

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6292 OF 2024

Surekhaben Chhaniyabhai Varli

...Petitioner

Versus

1. Union Of India
2. The Administrator, U. T. Dadra and Nagar
Haveli, Daman and Diu.
3. The Collector, U.T. Dadra and Nagar Haveli,
4. Deputy Collector (R.D.C.), U.T. Dadra and
Nagar Haveli
5. Law Secretary, U.T. Dadra and Nagar Haveli
6. Hiteshkumar Kismatbai Bhandari
7. Pankajkumar Naginbhai Bhandari
8. Ami Jayvatlal Shah
9. Gordhankumar Ganeshbhai Purohit
10. Nipuna Mahendrasinh Rathod
11. Sunny Bhikhubhai Bhimra
12. Minaben Baberbhai Patel

...Respondents

Mr. Pramod N. Joshi a/w Ms. Rukhmini Khairnar, for the Petitioner.
Mr. Hiten Venegaokar a/w Mr. Harsh Dedhia, for the Respondents.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE : 01 APRIL 2025

Oral Judgment: (Per G. S. Kulkarni, J.)

1. Rule made returnable forthwith. Respondent waives service. By consent of the parties, heard finally.
2. A short issue which arises for consideration in this proceedings under Article 226 of the Constitution is whether respondent no. 3- The Collector, Union Territory of Dadra and Nagar Haveli was correct in not passing a

reasoned order on the petitioner's application for appointment as a notary public.

3. The facts lie in a narrow compass:-

On 29 January 2025, respondent no. 3 issued an advertisement inviting applications for appointment of notary for the Union Territory of Dadra and Nagar Haveli. In pursuance of such advertisement, petitioner made an application dated 3 February 2024 which is stated to be in the prescribed form. Such application was accepted and the petitioner was called for interview by the Interview Board on 21 February 2024.

4. It is the petitioner's case that when seven notaries were selected whose appointments were notified vide notification dated 12 March 2024, the petitioner presumed that the petitioner's application had either remained to be decided or was rejected. It is the petitioner's case that as no reasons were communicated to the petitioner. It is contended that considering the provisions of law it could not be that the petitioner's application suffered a rejection. It is also the petitioner's case that there cannot be an automatic rejection of the petitioner's application as any rejection of the application would require reasons to be furnished. This more particularly considering the Notaries Rules, 1956. In supporting such contentions, Mr. Joshi, learned counsel for the petitioner has placed reliance on the decision of the Division Bench of this Court in the *Nandkishor S/o Gangaram Dhudkekar vs. Union of India*¹.

5. On the other hand Mr. Venegaokar, learned counsel for the respondent has opposed the petition supporting the action of the respondents. It is his

1. (2008) 1 Mah LJ 349

contention that the law would not require any reasons to be furnished, as already the selection has been made and seven candidates have been selected/notified. Accordingly, he has prayed for rejection of the petition.

Analysis

6. On the aforesaid premise, we have heard learned counsel for the parties. At the outset we find that appointment of notaries is governed by the provisions of the Notaries Act, 1952 (for short "**the Act**"). Section 3 of the Act provides for power to appoint notaries is conferred with the Central Government as also the State Government. Section 3 read thus: -

***"3. Power to appoint notaries.**—The Central Government, for the whole or any part of India, and any State Government, for the whole or any part of the State, may appoint as notaries any legal practitioners or other persons who possess such qualifications as may be prescribed."*

7. By virtue of the provisions of section 15 of the Notaries Act, the Central Government has framed the Notaries Rules 1956. Under such Rules, Rule 4 deals with application for appointment as a notary, Rule 6 provides for preliminary action on such application to be taken, Rule 7 provides for recommendation of the competent authority, Rule 7A provides for constitution of the Interview Board, Rule 8 provides for appointment of notary. Such procedure as contemplated under these rules is required to be followed for making the appointment of a notary. The relevant rules are required to be noted which read thus :-

***"4. Application for appointment as a notary.**—(1) A person may make an application for appointment as a notary (hereinafter called "the applicant") online in Form I or Form II as applicable, addressed to such officer or authority (hereinafter referred to as the "competent*

authority") of the appropriate Government as that Government may, by notification in the Official Gazette, designate in this behalf.

(2) The memorial shall be drawn by a person referred to in clause (a) of rule 3 in accordance with Form I and by a person referred to in clauses (b) and (c) of the said rule in accordance with Form II.

6. Preliminary action on application.-(1) The competent authority shall examine every application received by him and if he is satisfied that the application is not complete in all respects or the applicant does not possess the qualifications specified in rule 3, or that any previous application of the applicant for appointment as a notary was rejected within six months before the date of the application, shall reject it summarily and inform the applicant accordingly.

(2) If the competent authority does not reject the application under sub-rule (1)-(a) * * *

(b) he may, if he thinks fit, ascertain from any Bar Council, Bar Association, Incorporated Law Society or other authority in the area where the applicant proposes to practise, the objections, if any, to the appointment of the applicant as notary, to be submitted within the time fixed for the purpose.

7. Recommendation of the competent authority.-(1) The competent authority shall, after holding such inquiry as he thinks fit and after giving the applicant an opportunity of making his representations against the objections, if any, received within the time fixed under sub-rule (2) of rule 6, make a report to the appropriate Government recommending that the applicant may be allowed to appear before the Interview Board.

(2) The competent authority shall also make his recommendation in the report under sub-rule (1) regarding the persons by whom the whole or any part of the costs of the application including the cost of hearing, if any, shall be borne.

(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 practise, 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

(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.

7A. Constitution of the Interview Board.-(1) *If the appropriate Government allows that the applicant may be asked to appear before the Interview Board, the competent authority, shall inform the applicant to appear before the Interview Board, on the date, time and place fixed, to judge the competency of the applicant for being appointed as a Notary. The Interview Board shall submit its recommendations to the appropriate Government.*

(2) For the said purpose, one or more Interview Boards shall be constituted by the appropriate Government from amongst its offices dealing with legal matters and the Chairperson of every Interview Board shall be an officer not below the rank of Joint Secretary or Law Officer of that Government "Provided that the appropriate Government may dispense with the condition of holding of interviews for which reasons are to be recorded in writing.

8. Appointment of a notary.- (1) *On receipt of the recommendations of the Interview Board the appropriate Government shall consider the recommendation and shall—*

(a) allow the application in respect of the whole of the area to which it relates; or

(b) allow the application in respect of any part of the area to which it relates; or

(c) reject the application,

and shall also make such orders as the government thinks fit regarding the persons by whom the whole or any part of the costs of the application including the cost of hearing, if any, shall be borne

(2) An applicant shall be informed of every order passed by the appropriate Government under sub-rule (1):

(3) An applicant whose application has been rejected or allowed in respect of only a part of the area to which it relates or against whom an order as to costs has been made under sub-rule (1) may, within sixty days of the date of the order apply to the appropriate Government for reviewing the order and that Government may, after making such further inquiry as it thinks fit pass such order as it considers necessary.

(4) Where the application is allowed, the appropriate Government shall appoint the applicant as a notary and direct his name to be entered in the Register of Notaries maintained by that Government under section 4 of the Act and issue to him a certificate on payment of prescribed fees authorizing him to practise in the area to which the application relates or in such part thereof as the appropriate Government may specify in the certificate, as a notary for a period of five years from the date on which the certificate is issued to him.

4A) The appropriate Government may on and after the ninth day of May, 2001, appoint notaries in a State or Union Territory, as the case may be, not exceeding the number of notaries specified in the Schedule:

Provided that the number of notaries whose certificate of practice has been renewed under sub-section (2) of section 5 of the Act, shall be included in the total number of notaries appointed for the purpose of counting the total number of notaries specified in the Schedule:

Provided further that if in a State or Union Territory the number of notaries appointed before the ninth day of May, 2001 exceeds the number of notaries specified in the Schedule, such notaries shall continue to be so appointed in that State or Union territory, as the case may be.

Provided also that in case, request for enhancement of quota is received from Union Territory or the State concerned, the same shall be considered as per the following criteria-

(a) if there is an increase in the population of the concerned State or the Union Territory;

(b) if there is increase in the number of districts or tehsil or talka of the concerned State or Union Territory.]

'(5) The Register of Notaries shall be in Form II-A and the certificate of practice shall be in Form II-B."

(emphasis supplied)

8. From the perusal of the aforesaid provisions, the statutory scheme is quite clear that an application made by a candidate for appointment as a notary would be required to be taken to its logical conclusion namely by deciding such application. If the application is not to be entertained or is to be rejected, the concerned Government is required to make such orders as it thinks fit, as specifically provided under Rule 8 (1). Rule 8(2) provides that the applicant shall be informed of every order passed by the appropriate Government under sub-rule (1). This presupposes that a mere notification of selection of certain candidates in the selection / appointment process cannot be an order deciding an application of a particular applicant. What is further discerned from sub-rule (3) of Rule 8 is that any applicant whose application has been rejected or is allowed, in respect of only a part of the area to which it relates or against whom an order as to cost has been made under sub-rule (1) may, within sixty days of the order apply to the appropriate Government for reviewing the order, and further that the Government may, after making such further inquiry as it thinks fit pass appropriate orders as it considers necessary.

9. In our opinion, the provisions of sub rule-(1), (2) and (3) of Rule 8 are required to be read in conjunction as they form an integral part of the statutory scheme in regard to the appointment of notary. Necessarily such statutory scheme encompasses that individually an application is required to be decided and any order being passed on the application for appointment as a notary is required to be communicated to the applicant. It is only when the applicant is aware of the reasons underlying the decision on his application, the applicant can take recourse to the provisions of sub-rule (3) of Rule 8, which is a remedy to approach the appropriate Government in a review application. Any other reading of the scheme of Rule 8 would not further the object and intention of such statutory scheme which is clearly discerned from the plain reading of such Rules.

10. It is a well settled position in law that the administrative authorities in taking a decision on matters, in regard to which authority is conferred on them in law, are under a mandatory obligation to record reasons in the orders they would pass. In **Shrilekha Vidyarthi vs. State of Uttar Pradesh**², the Supreme Court has held that every State action may be informed by reason, which follows that an act uninformed by reason is arbitrary. In paragraph 36 of the report, the Supreme Court observed thus:

"36. Every such action may be informed by reason and if follows that an act un-informed by reason is arbitrary, the rule of law contemplates governance by law and not by humour, whim or caprice of the men to whom the governance is entrusted for the time being. It is the trite law that "be you ever so high, the laws are above you." This is what a man in power must remember always."

² (1991) 1 SCC 212

11. In **S. N. Mukherjee vs. Union of India**³, the Supreme Court held that the object underlying the rules of principles of natural justice is to prevent miscarriage of justice and to secure fair play in action. It was held that except in cases where the requirement to record reasons is expressly or by necessary implication is dispensed with, the authority must record reasons for its decision.

12. In **Sant Lal Gupta & Ors. v. Modern Co-operative Group Housing Society Ltd. & Ors.**⁴, the Supreme Court observed that reasons are the heartbeat of every conclusion, as it introduces clarity in an order and without which the order becomes lifeless. It was observed that the reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible /unsustainable particularly when the order is subject to further challenge before a higher forum. The Supreme Court held that recording of reasons is a principle of natural justice which ensures transparency and fairness in the decision making. A person who is adversely affected must know why his application has been rejected. These observations are aptly applicable in the present facts.

13. In **National Highways Authority of India & Ors. vs. Madhukar Kumar & Ors.**⁵ on the duty to record reasons, the following principles were reiterated by the Supreme Court:

“71. The advantages, undoubtedly, of introducing a reasons driven regime, are as follows. Persons, who may have a right or an interest, would know, what are the reasons which impelled the administrator to take a particular decision. Judicial review, in India, which encompasses the wide contours of public interest litigation as well, would receive immeasurable assistance, if the reasons for particular decisions, are articulated to the extent possible. The giving of reasons also has a disciplining effect on the administrator. This is for the reason that the reasons would capture the thought process, which culminated in the decision and it would help the administrator steer

³ (1990) 4 SCC 594

⁴ (2010) 13 SCC 336

⁵ (2022) 14 SCC 661

clear of the vices of illegality, irrationality and also disproportionality. Reasons could help establish application of mind. Conversely, the absence of reasons may unerringly point to non-application of mind. The duty to act fairly, may require reasons to be recorded but the said duty, though there is a general duty on all State players to act fairly, may have its underpinnings, ultimately in legal rights.

72.Even if, there is no duty to record reasons or support an order with reasons, there cannot be any doubt that, for every decision, there would be and there must be, a reason.”

14. Mr. Joshi. would be correct in placing reliance on the decision of the Division Bench of this Court **Nandkishor S/o Gangaram Dhudkekar (supra)** wherein the Division Bench examining Rule 6 as also Rule 8 of the Notaries Rules has clearly observed that if the application of the petitioner therein was to be rejected, it would contemplate communication of the decision to the applicant. It was observed that there has be a mention of the reasons on which the application has been rejected, as mandated by sub-rule (2) of Rule 8. The relevant observations are required to be noted which read thus: -

“ 16.If his application is rejected, Rule 6(1) as also Rule 8(1)(c) contemplate its communication to the applicant. It is obvious that in it there has to be a mention of reason for which the application has been rejected. In fact Rule 8(2) requires appropriate Government to inform applicant of every order passed by it under sub-rule (1) of Rule 8. The said order can also be an order imposing cost of processing the application of such candidate. Sub-rule (3) permits such applicant within 60 days to apply to appropriate Government for review and if such application is made, the Government is authorised to make such further inquiry as it thinks fit and then pass appropriate orders. It is, therefore, clear that if reasons communicated are arbitrary or perverse, the Statute provides for sufficient safeguards. In these circumstances, we find even the challenge in respect of absence of policy or guidelines as raised in the petition to be misconceived. It is settled law that mere possibility of abuse of power is not sufficient to induce the Court to hold that there is a need of framing guidelines or laying down any policy. The petitioner has not given any concrete example of such abuse of power or any political influence playing role in the process of selection.”

15. Thus, applying the aforesaid provisions of the Notaries Act and the Notaries Rules, as also the well settled principles of law as enunciated in the decisions as discussed hereinbefore, to the facts in hand, we find that the petitioner had made an application for appointing as Notary Public. He was interviewed and despite the same, no specific order was passed informing the petitioner of the decision on the petitioner's application. As no order was passed on the petitioner's application to reject the same or partly grant the same, there was no question of the petitioner invoking the provisions of sub-rule (3) of Rule 8. The inaction of respondent no.3 in not passing an order on the petitioner's application, cannot be recognized to be any lawful exercise of its authority under the Notaries Rules, 1956 as discussed hereinabove. It is therefore incumbent on the respondent to consider and dispose of the petitioner's application by a reasoned order.

16. In the light of the aforesaid discussion, in our opinion, the petition would be required to be disposed of in terms of the following order :-

ORDER

(I) The Interview Board is directed to grant a fresh hearing to the petitioner on the petitioner's application for appointment as a notary. Let this be undertaken within a period of three weeks from today.

(ii) On the basis of the recommendation of the Interview Board, the respondent no. 3 is directed to pass a reasoned order on the petitioner's application for appointment as a notary and the same be communicated to the petitioner.

(iii) Let this entire exercise be completed within a period of five weeks from today.

(iv) All contentions of the parties are expressly kept open.

(v) Disposed of in the aforesaid term. No costs.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]