



W.P.No.13330 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2023

CORAM

MR.JUSTICE N.SESHASAYEE

W.P.No.13330 of 2023
and W.M.P.No.13033 of 2023

P.Arivudainambi

... Petitioner

Vs.

Secretary to the Government, (Legal affairs),
Law (Admn) Department,
Secretariat,
Chennai-600009

... Respondent

PRAYER: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records of the respondent in G.O.(Ms).No.79, dated 13.02.2023 and quash the same and direct the respondent to issue a certificate of practice to the petitioner.

For Petitioner : Mr.K.S.Jeyaganeshan

For Respondent : Mr.G.Ameedius
Government Advocate



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ORDER

The petitioner is a practising advocate at Salem and he was appointed as a Notary and it was periodically renewed by the Government. While so, based on a complaint of certain Rajkannan, the Principal District Judge, Salem held an enquiry and found that the petitioner herein has breached the provisions of the Notaries Act, 1952 on two counts. Accepting the same, the Government has passed an order in G.O. (Ms) No.79 Law (Administration) Department dated 13.02.2023 removing the name of the petitioner for misconduct. This is now in challenge in this writ petition.

2. The allegations levelled against the petitioner are that (a) the complainant Rajkannan and one Selvarani have entered into an agreement of marriage. The document was signed by the parties before the petitioner and he is said to have attested it without the endorsement that the execution was before him; and (b) that the petitioner has not entered the details of the attestation made, and the charges he received for attesting the document in his Register.

3. This Court directed the petitioner to produce his Register for the year 2009-



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2010, and it was produced. Heard Mr.K.S.Jeyaganesan, the learned counsel for the petitioner, and Mr.G.Ameedius, the learned Government Advocate appearing for the respondent.

4.1 The learned counsel for the petitioner submitted that the entire proceedings before the learned Principal District Judge was conducted with the photostat copy of the document produced by Rajkannan, but even the very document at page 2 (backside of page 1) he has made an endorsement that it was signed before him at Salem and that he has signed. Turning to the allegation of non-maintenance of register is concerned, the learned counsel took this court to a copy of the relevant page in the Register, which showed that on the relevant date he did enter necessary entries in the Register and also carries the signatures of the parties and his signature for the amount he has received for his services.

4.2 Learned Government Advocate appearing for the respondent submitted that the Government acted on the report of the then Principal District Judge, Salem.

5. On scrutinizing the Register, it is found that there is no endorsement by the



learned District Judge that it had been inspected or examined by him, even though the learned District Judge seems to rely on it. Turning to merit, in the context of the impugned proceedings of the Government, the relevant entry to be considered is in Page 11 of the Register, and it is seen to have been marked as Ex.B1. This endorsement admitting the document as Ex.B1 is written only in pencil.

6. This Court carefully perused the enquiry report cum recommendation of the learned Principal District Judge, which form the basis for the Government to pass the impugned G.O. And also weighed the submissions of the learned counsel for the petitioner in the context. And, this Court considers that the appreciation of the register by the learned District Judge requires a revisit. There are at least a couple of noticeable facts:

- Firstly, the document which the complainant has produced is only a Photostat copy, and its reliability needs to be ascertained.
- Secondly, the finding of the learned District Judge that the petitioner herein has not made the statement in the affidavit in question that he had 'signed before or attested before him', does not also appear to be correct,



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since the Photostat copy of the document produced before the Court has it.

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Thirdly, there are facts disclosed by the Register.

7.In view of the same, this Court chooses to set aside the impugned G.O., dated 13.02.2023, and remands the matter back to the Principal District Judge for a *de novo* consideration. However, until a final decision is made, the petitioner is restrained from discharging his function as a Notary. The petitioner is required to produce the Register that was produced before this Court before the District Judge.

8.This writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

04.08.2023

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Index : Yes / No

Neutral Citation



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N.SESHASAYEE, J.
Anu

To

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Law (Admn) Department,
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