

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 02.07.2013
Judgment pronounced on : 05.07.2013

+ W.P.(C) 4069/2013 & CM Nos. 9597-98/2013
IMAMUDDIN

..... Petitioner

Through: Mr. S.S. Dahiya, Advocate

versus

UNION OF INDIA

..... Respondent

Through: Counsel for the respondent (presence not
given)

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

The petitioner before this Court was appointed as Notary Public and was authorized to practice throughout Tehsil Sikandarabad in District Bulandsahar, Uttar Pradesh with effect from 2.8.2007 for a period of five years. On expiry of the aforesaid term of five years, the petitioner vide application dated 25.4.2012 applied for renewal of his certificate and deposited the renewal fees of Rs.500/- along with an affidavit. The certificate of the petitioner, however, has not been renewed till date.

2. On receipt of certain complaints with respect to criminal cases pending against the petitioner, Deputy Legal Advisor and CA, Ministry of Law & Justice, Department of legal affairs, vide letter dated 13.12.2012, referring to the affidavit submitted by the petitioner along with his application, sought explanation of the petitioner with respect to

the allegations made against him. A copy of the communication received from Senior Superintendent of Police, Bulandsahar, giving details of the cases filed and decided against the petitioner was also enclosed to the said letter. The petitioner submitted reply dated 31.12.2012 stating therein that none of the pending cases against him related to an offence involving moral turpitude and therefore no false statement was made by him in the affidavit which he had furnished while seeking renewal of his certificate of practice. He also submitted copies of the order passed by the High Court of Allahabad, staying the sentence awarded to him in two cases, one under Section 302/149,147/148 of IPC and the other under Section 147/307/149/148 of IPC.

3. Vide impugned order dated 14.5.2013, the respondents after considering the explanation submitted by the petitioner and giving personal hearing to him, conveyed, to him the decision of the Appropriate Government to suspend his certificate of practice as Notary with effect from 10.5.2013 till final outcome of the pending criminal cases against him. Being aggrieved, the petitioner is before this Court by way of this writ petition.

4. The order suspending the certificate of practice of the petitioner was assailed by the learned counsel for the petitioner on two grounds. The first ground taken by him was that the petitioner was convicted much prior to his appointment as Notary Public and, therefore, his certificate of practice could not have been suspended for such conviction. In other words, according to the learned counsel for the petitioner, it is only conviction post grant of certificate of practice which can be a ground for suspension of certificate of practice. The second contention was that none

of the offences for which the petitioner has been convicted, involves moral turpitude and, therefore, such conviction cannot be a ground for suspending his certificate of practice.

5. Section 5 of the Notary Act, 1952, to the extent it is relevant provides for appointment of Notary for a period of five years from the date on which the certificate authorizing him to practice, is issued. It also provides that the government appointing Notary, may, on receipt of an application and the permitted fee, renew the certificate of practice for a period of five years at a time.

6. Section 10 of the Act provides for removing the name from the Register of Notaries and one of the grounds for removal of the name from the said Register is conviction by any Court for an offence involving moral turpitude. Rule 13 of the Notaries Rules, 1936 provides for inquiring into for professional or other misconduct by a Notary. Under the said Rule, the Appropriate Government, if it is of the opinion that action should be taken against the notary, may make an order suspending him from practice for a specified period.

7. It would be seen from Section 5 of the Act that renewal of the certificate of practice granted to a notary is not automatic and the Government which appointed notary has discretion either to renew the certificate of practice or to reject the application submitted for this purpose. It can hardly be disputed that while considering an application for appointment as a Notary or for renewal of the certificate of practice granted to a notary, the government is expected to examine the suitability or otherwise of the applicant for appointment as a notary.

8. The certificate of practice granted to the petitioner on 2.8.2007 being for a period of five years, expired by efflux of time on 1.8.2012. Though the petitioner did apply for renewal of his licence, the Government did not renew his certificate of practice. In the absence of renewal of certificate of practice, which was issued to the petitioner on 2.8.2007, he ceased to be a Notary Public with effect from 2.8.2012. The order for removal of name from the Register of Notaries under Section 10 of the Act or an order suspending him from practice, under Rule 13(12)(b)(ii) of the Notaries Rules, pre-supposes existence of a valid certificate of practice at the time such an order is passed. If a person has already ceased to be a notary on account of expiry of his certificate of practice by efflux of time, an order removing his name from the Register of Notary or suspending him from practice would be a superfluous order, which needs to be ignored from consideration. The merit or otherwise of such an order need not be considered by the Court even if challenged in a writ petition.

9. There is no merit in the contention that it is only the conviction after appointment as Notary Public which can lead to removal of a notary from the Register under Section 10(e) of the Act. If such a conviction was not disclosed at the time of appointment as a notary public and later comes to the knowledge of the government, it would be competent to remove his name from the Register under Section 10(e) of the Act. In any case, if name of a person convicted by a Court for offence involving moral turpitude can be removed from the Register, it would be difficult to say that the government cannot reject renewal of his certificate on account of such a conviction. Therefore, the only question which arises

for consideration in this case is as to whether the petitioner was convicted of an offence involving moral turpitude or not.

10. In *Hikmat Ali Khan vs. Ishwar Prasad Arya and others* [(1997) 3 SCC 131], an advocate for assaulting his opponent with knife was convicted under Section 307 I.P.C., and to undergo rigorous imprisonment for a period of three years and a further period of nine months for an offence under Section 25 of the Arms Act. The conviction and sentence for the offence under Section 307 I.P.C. were maintained by the High Court. But the advocate was given benefit of doubt regarding the offence under Section 25 of the Arms Act and the conviction and sentence of the said offence were set aside. Before he could be arrested to undergo rigorous imprisonment for three years for the offence under Section 307 I.P.C., the sentence was suspended, on the basis of the letter purported to be issued by the Governor under Article 161 of the Constitution of India. Later on, it was found that the above said letter itself was fraudulent and there upon a warrant of arrest was issued by the Court. Learned Additional District and Sessions Judge, who was responsible for executing the sentence, sent a complaint about this to the Bar Council of U.P., for taking action against the advocate under Section 35 of the Advocates Act, 1961. The Disciplinary Committee of Bar Council of U.P., debarred the advocate for two years. On appeal, the Bar council of India, set aside the order on the view that there was no material to hold that the Advocate had prepared the letter, which was subsequently, found to be forged. In the meanwhile, the appellant, who was the victim in the offence under Section 307 I.P.C., made a complaint against the advocate to the Secretary, Bar Council of U.P., stating that he

was convicted and sentenced under Section 307 I.P.C. The Disciplinary Committee of Bar Council of U.P., debarred the advocate from practicing for a period of three years. Aggrieved by the same, the advocate preferred an appeal to the Bar Council of India to set aside the penalty. The victim also filed another appeal to the Bar Council of India and prayed that the punishment imposed by the Disciplinary Committee of the Bar Council of U.P., be enhanced and his name to be removed from the roll of advocates. The Bar Council of India set aside the order of suspension. Consequently, the appeal filed by the victim was dismissed. Being aggrieved by the order of the disciplinary committee, Bar Council of India, allowing the appeal filed by the advocate and the dismissal of the appeal filed for enhancement, the victim filed an appeal to the Supreme Court. Dealing with the act of misconduct, the Supreme Court observed that, “Under sub-section (3) of Section 35 of the Act the Disciplinary Committee of the State Bar Council is empowered to pass an order imposing punishment on an advocate found guilty of professional or other misconduct. Such punishment can be reprimand [clause (b)], suspension from practice for a certain period [clause (c)] and removal of the name of the advocate from the State roll of advocates [clause (d)], depending on the gravity of the misconduct found established. The punishment of removal of the name from the roll of advocates is called for where the misconduct is such as to show that the advocate is unworthy of remaining in the profession. In this context, it may be pointed out that under Section 24-A of the Act a person who is convicted of an offence involving moral turpitude is disqualified for being admitted as an advocate on the State roll of advocates. This means that the conduct involving conviction of an

offence involving moral turpitude which would disqualify a person from being enrolled as an advocate has to be considered a serious misconduct when found to have been committed by a person who is enrolled as an advocate and it would call for the imposition of the punishment of removal of the name of the advocate from the roll of advocates. In the instant case Respondent 1 has been convicted of the offence of attempting to commit murder punishable under Section 307 IPC. He had assaulted his opponent in the courtroom with a knife. The gravity of the misconduct committed by him is such as to show that he is unworthy of remaining in the profession.”

If an offence under Section 307 of IPC for attempt to commit murder is an offence involving moral turpitude, it would be difficult to accept the contention that a murder which is punishable under Section 302 of IPC does not involve moral turpitude. In *Bharat Sanchar Nigam Limited and others versus Central Administrative Tribunal, Chandigarh Bench, Chandigarh and another* [CWP No.23581 of 2011 decided on 15.3.2013], a Division Bench of Punjab & Haryana High Court was of the view that the conviction for the offence under Section 302 of IPC involves moral turpitude.

11. The petitioner before this Court was convicted under Section 307 of IPC in one case and under Section 302 of IPC in the other case. Since both these offences involve moral turpitude, his name could have been removed from the Register, under Section 10(e) of the Notary Act. A person whose name could be removed from the Register on account of such a conviction is certainly not a fit person to be appointed as a notary

public and, therefore, there can be no justification for giving a direction to the respondent to renew the notary public granted to the petitioner.

12. To conclude, since the certificate of practice granted to the petitioner expired by efflux of time on 1.8.2012, the legality of the order suspending him during pendency of his appeal before the Allahabad High Court need not be examined. Even on merit, no fault can be found with the government's order suspending the certificate granted to a notary, who was convicted under Section 302 and 307 of IPC, both of which involve moral turpitude during pendency of his appeal before the High Court when his conviction has not been suspended and it is only the sentence awarded to him which stands suspended. Also, since on account of his conviction under Section 302 and 307 of IPC, the petitioner cannot be said to be a person suitable for appointment as a notary public, no direction for renewal of his certificate can be issued to the respondent.

13. While applying for renewal of his certificate, the petitioner filed an affidavit stating therein that he has not been convicted for an offence involving moral turpitude. This obviously was a false statement in view of his conviction under Section 307 & 302 of IPC. This is yet another ground on which renewal of his certificate of practice can be refused.

14. Writ petition is devoid of any merit and is hereby dismissed. There shall be no order as to costs.

V.K.JAIN, J

JULY 05, 2013/rd