

CIVIL MISCELLANEOUS

*Before H. R. Khanna, J.*

PHAGU RAM, —*Petitioner.*

*versus*

STATE OF PUNJAB AND OTHER, —*Respondent.*

Civil Writ No. 890 of 1964.

*Notaries Act (LIII of 1952)—Ss. 3, 8 and 10 —Notaries appointed under the Act—Whether hold a civil post under the Government—Removal of notaries—Whether requires compliance of Art. 311 of the Constitution—Notaries—Functions of—Mala fides of the complainant—Whether vitiate the order of removal passed by the Government— Quantum of punishment—Whether can be determined by High Court in a petition under Art. 226 or 227 of the Constitution of India.*

1964  
October. 9

*Held*, that a notary appointed under section 3 of the Notaries Act, 1952, does not hold a civil post under the Government and it is not necessary to comply with the requirements of Article 311 of the Constitution before removing his name from the Register of notaries. It is, no doubt, true that a notary is appointed under the Act and his name can be removed by the Government from the Register of notaries

but the fact remains that the functions performed by him are such as do not relate to activities which fall directly within the sphere of the Union or the State. The essential function of a notary is to bestow an impress of authenticity upon certain acts performed by him under the Act and in order to afford facility to the general public for securing such authenticity, notaries are appointed. Such a facility can be availed of by the general public on payment of certain fees which have been specified in the Rules under the Act, and it is significant that the fees go to the pocket of the notary and not to the coffers of the Government. The Government only gets revenue in the shape of stamps which have to be affixed according to law for notarial acts. No doubt a notary is appointed by the Government but he gets no salary from the Government and the duties performed by him are normally not such as keep him fully occupied. It would be stretching the meaning of the words too far to hold that a notary holds a civil post to whom Article 311 applies. The Act, as its preamble goes to show, has been enacted to regulate the profession of notaries, and the different provisions, contained in the Act, do not warrant the inference that a notary holds a civil post.

*Held*, that the High Court will quash the order passed by the Government only if it is shown that the Government was actuated by malice against the petitioner. The mere fact that the person, on whose complaint the order has been made, bore feelings of ill-will against the petitioner, will not go to show that the Government was also motivated by any such animus.

*Held*, that it is for the Government to decide as to what penalty, if any, should be imposed upon a notary for the infraction of the rules and the High Court cannot act as a Court of appeal for determining the quantum of punishment in a petition under Article 226 or 227 of the Constitution of India.

*Petition under Articles 226/227 of the Constitution of India praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the impugned order of respondents and further praying that the operation of the order, dated 22nd April, 1964 be stayed and respondents Nos. 1 and 2 be directed to produce the record of the above case.*

H. R. AGGARWAL, ADVOCATE, for the Petitioner.

A. M. SURI, ADVOCATE, for the Respondents.

#### ORDER

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KHANNA, J.—Shri Phagu Ram, Advocate, petitioner by means of this petition under Articles 226 and 227 of the



Constitution of India seeks to assail the order dated 22nd April, 1964, of the Punjab Government under section 10 of the Notaries Act, 1952 (No. LIII of 1952)—hereinafter referred to as the Act—whereby the name of the petitioner was removed from the register of notaries maintained by the Government under section 4 of the Act.

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The petitioner is practising as an Advocate in Ludhiana since 1953. He was appointed a notary under section 3 of the Act by the Punjab Government on 22nd September, 1960, for the district of Ludhiana. The term of the petitioner on application made by him was renewed for a further period of three years from 22nd September, 1963. On 7th November, 1962, Shri Om Parkash Puri, Advocate, respondent No. 3, whose wife is an Oath Commissioner, made a complaint to the Punjab Government against the petitioner containing the following allegations:—

“(1) That the respondent being a notary public appointed by the Punjab Government under the Notaries Act, 1952, is not authorised to attest the true copies of any document as this does not come under any provision of Notaries Rules, 1956, whereas the respondent has been daily attesting the true copies of various documents and charging annas ‘8’ only as his fee for such attestations. Document Exhibit A has been produced in support of the same.

(2) That, *vide* rule 10, clause (1) and sub-clause (j) of the Notaries Rules, 1956, a notary can verify the translation of any document from one language to another and the notary fee for the same is prescribed at Rs. 25 while the respondent has translated copy of the Birth Register Entry from Urdu to English (document Exhibit B) and has charged only annas ‘8’ as fee and further the translation of the document from one language to another is a notarial act and under Article 42 of Schedule 1-A (Punjab) of the Indian Stamp Act, 1899, every notarial act is to be affixed with stamp fee of Rs. 4.50 nP., before verification whereas document Exhibit B does not bear any such stamp. This action on the part of the respondent has resulted in heavy loss of revenue to the Punjab State.



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Further the respondent has not been entering such attestations in the register nor is he issuing any receipt for the fee received which is an infringement of rule 11(2)(a) of the Notaries Rules.

- (3) That a criminal case under section 420 I.P.C., has been registered with the local police against the respondent for doing unauthorised bogus attestations."

On receipt of the complaint the matter was entrusted by the Home Secretary to the Punjab Government to the Deputy Commissioner, Ludhiana, for holding an enquiry. The complaint was at first looked into by Shri Abhe Raj Singh, Additional Deputy Commissioner, who submitted his report to the Government. The Government thereupon returned the papers to Shri Sube Singh, Deputy Commissioner, Ludhiana, with the direction to conduct the enquiry himself as the Additional Deputy Commissioner was not competent to hold the enquiry under the Notaries Act. Shri Sube Singh, accordingly, conducted a fresh enquiry himself and held that the petitioner was not guilty of any infraction of the legal provisions because of his attesting a copy as true copy. Regarding the charge contained in para one of allegation No. 2 it was held that clarification had been sought from the Government on the point on behalf of all the notaries of the State and till the matter was decided at the Government level it could not be said that there had been any contravention of the Notaries Rules framed under the Act. In respect of allegation No. 3 it was found that the police had not considered the case under section 420, Indian Penal Code, to be fit for prosecution. The Deputy Commissioner, however, found that there had been omission on the part of the petitioner inasmuch as he had not made entry in his Register and had not issued receipt in respect of the fee charged by him. This was held to be an infringement of rule 11(2)(9) of the Notaries Rules 1956. This infringement in the view of the Deputy Commissioner, was not an act which should warrant a severe punishment in the shape of cancellation of his licence and it would be sufficient if he was warned to abide by this rule more rigidly in future. The Punjab Government on receipt of the report passed the impugned order. It was recited in that



order that the Government, after considering the report, had come to the conclusion that the petitioner was guilty of such misconduct as, in the opinion of the Government, rendered him unfit to practise as a notary under the Act.

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Mr. Aggarwal, learned counsel for the petitioner, has argued that the petitioner being a notary appointed under the Act should be deemed to hold a civil post under the State of Punjab and as such he could not be removed from the register of notaries without complying with the requirements of Article 311 of the Constitution. In my opinion this contention is not well-founded. The notaries are appointed under section 3 of the Act, according to which the Central Government may appoint a notary for the whole or any part of India, and any State Government, for the whole or any part of the State. Section 5 shows that every notary, who intends to practise as such, has to pay the prescribed fee and thereupon his name is entered in the Register maintained by the Government, under section 4 of the Act. Sub-section (1) of section 8 specifies the functions of notaries, and reads as under :—

“8(1) A notary may do all or any of the following acts by virtue of his office, namely :—

- (a) verify, authenticate, certify or attest the execution of any instrument;
- (b) present any promissory note, hundi or bill of exchange for acceptance or payment or demand better security;
- (c) note or protest the dishonour by non-acceptance or non-payment of any promissory note, hundi or bill of exchange or protest for better security or prepare acts of honour under the Negotiable Instruments Act, 1881 (XXVI of 1881), or serve notice of such note or protest;
- (d) note and draw up ship's protest, boat's protest or protest relating to demurrage and other commercial matters;
- (e) administer oath to, or take affidavit from, any person;

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- (f) prepare bottomry and respondentia bonds, charter parties and other mercantile documents;
- (g) prepare, attest or authenticate any instrument intended to take effect in any country or place outside India in such form and language as may conform to the law of the place where such deed is intended to operate;
- (h) translate, and verify the translation of, any document from one language into another;
- (i) any other act which may be prescribed."

Section 9 prevents a person from practising as a notary without holding a certificate of practice. Section 10 gives a power to the Government to remove the name of the notary from the Register of notaries, and reads as under:—

"10. The Government appointing any notary may, by order, remove from the Register maintained by it under Section 4 the name of the notary, if he—

- (a) makes a request to that effect; or
- (b) has not paid any prescribed fee required to be paid by him; or
- (c) is an undischarged insolvent; or
- (d) has been found, upon inquiry in the prescribed manner, to be guilty of such professional or other misconduct as, in the opinion of the Government, renders him unfit to practise as a notary."

The question as to what should be the true test to determine as to whether a person holds a civil post under the State or the Union was gone into by a Full Bench of Allahabad High Court in *Mohammad Ahmad Kidwai v. Chairman, Improvement Trust, Lucknow* (1). While deciding that an employee of Improvement Trust does not hold a civil post under the State, the Court held—

"The true test to determine whether a person held a civil post under the Crown as contemplated

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(1) A.I.R. 1958 All. 353.



by section 240 of the Government of India Act or was a member of a civil service of the Union or the State or held a civil post under the Union or the State has primarily to be determined in relation to the functions which he performed.

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If his duties relate to activities which fell directly within the sphere of the Union or the State and his services were under the direction and control, as also his appointment was by either the Union or the State, then he could fall under those services which were contemplated by either section 240 of the Government of India Act or by Article 311 of the Constitution of India, but if the sphere of activity of the employee fell within the sphere of activity of a local authority constituted under some Statute having a separate legal existence, then the position of that employee, even though the State or the Union controlled some of his activity and gave him direction in the discharge of his functions fell outside the scope of either section 240 of the Government of India Act or Article 311 of the Constitution of India."

Keeping in view the criteria laid down above and also taking into consideration the functions of a notary, he cannot, in my opinion, be deemed to hold a civil post. It is no doubt true that a notary is appointed under the Act and his name can be removed by the Government from the Register of notaries, the fact remains that the functions performed by him are such as do not relate to activities which fall directly within the sphere of the Union or the State. The essential function of a notary is to bestow an impress of authenticity upon certain acts performed by him under the Act and in order to afford facility to the general public for securing such authenticity, notaries are appointed. Such a facility can be availed of by the general public on payment of certain fees which have been specified in the Rules under the Act and it is significant that the fees go to the pocket of the notary and not to the coffers of the Government. The Government only gets revenue in the shape of stamps which have to be affixed according to law for notarial acts. No doubt a



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notary is appointed by the Government, but he gets no salary from the Government and the duties performed by him are normally not such as keep him fully occupied. Taking into account all the factors, I am of the opinion that it would be stretching the meaning of the words too far to hold that a notary holds a civil post to whom Article 311 applies. The Act, as its preamble goes to show, has been enacted to regulate the profession of notaries, and the different provisions, contained in the Act, do not warrant the inference that a notary holds a civil post.

Mr. Aggarwal, has referred to a Single Bench case of Kerala High Court, *Francis v. State of Kerala and another* (2) in which it was held that a special First Class Honorary Magistrate holds a civil post. Keeping in view the vast difference in the functions of a notary and an Honorary Magistrate, I am of the opinion that the petitioner can derive no benefit from that authority in the present case.

It has then been argued by Mr. Aggarwal, that the order made by the Punjab Government removing the name of the petitioner from the Register of notaries is *mala fide*. It is pointed out in this connection that previously the wife of respondent No. 3, who is an Advocate and an Oath Commissioner, made a report against the petitioner whereupon the Punjab Government removed the name of the petitioner from the Register of notaries and appointed the wife of respondent No. 3 as notary in place of the petitioner. The petitioner then moved this Court by means of a writ petition and the order of the Government was set aside by this Court on 25th September, 1962, on the ground that the petitioner had been removed without holding the enquiry contemplated under the Act. The appointment of the wife of respondent No. 3, as notary was also set aside. According to the learned counsel for the petitioner, respondent No. 3 was actuated by malice in making the complaint dated the 7th November, 1962, against the petitioner. In this respect I am of the view that this Court would quash the impugned order made by the Punjab Government only if it is shown that the Government was actuated by malice against the petitioner. The mere fact that respondent



No. 3, on whose complaint the order in question was made, bore feelings of illwill against the petitioner, would not go to show that the Government was also motivated by any such animus. The record of the case is bereft of any material which may go to show that the impugned order is *mala fide* and the contention advanced on behalf of the petitioner in this respect must as such be repelled.

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Mr. Aggarwal, then argues that as the two fees of annas eight in respect of which the petitioner failed to make entries in his Register or to issue receipts were on account of acts performed by the petitioner which have been found by the Deputy Commissioner to be not notarial acts, the failure of the petitioner to make entries about those fees in his Register or to issue receipts thereof would not constitute an infraction of the provisions of the Act. In this connection I find that clause (9) of rule 11 of the Notaries Rules 1956, reads as under:—

“(9) Every notary shall grant a receipt for the fees and charges realized by him and maintain a register showing all the fees and charges realized.”

It is not disputed that the petitioner attested the copy of the birth entry and its translated copy in English as a notary. In the circumstances the two fees in question should be deemed to have been received by the petitioner in his capacity as notary. As such the petitioner was bound to issue receipts in respect of the two fees in question and to make entries about them in his register of fees. The omission of the petitioner to do so, in the circumstances, would amount to an infraction of clause (9) of rule 11 reproduced above.

It is next argued by Mr. Aggarwal that according to section 10 of the Act, reproduced above, the petitioner's name could be removed from the register of notaries if he was guilty of such professional or other misconduct as in the opinion of the Government rendered him unfit to practise as a notary. It is contended that an infraction of clause (9) of rule 11 would not amount to misconduct. This contention, in my opinion, is not well-founded. When notaries are appointed under the Act they have to abide



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by the rules framed under the Act and cannot with impunity fail to comply with them. Non-compliance with the rules, in my view, amounts to misconduct for which the Government is empowered to remove the notary's name from the Register maintained under section 4 of the Act.

Lastly reference has been made to clause (12) of rule 13 of the Notaries Rules which provides the different penalties which may be imposed on a defaulting notary under the Act and reads as under:—

“12(a) The appropriate Government shall consider the report of the competent authority, and if in its opinion a further inquiry is necessary, may cause such further inquiry to be made and a further report submitted by the competent authority.

(b) If after considering the report of the competent authority the appropriate Government is of the opinion that action should be taken against the notary, the appropriate Government may make an order—

(i) cancelling the certificate of practice and perpetually debarring the notary from practice, or

(ii) suspending him from practice for a specified period, or

(iii) letting him off with a warning, according to the nature and gravity of the misconduct of the notary proved.”

It is contended that failure of the petitioner to issue the two receipts in question and to make entries in respect thereof in the Register of fees was a minor lapse for which, as recommended by the Deputy Commissioner, a warning to be more careful in future would have served the purpose. Although I am of the view that there is force in this contention, the only authority, which can afford relief to the petitioner in this respect, is the Punjab Government because it is for the Government to decide as to what penalty, if any, should be imposed upon the petitioner for the infraction of the rules. This Court cannot act as a Court of appeal for determining the quantum of



punishment in this petition under Articles 226 and 227 of Phagu Ram  
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The petition, in the circumstances, fails and is State of Punjab  
dismissed, but without costs. and others

B.R.T.

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