

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: Hon. Mr. S. c. Sharma, J

WRIT PETITION NO. 2819/2010

Rais Khan s/o Bashir mohammad Khan
Vs.

The State of M.P. & another

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[J U D G M E N T]

(5/10/2010)

The petitioner before this Court has filed this present petition being aggrieved by an order dt. 22/6/09 passed by President, Grievance Redressal Authority, Sardar Sarovar Project. The contention of the petitioner is that he was appointed as a notary by Government of India on 22/1/08 and since then he is discharging his duties as a notary strictly in consonance with the provisions of the Notaries Act 1952 read with the Notaries Rules 1956. The petitioner has further stated that one Smt. Parvati Bai approached the petitioner on 26/5/09 for swearing an affidavit and the petitioner has explained the contents of the affidavit of Smt. Smt. Parvati Bai and after explaining the contents of the affidavit on 26/5/09, the same was notarised. The petitioner has further stated that Smt. Parvati Bai preferred a complaint before the Registrar, Sardar Sarovar Grievances

Redressal Forum and the complaint of Smt. Parvati Bai was rejected by the Registrar, Sardar Sarovar Grievances Redressal Forum in the matter of grant of compensation. The petitioner has further stated that the President, Grievances Redressal Forum while deciding the appeal of Smt. Parvati Bai ie., appeal No.365/07 has observed that the petitioner while notarising the affidavit of Smt. Parvati Bai has not stated in the affidavit that the contents of the affidavit were explained to her and therefore the petitioner has executed the affidavit in a most carelessness manner. The petitioners grievances is that the President has directed action against the petitioner in the matter and thereafter on the basis of the order passed in appeal, the State Government though is not the appropriate government has issued a show cause notice (Annexure p/2) dated 23/2/10. The petitioner has prayed for quashing of the show cause notice as well as the observation made against him in order dated 3/6/09 passed by the President, Grievances Redressal Forum, Sardar Sarovar Project. Learned counsel for the petitioner has relied upon a judgment delivered by the apex court in the case of Manish Dixit and others Vs. State of Rajasthan reported in (AIR 2001 SC 93) and his contention is that the apex court in the aforesaid

case has held that in case any adverse remarks are made against a person, he should have been given an opportunity of hearing, as such adverse remarks are strictures resulting in serious consequences on future career of the person concerned. A reply has been filed on behalf of respondent State and contention of the respondent State is that the action initiated by the State Government is in consonance with the statutory provisions as contained under the Notaries Rules 1956 and they have rightly issued a show cause notice under Rule 13 of the Notaries Rules 1956. The respondents have also stated that the petitioner while notarising the affidavit of one Smt. Parvati Bai has not explained the contents of the affidavit to Smt. Parvati Bai and the same finds place in the order passed by the President dated 3/6/09. The respondents have further stated that they have taken the action against the petitioner rightly keeping in view the order passed by the President and no case for interference is made out in the matter.

Heard learned counsel for the parties at length and perused the record.

In the present case the petitioner before this court was appointed as a Notary by Government of India on 22nd January

2008. It is needless to mention that the petitioner was not appointed by the State Government. The Notaries Rules 1956 defines the appropriate Government and the definition clause ie., Sec. 2(a) defines the appropriate Government as under :

(a) “appropriate Government” means in relation to a notary appointed by the Central Government, the Central Government, and in relation to a notary appointed by the State Government, the State Government;

In the present case as the petitioner was appointed by the Central Government and therefore the appropriate Government is certainly the Government of India. Rule 13 of the Notaries Rules 1956 reads as under :

13. Inquiry into the allegations of professional or other misconduct or 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 under the person complained against, unfit to be a notary;

(b) the oral or documentary evidence relied upon in support of the allegations made on the complaint.

The aforesaid statutory provisions of law makes it

clear that an inquiry into the misconduct of a notary may be initiated by the appropriate Government. In the present case the appropriate Government is Central Government whereas the action has been initiated by the State Government and therefore the notice as contained in Annexure P/2 dated 23/2/10 as well as the notice dated 13/7/09 issued by the Officer In Charge Nazarat, Distt. Dhar is bad in law. In the present case learned counsel for the petitioner has drawn the attention of this court towards the affidavit on the basis of which strictures were passed against the petitioner by the President of the Grievances Redressal Forum. The seal affixed on the back side of the Affidavit which is in Hindi reflects that the contents of the Affidavit were explained to Smt. Parvati Bai and she has affixed her thumb impression on the reverse page of the affidavit also. Thus it is not a case where the notary has not stated on the affidavit that the contents of the Affidavit were explained to the person concerned namely Smt. Parvati Bai and she was aware of the contents of the affidavit and therefore the strictures against the petitioner in para 6 deserves to be expunged. In

the present case the affidavit enclosed along with the Writ Petition as well as the seal affixed on the reverse side of the affidavit has not been taken into account by the President or by the State Government at all and therefore the strictures made against the petitioner deserves to be expunged. The Apex Court in the case of Manish Dixit and others Vs. State of Rajasthan reported in (AIR 2001 SC 93) in para 43 and 44 has held as under :

43. Even those apart, this Court has repeatedly cautioned that before any castigating remarks are made by the Court against any person, particularly when such remarks could ensue serious consequences on the future career of the person concerned he should have been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. Such an opportunity is the basic requirement, for, otherwise the offending remarks would be in violation of the principles of natural justice. In this case such an opportunity was not given to PW 30 (Devendra Kumar Sharma). State of UP V. Mohd. Naim (1964) 2 SCR 363: (AIR 1964 SC 703: 1964 (1) Cri LJ 549). Ch. Jage Ram Vs. Hans Raj Midha (1972) 1 SCC 181: (AIR 1972 SC 1140: 1972 Cri LJ 768), R. K. Lakshmanan v. A. K. Srinivasan. (1975) 2 SCC 466: (AIR 1975 SC 1741: 1975 Cri LJ

1545): Niranjan Patnaik V. Sashibhusan Kar. (1986) 2 SCC 569: (AIR 1986 SC 819 : 1986 Cri LJ 911); State of Karnataka v. Registrar General 2000 (5) Scale 504 : (2000 AIR SCW 2794: air 2000 SC 2626).

44. It is apposite in this context to extract the following observations made by this court in Dr. Dilip Kumar Deka V. State of Assam (1996) 6 SCC 234 :

“we are surprised to find that in spite of the above catena of decisions of this court, the learned Judge did not, before making the remarks, give any opportunity to the appellants, who were admittedly not parties to the revision petition to defend themselves. It cannot be gainsaid that the nature of remarks the learned Judge has made, has cast a serious aspersion on the appellants affecting their character and reputation and may, ultimately affect their career also. Condemnation of the appellants without giving them an opportunity of being heard was complete negation of the fundamental principle of natural justice.”

The apex court in the aforesaid case has held that in case any castigating remarks are made by the court against any person, particularly when such remark would ensue serious consequences on future career of the person concerned, he should have been given an opportunity of

being heard in the matter in respect of such proposed remarks or strictures. Keeping in view the judgment delivered by the apex court in the aforesaid case as the petitioner was never heard at any point of time in the matter and by virtue of the strictures the impugned action has been initiated against him, the adverse remarks / strictures deserves to be expunged. Resultantly the Writ petition is allowed. The adverse remarks / strictures against the petitioner in para 6 of order dated 3/6/09 (annexure P/1) are hereby expunged. Resultantly the notice dated 13/7/09 (Annexure P/5) and the notice issued by the State Government dated 23/2/10 are also quashed as being without jurisdiction. The writ petition stands allowed. No order as to costs.

(S. C. Sharma)
J U D G E