
(34) We would have normally accepted this submission. However, in the present case, we find that the conduct of the promoters including petitioner No. 2 has been unfair. They had taken a substantial amount of money from an agency of the State. They did not pay a penny. Still further, instead of allowing the Corporation to take over possession of the concern for either running the unit or selling it, they had removed the entire machinery and taken it away. In this situation, the respondent-Corporation had no choice but to proceed to recover the dues from all available sources including the Guarantors. The action of the Corporation in the facts and circumstances of this case is in public interest. It promotes the purpose of law. It is in conformity with the provision of the Act. The conduct of the company and its promoters leaves a lot to desire. Thus, the order calls for no interference.

(35) Another fact which deserves mention is that the order dated June 15, 1998 has already been upheld in C.W.P. No. 8565 of 1998. Admittedly, the order passed by the Bench on March 23, 1999 was not challenged by the company or any of its promoters. As the challenge to the order at the instance of the husband of petitioner No. 1 and the brothers of petitioner No. 2 has already been negated by a Bench of this Court and the order has attained finality, we find no ground to interfere with the impugned order.

(36) No other point has been raised.

(37) In view of the above, we find no merit in this petition. It is, consequently, dismissed with costs. The costs are assessed at Rs. 50,000.

S.C.K.

Before Jawahar Lal Gupta and Ashutosh Mohunta, JJ

RAVINDER SINGH RANA,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. NO. 8525 OF 2000

4th July, 2001

Constitution of India, 1950—Art. 226—Notaries Act, 1952—S.3—Notaries Rules, 1956—Rls. 3 and 7—Appointment of a Notary—Deputy Commissioner duly recommending the case of the petitioner—State Government rejecting the recommendation and appointing a person having much longer practice than the petitioner—No illegality in taking into consideration the opinion of the District Judge regarding suitability of a candidate—Recommendation of the D.C. not binding on the State Government—Power to appoint a Notary vests in the State—Decision of the Government in rejecting the candidature of the petitioner just and fair.

Held, that the Deputy Commissioner makes a recommendation under Rule 7. The final decision has to be taken by the Government. In the very nature of things, the Deputy Commissioner makes a mere recommendation. The rules do not empower him to make an appointment. The power to appoint vests in the State Government. Thus, the contention that the recommendation made by the Deputy Commissioner is binding, cannot be sustained.

(Para 14)

Further held, that the competing claims of the contenders had to be considered. It may not be appropriate for the Government to issue an order which may reflect adversely on one or the other applicant. However, it is clear from the papers that the comparative merits of all the candidates were duly considered. The factors as enumerated under the rules were kept in view. The extent of practice of the respective candidates was taken into consideration. Thereafter, respondent No. 4 was selected. In the circumstances of the case, we are satisfied that the decision was just and fair.

(Para 16)

Further held, that the District Judge watches the performance of the advocates in the District. It is in view of this position that the Government has directed the Deputy Commissioners to obtain the views of the highest Judicial Officer of the District before forwarding the recommendation to the Government. Since the District Judge is in a better position than the others to judge the suitability or otherwise of a legal practitioner, the Government committed no illegality in taking his opinion into consideration.

(Para 19)

J.R. Mittal, Senior Advocate with.

Lalit Sharma and H.S. Sirohi, Advocates for the petitioner.

M.C. Berry, Senior DAG Punjab for respondent Nos. 1 to 3,

Gurcharan Singh Advocate for respondent No. 4.

JUDGMENT

Jawahar Lal Gupta, J. (Oral)

(1) Is the action of the Government in appointing respondent No. 4 as a Notary illegal ? This is the short question that arises in the present case. A few facts may be noticed.

(2) The petitioner is an advocate. He had applied for appointment as a Notary. *Vide* letter dated 8th October, 1998, he was duly recommended for appointment by the Deputy Commissioner for one of the two available vacancies. *Vide* order dated 20th January, 2000, the State Government had appointed Mr. Avtar Singh Dhanoa against one of the two vacancies. For the second vacancy, the Government had asked the Deputy Commissioner to reconsider the matter. It was also observed that the name of Ujaggar Singh who had submitted the application may also be considered. A copy of this letter is at Annexure P. 9 with the Writ petition. On receipt of this letter, the Deputy Commissioner, Rupnagar had reiterated his recommendation for the appointment of the petitioner. However, the Government had *vide* its order dated 24th May, 2000, directed that Mrs. Harpal Kaur be appointed. A copy of the order is at Annexure P. 11. Aggrieved by the direction of the Government, the petitioner has approached this Court through the present writ petition.

(3) The petitioner alleges that the appointment of respondent No. 4 is illegal and contrary to provisions of the Notaries Rules, 1956. He prays that the order dated 24th May, 2000, a copy of which is at Annexure P. 11, be quashed and that the respondent be directed to appoint him as a Notary at Sub-Division Kharar as a 'reserved' candidate belonging to the category of Scheduled Castes.

(4) In response to the notice of motion, two separate written statements have been filed. In the reply filed on behalf of the

Government, it has been *inter alia* pointed out that the State of Punjab has allocated three posts of Notaries to the Kharar Sub-Division. The instructions regarding reservation for Scheduled Castes etc. are not applicable in case of appointment of Notaries. It has been admitted that the Deputy Commissioner had recommended the petitioner's name. The Commissioner had forwarded the recommendation of the Deputy Commissioner to the State Government. He had also forwarded a complaint submitted by Mrs. Baljit Kaur, Advocate alongwith the report of enquiry conducted by the SDM, Kharar. The matter was considered under Rule 8. It was decided to appoint Mr. Avtar Singh Dhanoa for the first vacancy. Regarding the second vacancy, the Deputy Commissioner was asked to reconsider the matter. It has been further pointed out that the State Government has laid down a procedure *vide* its letter dated 19th October, 1957. A copy of this letter has been produced as Annexure R. 3 with the written statement. It has been *inter alia* provided that the Deputy Commissioner shall report to the Government through the Commissioner of the Division 'after obtaining the comments of the District & Sessions Judge concerned'. The District & Sessions Judge, Ropar has "recommended the name of Shri Avtar Singh Dhanoa, Advocate for (the) first post and that of Smt. Harpal Kaur, Advocate for the second post" These recommendations "of the competent authority were considered by the Government under Rule 8...." It was found that "weightage given to the petitioner for getting a certificate for National Service Scheme" had no "relevancy to his profession or eligibility for" appointment as a Notary." The Government "after considering the comments of the District & Sessions Judge, Ropar and the recommendations of the Deputy Commissioner, Ropar found that the experience of respondent No. 4 is higher than the petitioner. The petitioner was not having his independent practice at Kharar. Therefore, respondent No. 4 was considered more meritorious for appointment as Notary Public and according to Rule 8 the State Government has appointed her as Notary Public at Kharar". The respondents have reiterated that "the District & Sessions Judge had recommended the name of respondent No. 4. On enquiries.... it transpired that respondent No. 4 had more years of practice than the petitioner and secondly the petitioner was not having independent practice at Kharar. Considering the merits of the candidates, the Government decided to appoint respondent No. 4".

(5) A separate reply has been filed by the fourth respondent. It has been pointed out by her that she possesses the qualifications of M.A.B.Ed and LL.B. She has been practising as an advocate at Civil Courts, Ropar since 12th April, 1982. As Against this, the petitioner on his own showing "is doing practice at Civil Courts, Kharar since the year 1995". She has also produced the certificates from different Presidents of Bar Association, Kharar as Annexures R4 to R8 "to show that the petitioner has not been practising at Civil Courts, Kharar". She has further state that "the members of Bar Association, Kharar passed a resolution on 7th August, 2000 under the Presidentship of Shri Anil Kaushal, a copy of which is at Annexure R9 in which it is confirmed that the petitioner never practised in Judicial and Revenue Courts at Kharar.....nor he resides at Kharar....." In fact, the petitioner is a member of the High Court Bar Association at Chandigarh. Various other averments have also been made.

(6) On the above premises, the respondents pray that the writ petition be dismissed.

(7) Learned counsel for the parties have been heard.

(8) On behalf of the petitioner, it has been pointed out by Mr. J.R. Mittal, Senior Advocate that the Deputy Commissioner is the competent authority. His recommendation could not have been rejected. The Government had wrongly ignored the petitioner without assigning any reason. The recommendation of the District Judge was irrelevant.

(9) The claim made on behalf of the petitioner has been controverted by Mr. M.C. Berry, Sr. DAG who appeared for the State of Punjab and the other official respondents. Mr. Gurcharan Singh, counsel for respondent No. 4 submitted that the orders passed by the Government are in conformity with the rules.

(10) Initially, the Master of Faculties in England used to appoint Notaries in India for performing 'recognised notarial functions.' After independence, the Parliament had enacted the Notaries Act, 1952. By Section 3 of the Act, the Central Government was empowered to appoint Notaries for "the whole or any part of India". The appointments had to be made from amongst the "legal practitioners or other persons who possess such qualifications as may be prescribed". The functions of the Notaries are enumerated in Section 8. Section

12 provides for the imposition of penalty on a person who falsely represents to be a Notary. Section 15 empowers the Central Government to make Rules by Notification in the Official Gazette.

(11) In exercise of the power conferred by Section 15, the Notaries Rules, 1956 have been enacted. Rule 3 lays down the qualifications for appointment as a Notary. Rule 4 entitles a person to apply for appointment as a Notary. Rule 6 requires the competent authority to examine the application. Rule 7 lays down that the competent authority shall "after holding such inquiry as he thinks fit and after giving the applicant an opportunity of making his representation against the objections, if any, received within the time fixed.....make a report to the appropriate Government recommending either that the application may be allowed for the whole or any part of the area to which the application relates or that it may be rejected". It has been further provided that while making the recommendation, the competent authority shall have due regard to the matters enumerated in sub clauses (a) to (e). One of the relevant factors is—"whether the applicant ordinarily resides in the area in which he proposes to practice as a Notary". Another matter which has to be taken into consideration in the case of a legal practitioner is the "extent of his practice". Rule 8 empowers the Government to consider and decide the matter.

(12) In the present case, the petitioner had undoubtedly applied for appointment as a Notary. His case was duly recommended by the Deputy Commissioner. The case was then forwarded to the State Government. On receipt of the recommendation from the Deputy Commissioner, the matter was considered by the appropriate authority. After examination of the matter, the Government had selected respondent No. 4. Did it err in doing so ?

(13) Mr. Mittal, counsel for the petitioner contended that under Rule 4, the recommendation made by the Deputy Commissioner could not have been rejected by the State Government.

(14) The contention is misconceived. Reference to Rule 4 is wholly misplaced. In fact, the Deputy Commissioner makes a recommendation under Rule 7. The final decision has to be taken by the Government. In the very nature of things, the Deputy Commissioner makes a mere recommendation. The power to appoint vests in the

State Government. Thus, the contention that the recommendation made by the Deputy Commissioner is binding, cannot be sustained.

(15) It was then contended that the Government has arbitrarily rejected the petitioner without assigning any reason. Thus, the appointment of respondent No. 4 by order dated May 24, 2000 is vitiated.

(16) We are unable to accept even this contention. It deserves notice that all the applicants were advocates. The competing claims of the contenders had to be considered. It may not be appropriate for the Government to issue an order which may reflect adversely on one or the other applicant. However, it is clear from the papers before us that the comparative merits of all the candidates were duly considered. The factors as enumerated under the rules were kept in view. The extent of practice of the respective candidates at Kharar was taken into consideration. Thereafter, respondent No. 4 was selected. It may be mentioned that with regard to the petitioner, various Presidents of the Bar Association had pointed out that he was not practising at Kharar. It was even mentioned that he did not have a seat in the Court Complex. Still further, a letter, copy of which is at Annexure R2 with the written statement filed by the Government, had been sent by the members of the Bar. It had been pointed out that his name was being unduly propped up by Mr. Jarnail Singh, General Assistant to the Deputy Commissioner. The Government was surely alive to the factual position. It is on consideration of the matter that the final decision had been taken. In the circumstances of the case, we are satisfied that the decision was just and fair. It is not correct to suggest that there were no reasons for the Government to arrive at the impugned decision.

(17) It may be mentioned that in the communication dated May 10, 2000 (Annexure R.2), it has been pointed out that the petitioner is "neither practising lawyer of Kharar nor a member of Bar Association". It is alleged that his name had been wrongly recommended by the Deputy Commissioner. It has been specifically pointed out that Mr. Jarnail Singh, the General Assistant to the Deputy Commissioner, Ropar was "taking personal pains in favour of Mr. Ravinder Singh Rana (the petitioner) and recently got the concerned Branch under his own control to extend help to Mr. Rana. Objections were filed by

the Advocates. A representation was given to the Deputy Commissioner, Ropar. It was not considered. On the contrary, a fax message recommending the name of the petitioner was sent to the Government on the same day by fax so as to get the matter decided immediately and to "avoid the other candidates". The Government could not have ignored these facts.

(18) Mr. Mittal contended that the Government had erred in taking into consideration the recommendation of the District Judge.

(19) Even this contention is untenable. The District Judge watches the performance of the advocates in the District. It is in view of this position that the Government has directed the Deputy Commissioners to obtain the views of the highest Judicial Officer of the District before forwarding the recommendation to the Government. In the present case, the views of the District Judge were available with the Government. Since the District Judge is in a better position than the others to judge the suitability or otherwise of a legal practitioner, the Government committed to illegality in taking his opinion into consideration.

(20) No other point has been raised.

(21) Before parting with the judgment, it may be mentioned that the petitioner's claim was duly considered. A person who has a much longer practice than the petitioner has been selected and appointed. Respondent No. 4 has averred that she has been practising at Kharar since the year 1982. As against this, the petitioner claims to have started practice at Kharar, in the year 1995. Even this claim has been disputed by the respondents. A perusal of the writ petition shows that the petitioner resides in Mohali. In the circumstances of the case, we are satisfied that there is no injustice which may call for interference in proceedings under Article 226 of the Constitution.

(22) Resultantly, we find no merit in this petition. It is, consequently, dismissed. In the circumstances of the case, we make no order as to costs.

S.C.K.