



W.P.(MD).No.21360 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 16.08.2022

ORDER PRONOUNCED ON : 25 .08.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.21360 of 2021
and WMP(MD).No.7924 of 2021**

D.Karuppiah

....Petitioner

Vs

The Secretary to the Government
Law (Administration) Department
Chepauk
Chennai

...Respondent

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the order passed by the respondent vide his proceedings in G.O(Ms).No.236 Law (Administration) Department, dated 02.08.2021 and quash the same and consequently restore the petitioner's name as Notary in Dindigul District in Register of Notaries maintained by the Government.

For Petitioner : Mr.R.Anand

For Respondent : Mr.S.Shanmugavel
Additional Government Pleader



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ORDER

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The present writ petition has been filed challenging an order passed by the respondent herein under which the petitioner's name was removed from the register of notaries.

2. According to the petitioner, he is a practising Advocate in Dindigul and he is a notary public from the year 1993 onwards approved by the Government of Tamil Nadu. The petitioner has further contended that in the year 2012, 11 applicants had approached him to get notary attested in their affidavits for their passport applications. After verifying the identification of each one of the individuals, he had attested their affidavits. Thereafter, an investigation by the Central Bureau of Investigation revealed that the residential address mentioned in the affidavit of those 11 applicants are fictitious in nature and he was charged in criminal proceedings in C.C.No.9 of 2012 on the file of the II Additional District Judge for CBI Cases, Madurai on the allegation that he had attested bogus affidavits. His discharge application in CrI.M.P(MD).No.400 of 2013 was dismissed by the trial Court on 05.03.2014. Hence, he failed CrI.R.C(MD).No. 222 of 2014 before this Court. This Court by its order dated 27.07.2014 had allowed the revision and discharged the petitioner.



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3. According to the petitioner, the C.B.I. has lodged a complaint to the respondent on 17.01.2012 to initiate action against him. Hence, the respondent had issued a charge memo on 10.12.2012. Not being satisfied with the written submission, the respondent herein referred the matter for an enquiry to the learned District Judge, Dindigul by their proceedings dated 21.05.2013. The petitioner had further contended that the learned District Judge after recording the oral evidence had submitted a report to the Government on 04.09.2018. On the basis of the said report, the respondent has passed the impugned order on 02.08.2021 cancelling the certificate of practice and perpetually debarring him from functioning as a notary. The said order is under challenge in the present writ petition.

4. The learned counsel for the petitioner had contended that as per Rule 13(1) of Notaries Act, 1952, the respondent is at liberty to initiate suo motu proceedings into the allegation of professional or other misconduct of a notary or on an inquiry or on a complaint received in Form XIII. In the present case, the Central Bureau of Investigation has sent a letter to the respondent requesting them to initiate an enquiry. The said letter is not in the statutory form of Form XIII. In such an event, the respondent authority ought to have returned the complaint as contemplated under Rule 13(3) of Notaries Rules, 1956. The respondent ought not to have proceeded further and issued a



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charge memo to the writ petitioner based upon this complaint which is not in statutory form.

5.The learned counsel for the petitioner had further contended that the learned Principal District Judge who is the competent authority while conducting an enquiry has not examined those 11 applicants, who got false notaries by the petitioner. Only when they are examined, whether the documents produced by those applicants in support of their names and their addresses were bogus or not will come to light. The learned counsel had further contended that though the Central Bureau of Investigation had sought permission from the respondent to prosecute me, the respondent has not granted any sanction. Only because of the said fact, the petitioner was discharged in the criminal proceedings. When the respondent has not found any material to grant sanction for prosecution of the petitioner, it ought not to have initiated proceedings under Section 10 of the Notaries Act, 1952. He had further contended that during CBI investigation, his notary register and certificates have been seized by the CBI and copies of the same were not furnished to him when the learned District Judge conducted an enquiry. However, the learned District Judge refused to furnish such copies to the petitioner on the ground that they were only seized from him and there is no necessity for supplying copies of those documents to the writ petitioner.



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However, the learned District Judge has proceeded to rely upon those documents and found that the petitioner is guilty of misconduct. Hence, the enquiry is vitiated for non furnishing of relevant documents that were relied upon by the enquiry officer to arrive at a finding as against the writ petitioner.

6.The learned counsel had further contended that at the time of getting notaries, those 11 applicants have produced, Voter ID cards, Ration cards, Driving License and Transfer Certificate standing in their names. Only relying upon those documents, the petitioner had identified the deponents and thereafter, attested the documents. The petitioner cannot go and verify the addresses mentioned in those documents as to the veracity of those documents. In case, if the document that are produced are found to be forged at a later point of time, a notary public cannot be considered to be at fault or he cannot be punished for a misconduct. The learned counsel had further contended that one more Advocate namely V.Ramakrishnan who was arrayed as 10th accused in the same case, was not proceeded against by the respondent. In fact, the Central Bureau of Investigation in their letter dated 17.01.2012 addressed to the respondent had requested the respondent to initiate action as against the petitioner as well as the said V.Ramakrishnan. The respondent has cherry picked the petitioner alone and has initiated proceedings under Section 10 of Notaries Act, 1952. Hence, the present



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proceedings are liable to be quashed on the ground that they are discriminatory in nature. The learned counsel had further contended that the report of the learned District Judge was not served upon the petitioner and no second show cause notice was issued to the writ petitioner to offer his explanation for the said report. Hence, the learned counsel for the petitioner has prayed for allowing the writ petition.

7.Per contra, the learned Additional Government Pleader appearing for the respondent had contended that the petitioner and another Advocate by name V.Ramakrishnan have attested around 22 affidavits and the documents annexed to the said affidavits confirming the name and address of those applicants. Relying upon those affidavits, passport has been granted to them and they have fled the Country. Hence, the said conduct on the part of the writ petitioner is a gross misconduct and therefore, he was proceeded under Section 10 of the Notaries Act read with Rule 13 of Notaries Rules, 1956.

8.The learned counsel had further contended that the learned District Judge while conducting an enquiry has afforded due opportunity and personal hearing to the petitioner. The writ petitioner had examined himself as DW1 and has received 11 documents marked as Exhibits D1 to D11. Hence, the report of the learned District Judge is after a full pledged enquiry giving due



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opportunity to the writ petitioner. Therefore, the contention of the petitioner that he was not afforded proper opportunity before the competent authority is not legally sustainable. The petitioner has raised a defence before the learned District Judge that after being discharged in the criminal proceedings, he cannot again be proceeded for the alleged misconduct under Notaries Act, 1952. The learned District Judge has categorically found that the criteria for prosecuting a person in a criminal offence is completely different from that of the criteria for proceedings against a person for misconduct. Hence, the contention of the petitioner is not legally sustainable.

9.The learned Additional Government Pleader has further contended that due to negligence on the part of the notary public, several persons have obtained passport and they have fled the Country. The petitioner has chosen to certify certain documents like Voter ID cards, Ration cards, Driving license and Transfer certificates produced by those 11 applicants as genuine documents. On investigation, it was found that those documents are false and fabricated . Hence, the petitioner had issued certificates to unknown persons without verifying the genuineness of their identity and based upon the said certificates, 11 persons have obtained passport. Hence, the negligence and misconduct on the part of the petitioner has been established in the enquiry before the competent authority.



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10.The learned counsel for the respondents had further contended that as per Rule 11(2) of the Notaries Rule 1956, the petitioner has to maintain a notarial register in the form prescribed in Form XV. The notarial register seized from the petitioner during CBI investigation reveals that the said register has not been maintained by the petitioner in the prescribed form. In fact, the petitioner has admitted that he has not entered particulars in the notaries register. The said fact has been recorded by the learned District Judge in his enquiry report. Hence, the petitioner has clearly violated the provisions of the Notaries Act.

11.The learned Additional Government Pleader had further contended that according to the petitioner, all 11 applicants had personally appeared before him and signed the register. However, the register does not reflect the signature of the four persons namely Manikandan, Pandian, Ganesan and Prabhu. The petitioner has not afforded any explanation for the missing signatures in the notary register. He had further contended that the delinquent Advocate namely V.Ramakrishnan was not appointed as notary by the State Government and he was appointed as notary by the Government of India. Hence, only the Government of India is the competent authority to initiate action as against the said Ramakrishnan. Therefore, the contention of the petitioner that the action initiated by the respondent is discriminatory in nature is not correct.



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12.The learned Additional Government Pleader had further contended that Rule 13 of the Notaries Rule 1956 does not contemplate serving of enquiry report upon the petitioner and calling for a second explanation from the petitioner. When there is no statutory mandate, the petitioner cannot complain that the enquiry report was not served upon him. Hence, he prayed for dismissal of the writ petition.

13.I have considered the submissions made on either side and perused the materials available on record.

14.The petitioner is a practising Advocate in Dindigul and he was appointed as a notary public by the respondent in the year 1993. He was charge sheeted in a criminal case for attesting fake documents for obtaining passport in C.C.No.9 of 2012 on the file of the II Additional District Court for CBI Cases, Madurai. He was discharged from the said case by an order of this Court in CrI.RC(MD).No.222 of 2014 on 27.07.2014. The said order of this Court was confirmed by the Hon'ble Supreme Court in SLP.No.123365 of 2015 dated 07.08.2015. These facts are not in dispute.



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15.The main allegation as against the writ petitioner was that without verifying the identity of 11 applicants and the genuineness of the documents produced by them such as Ration card, Voter ID card, Driving Licence and Transfer certificate. He had attested those documents as genuine one. Based upon the said certificates, those 11 applicants managed to obtain passport and they have left the country.

16.The CBI has addressed a letter to the respondent on 17.01.2012 requesting them for cancellation of notary license. Based upon the said complaint, a charge memo has been issued to the writ petitioner on 10.12.2012. The charge as against the petitioner is as follows:

“You, Thiru.D.Karuppiah, Notary in Dindigul have attested 11 sworn affidavits without verifying the names and addresses of the applicants which are bogus. The act of yours constitutes infraction of rule provisions contained in rule 11(8) of the Notaries Rules, 1956 and your act of non-compliance with the said rules amounts to mis-conduct”

17.According to the charge memo, the act of the petitioner had constituted an infraction of the rule contained in rule 11(8) of the Notaries Rules 1956.



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18.The said Rule 11(8) of the Notaries Rules 1956 is extracted as follows:

“11(8).The notary may-

(1)draw, attest or certify documents under his official seal including conveyance of properties;

(2)note and certify the general transactions relating to negotiable instruments;

(3)prepare a will or other testamentary documents; and

(4)prepare and take affidavits for various purposes for his notarial acts”.

19.A perusal of the above said rule will clearly disclose that it enumerates the powers and it does not enumerate any of the act of the notary public as a professional or other misconduct. The Government is empowered to remove the name from the register of notaries after an enquiry in the prescribed manner if found that the notary is guilty of such professional or other misconduct, in the opinion of the Government, renders him unfit to practise as a notary as contemplated under Section 10(d) of the Notaries Act, 1952. Hence, it is clear that the notary ought to have been found to be guilty of a professional or other misconduct, which would render him unfit to practise as a notary. The Government have arrived at such a finding. Rule 13 of the Notaries Rule, 1956 reads out an elaborate procedure of conducting an enquiry into the allegation of professional or misconduct of a notary.



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20. In the present case, as contemplated under Rule 13(4-A), a charge memo was issued to the writ petitioner on 10.12.2012 for which a written submission has been submitted by the writ petitioner on 22.12.2012. The respondent not being satisfied with the written submission, found a prima facie case as against the notary and has ordered an enquiry through the learned District Judge, Dindigul. The learned District Judge after affording an opportunity to the petitioner had submitted his report to the respondent herein on 04.09.2018. Based upon the said report, the present impugned order has been passed removing the name of the petitioner from the register of notaries.

21. One of the contentions of the writ petitioner is that the said enquiry report has not been furnished to him and no explanation was called for before passing the impugned order. However, the respondent had contended that Rule 13 of the Notaries Rule, 1956 does not contemplate serving of enquiry report and calling for explanation. The respondent has also relied upon a judgement of the Hon'ble Apex Court reported in **2008 9 SCC Page 31 (Haryana Financial Corporation and another Vs. Kailash Chandra Ahuja)** to contend that unless prejudice or miscarriage of justice is shown by the delinquent employee due to non supply of enquiry report, the failure to



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furnish the enquiry report will not automatically result in quashing or setting aside the order of punishment.

22.As per Section 10(d) of the Notaries Act, 1952, the Government has to form an independent opinion with regard to the profession or other misconduct of the notary public. As per Rule 13(12), after receiving report from the learned District Judge, the Government is empowered to order further enquiry and call for further report. Considering the said report, the appropriate Government should form an opinion whether to initiate action as against the notary public or not Therefore, it is clear that the report of the enquiry officer is not final and the Government has to form its independent opinion whether to accept the report in total or order further enquiry and call for further report. Even after receiving the report, it is within the discretion of the Government to initiate action or drop action as against the delinquent notary public. Rule 13(12)(b) of the Notaries Rules, 1956 enumerates three kinds of punishments that could be imposed by the Government Such a wide discretion has been vested with the Government under Statutory Rules.

23.In the light of the above said discussion, now let us consider the order impugned in the writ petition. The respondent has passed the impugned order on 02.08.2021. Paragraph No.1 of the impugned order given details



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about the declaration of the petitioner as a notary public and his renewal.

Paragraph No.2 of the order deals with the complaint lodged by the CBI and the charge memo issued to the petitioner. Paragraph Nos. 3 and 4 describe about the written submission filed by the writ petitioner pursuant to the charge memo and the enquiry conducted by the Principal District Judge, Dindigul. Paragraph No.5 of the impugned order simply extracts three points for consideration taken by the learned District Judge, Dindigul and his findings. In Paragraph No.6, the Government has simply accepted the opinion of the Principal District Judge, Dindigul and arrived at a finding that it amounts to misconduct and proceeds to pass an order under Rule 13(12)(b)(i) of Notaries Rules 1956 cancelling the certificate of practice and perpetually debarring the notary from practice.

24.The above said analysis of the impugned order would reveal that the enquiry report of the learned Principal District Judge has been the sole basis of the adverse order as against the writ petitioner. Hence, the judgement of the Hon'ble Supreme Court relied upon by the respondent for non furnishing of the enquiry report, a punishment cannot be set aside is not applicable to the facts of this case. In fact, as contemplated under Section 10(d) of Notaries Act and under Rule 13(12) of the Notaries Rule, the Government has to form an independent opinion to arrive at a finding with regard to the imposition of



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punishment. In the present case, the Government has simply accepted the findings of the enquiry officer and solely based upon the said report, the impugned order has been passed. In such an event, it cannot be contended that the non-supply of enquiry report or calling for an explanation from the writ petitioner for the said enquiry report did not cause prejudice to the writ petitioner.

25.The learned Single Judge of this Court, in a judgement reported in 2017-1-L.W.385 (S.Pathmanaman Vs. The Government of Tamil Nadu, represented by its Secretary, Law Department, Fort.St.George, Chennai 600 009) in paragraph No.16 has held as follows:

“16.Apart from that before passing any order based on the report submitted by the competent authority, the respondent ought to have given opportunity to the petitioner by giving a copy of the enquiry report and an opportunity of hearing should be given before passing the impugned order. Even though Rule 13 does not provide for giving a copy of enquiry report, in order to satisfy the principles of natural justice, the respondent ought to have served a copy of the enquiry report submitted by the competent authority and should have passed orders only after getting an explanation from the petitioner”

26.The learned Single Judge has held that even though Rule 13 does not contemplate furnishing a copy of the enquiry report, in order to satisfy the principles of natural justice, the respondent ought to have served a copy



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of the enquiry report and should have passed orders only after getting explanation from the writ petitioner.

27. In view of the above discussion, the order impugned in the writ petition being passed solely upon the enquiry report of the learned Principal District Judge, Dindigul and without forming an independent opinion by the Government, non furnishing of the said report and calling for further explanation from the writ petitioner, has initiated proceedings and hence, the same is set aside and the matter is remitted back to the file of the respondent herein. The respondent is directed to furnish a copy of the enquiry report to the writ petitioner and call for an explanation from the writ petitioner and thereafter, pass an order. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

28. With the above observations, the writ petition stands allowed and the matter is remitted back to the file of the respondent. No costs. Consequently, connected miscellaneous petition is closed.

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The Secretary to the Government
Law (Administration) Department
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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and WMP(MD).No.7924 of 2021

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