should be taken against Thiru.S.Prabakar, Notary in and throughout Idappadi Taluk in Salem District, for his non-compliance and violation of the procedures laid down in the Notaries Rules, 1956 which amounts to misconduct and accordingly in exercise of the powers conferred under sub-rule (12) (b) (i) of rule 13 of the Notaries Rules, 1956, the Governor of Tamil Nadu hereby cancels the Certificate of Practice issued to Thiru.S.Prabakar, Notary in and throughout Idappadi Taluk in Salem District and perpetually debars the said Notary from practice and also in exercise of the powers conferred by clause (d) of Section 10 of the Notaries Act, 1952 (Central Act LIII of 1952) removes the name of Thiru.S.Prabakar, Notary in and throughout Idappadi taluk in Salem District from the Register of Notaries



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6. It is further submitted that based on an anonymous complaint the proceeding was initiated. The copy of the anonymous complaint was served on the petitioner long after the limitation inspired under Section 13 of the Notaries Act, 1956.

7. It is further submitted that though the enquiry report of the Principal District Judge, Salem has also been forwarded to the petitioner none of the witness as examined during “Enquiry” Mr.S.Muruganandam, the President of the Bar Association, Sankagiri has also not categorically established any misconduct on the part of the petitioner.

8. On the other hand, the said witness has merely confirmed that he had received few complaints from the member of the Bar Association and public. However, he has not filed any documents to substantiate the same.

9. The learned counsel for the petitioner submits that, even if it is assumed that the seal of the petitioner was misused by G.Subramani, Krishna Typewriting Institute, Sankagiri, it would not amount to misconduct within the meaning of Section 10 (d) of the Notaries Act, 1952.



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10. It is further submitted that the entire proceeding was misconceived as it was based on an anonymous complaint which was not in Form XIII as is contemplated under Rule 13 of the Notaries Rules, 1956.

11. In this connection, the learned counsel for the petitioner has placed reliance on the following cases:

- i. **Mohammad Sharif Vs. District Judge, Mahoba and others**, 2009 SCC Online All 1082;
- ii. **P.Mohandas Vs. Secretary to the Government of Kerala and Ors**, 2001 SCC Online Ker 158;
- iii. **State Government of Uttar Pradesh Vs. Kashi Prasad Saksena**, 1969 SCC Online All 270.

12. The impugned order is defended by the learned Government Advocate for the respondent. It is submitted that the impugned order of the respondent is well reasoned and requires no interference.

13. It is further submitted that there is further corroboration in as much as the second witness namely a hand writing expert has confirmed that the signature of the petitioner was there in the document which was produced before the “Enquiry Officer” as an exhibit and therefore, the petitioner was guilty of misconduct.



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WEB COPY 14. That apart, it is submitted that under Rule 13 of the Notaries Rules, 1956, a certificate of a person can be revoked by the Government suo moto, if circumstances so warrants.

15. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent.

16. I am of the view, the impugned order passed by the respondent is unsustainable as the enquiry conducted by the Principle District Judge, Salem does not meet with the requirements of the preponderance of probability.

17. As per Section 10(d) of the Notaries Act, 1952, it is clear that the Government appointing any notary may, by order, remove the name of such person from the register maintained by it under Section 4, if it is found upon inquiry in the prescribed manner, that such person is guilty of such professional or other misconduct as, in the opinion of the Government, renders him unfit to practice as a notary.



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WEB COPY 18. The above provision makes it clear that an enquiry has to be in the prescribed manner. Such manner is prescribed in Rule 13 of the Notaries Rules, 1956. Rule 13 of the Notaries Rules, 1956 reads as under:

“13. Inquiry into the allegations of professional or other misconduct of a notary.

- 1) An inquiry into the misconduct of a notary may be initiated either suo motu by the appropriate Government or on a complaint received in Form XIII*
- 2) Every such complaint shall contain the following particulars, namely:
 - a) the acts and omissions which, if proved, would render the person complained against unfit to be a notary;*
 - b) the oral or documentary evidence relied upon in support of the allegations made in the complaint.**
- 3) The appropriate Government shall return a complaint which is not in the proper Form or which does not contain the aforesaid particulars to the complainant for representation after compliance with such objections and within such times as the appropriate Government may specify:*

Provided that if the subject-matter in a complaint is, in the opinion of the said Government substantially the same as or covered



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by, any previous complaint and if there is no additional ground, the said Government shall file the said complaint without any further action and inform the complainant accordingly.

- 4) *Within sixty days ordinarily of the receipt of complaint, the appropriate Government shall send a copy thereof to the notary at his address as entered in the Register of Notaries.*

[(4A) Where an inquiry is initiated, suo motu by the appropriate Government, the appropriate Government shall send to the notary a statement specifying the charge or charges against him, together with particulars of the oral or documentary evidence relied upon in support of such charge or charges.]

- 5) *[A notary against whom an inquiry has been initiated may, within fourteen days of the service on him of a copy of the complaint under sub-rule (4) or of the statement of the charges under sub-rule (4A) as the case may be,] or within such time as may be extended by the appropriate Government, forward to that Government a written statement in his defence verified in the same manner as a pleading in a civil court.*

- 6) *If on a persual of 2[the written statement,] if any, of the notary concerned and other relevant documents and papers, the appropriate Government consider that there is a prima facie case against such notary, the appropriate Government shall cause an inquiry to be made in the matter by the competent authority. If the appropriate Government is of the opinion that there is no prima facie case against the notary concerned, 4[the complaint or charge shall be*



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filed] and the complainant and the notary concerned shall be informed accordingly.

- 7) Every notice issued to a notary under this rule shall be sent to him by registered post. If any such notice is returned unserved with an endorsement indicating that the addressee has refused to accept the notice or the notice is not returned unserved within a period of thirty days from the date of its despatch, the notice shall be deemed to have been duly served upon the notary.]*
- 8) It shall be the duty of the appropriate Government to place before the competent authority all facts brought to its knowledge which are relevant for the purpose of an inquiry by the competent authority.*
- 9) A notary who is proceeded against shall have right to defend himself before the competent authority either in person or through a legal practitioner or any other notary.*
- 10) Except as otherwise provided in these rules, the competent authority shall have the power to regulate his procedure relating to the inquiry in such manner as he considers necessary and during the course of inquiry, may examine witnesses and receive any other oral or documentary evidence.*
- 11) The competent authority shall submit his report to the Government entrusting him with the inquiry.*
- 12) (a) The appropriate Government shall consider the report of the competent authority, and if in its opinion a further inquiry is necessary, may cause such further inquiry to be made and a further*



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report submitted by the competent authority.

(b) If after considering the report of the competent authority, the appropriate Government is of the opinion that action should be taken against the notary the appropriate Government may make an order

i) cancelling the certificate of practice and perpetually debaring the notary from practice; or

ii) suspending him from practice for a specified period; or

iii) letting him off with a warning, according to the nature and gravity of the misconduct of the notary proved.

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

19. The proceeding has been initiated based on an anonymous complaint. It is not in terms of Rule 13 of the Notaries Rules, 1956 . A complaint has to be in Form-XIII. Perhaps, there is a professional rivalry among the notaries and therefore, somebody having vested interest against the petitioner has filed a complaint to revoke the certificate of the practice issued to the petitioner by filing an anonymous complaint and has taken a chance.



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WEB COPY 20. It is addressed to the general public and not to either the Principle District Judge, Salem or to the respondent herein. Therefore, the said complaint ought not to have been entertained. In fact, enquiry also should not have been ordered. However, the Principal District Judge, Salem has given a finding stating that the requirements of Rule 13 of the Notaries Rules, 1956 are not mandatory but the directory. This is contrary to express Section 10 (b) which uses the expression “ in the prescribed manner”.

21. The entire proceedings initiated to revoke the certificate of practice is thus unsustainable. I am of the view that the impugned order is liable to be quashed. It is accordingly quashed. The respondents are therefore directed to consider the petitioner's application for a certificate of practice strictly in accordance with the provisions of the Notaries Act, 1952 and the Rules 1956. While considering the application the stigma on account of the impugned order shall not be considered.



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WEB COPY 22. The writ petition stands allowed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking Order
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To

Secretary to Government (FAC),
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Chennai – 600 009.



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C.SARAVANAN, J.

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