

S.N. Murthy and ors. Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Oct-16-2008

Reported in : 2009(1)KantLJ185; 2009(1)KCCR630; AIR2009KAR46; 2009(1)KarLJ185

Judge : P.D. Dinakaran; V.G. Sabhahit, Jj.

Acts : [Notaries Act, 1952](#); Notaries Rules, 1956 - Rules 6, 7, 6(2)(a), 6(2)(b), 7(1)

Appeal No. : Writ Appeal No. 2030 of 2007

Appellant : S.N. Murthy and ors.

Respondent : State of Karnataka and ors.

Advocate for Def. : Jayakumar S. Patil, Adv.

Advocate for Pet/Ap. : Mahesh R. Uppin, Adv.

Judgement :

1. This appeal is filed by the petitioners in W.P. No. 83 of 2007 being aggrieved by the order passed by the learned Single Judge dated 5-9-2007 wherein the writ petition seeking for quashing of the order dated 24-12-2005 appointing respondents 3 to 6 in the writ petition as notaries has been dismissed.

2. The Government issued a notification calling for application for appointment to the post of Notaries. The second respondent-Principal District Judge, Hassan, is

the Competent Authority under the [Notaries Act, 1952](#). The second respondent issued a notification on 24-6-2005 calling for memorials of Advocates who have put in more than ten years of practice for appointment to the post of notary in accordance with Notaries Rules. 1956 (for short, 'the Rules'), application to be submitted on or before 24-6-2005. The writ petitioners 1 to 4-respondents 3 to 6 and others made an application for appointment of notary and on the recommendation of the second respondent, the Government has issued a notification on 24-12-2005 appointing respondents 3 to 6 as Notaries. Being aggrieved by the said order appointing respondents 3 to 6 as notaries, writ petition was filed seeking for quashing of the said order alleging that there is non-compliance of Rules 6 and 7 of the Notaries Rules. It was contended by the writ petitioner that copy of the notification calling for objections from the Bar Association was not issued as required under Rule 6(2)(a) of the Rules and no enquiry was held by the second respondent-the Competent Authority recommending respondents 3 to 6 for the posts of notary and if notification had been issued, petitioners would have filed objections for appointment of respondents 3 to 6 as notary and therefore, the order appointing respondents 3 to 6 as notary is liable to be set aside.

3. The second respondent filed objections denying the averments made in the petition and further averred that Rule 6(2)(a) has been deleted with effect from 8-7-1997 and therefore, the procedure of sending notification to the Bar Association calling for objections if any, is dispensed with in view of the deletion of Rule 6(2)(a) of the Rules and since no objections have been received and there was no necessity of holding any enquiry the second respondent after duly verifying the memorials submitted by the applicants, recommended for appointment of respondents 3 to 6 and accordingly notification has been issued and therefore, the writ petition is liable to be dismissed.

4. The learned Single Judge accepting the contention of the second respondent held that Rule 6(2)(a) of the Rules has been deleted and therefore, question of calling for objections from the Bar Association does not arise and apart from Rule 6(2)(a) which has been deleted, there is no other provision in the Rules for holding any enquiry and provision of Rule 7 is mandatory and only if the Competent

Authority deems fit to hold the enquiry, the Competent Authority can hold an enquiry and there is no compulsion on his part to hold an enquiry and accordingly, dismissed the writ petition. Being aggrieved by the dismissal of the writ petition, writ petitioners have preferred this appeal.

5. We have heard the learned Counsel appearing for the appellants.

6. The learned Counsel appearing for the appellants submitted that though Rule 6(2)(a) of the Rules of 1956 has been deleted, Rule 7 would show that the Competent Authority is required to hold an enquiry and therefore, reading of Rule 6(2)(b) and Rule 7 would show that even if Section 6(2)(a) is deleted, an enquiry is required to be held by the Competent Authority and in the absence of such enquiry appointment of respondents 3 to 6 is vitiated and therefore, the order of the learned Single Judge is liable to be set aside.

7. We have given careful consideration to the contention of the learned Counsel appearing for the appellants.

8. The rule requiring the Competent Authority to send notification to the Bar Association calling for their objections if any has been deleted with effect from 8-7-1997. The said rule reads as follows.

"6. (2)(a) he shall publish in the Official Gazette a notice of the application inviting objections, if any, to the appointment of the applicant as a notary, to be submitted within fourteen days of such publication".

9. In view of the deletion of the above said rule, it is clear that question of applying Rule 6(2)(a) does not arise. There is no merit in the contention of the learned Counsel appearing for the appellants that even if Rule 6(2)(a) is deleted, provisions of Rule 6(2)(b) and Rule 7(1) would show that an enquiry is required to be held by the second respondent. The provisions of Rule 6(2)(b) and Rule 7 read as follows.

"6. (2)(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 practice, the objections, if any, to the appointment of the applicant as

notary, to be submitted within the time fixed for the purpose.

7. (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 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.

10. It is clear from the reading of the above said provision of Rule 6(2)(b) that only where the Competent Authority feels and thinks fit an enquiry is required to be held and there is no mandate on the Competent Authority to hold an enquiry if no objections are received and he does not dispute the contents of memorials submitted to the post of notary. Therefore apart from Rule 6(2)(b) which is deleted with effect from 8-7-1997, there is no other provision under the Rules requiring second respondent to mandatorily hold an enquiry and if the contention of the learned Counsel appearing for the appellants is to be accepted, the same would amount to rewriting provisions of Rule 6(2)(a) into Rule 6 though the said rule has been deleted from the Rules with effect from 8-7-1997. No other contention is urged to show that appointment of respondents 3 to 6 is vitiated. Under the circumstances, having regard to the above said reasoning, we hold that the order passed by the learned Single Judge is justified and the appeal is devoid of merits and accordingly, we pass the following order:

The appeal is dismissed

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