

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

WP(C).No. 20494 of 2015 (J)

PETITIONER :

**ADV. SANTHOSH R. AGED 52 YEARS,
S/O.E.M. RAVINDRANATHAN NAIR, KARUVELIL HOUSE,
MADAPPALLY P.O., MADAPPALLY VILLAGE
CHANGACHERRY TALUK, KOTTAYAM - 686 546.**

**BY ADVS.SRI.M.P.MADHAVANKUTTY
SRI.S.RANJIT (KOTTAYAM)
SRI.GOKUL DAS V.V.H.**

RESPONDENTS :

- 1. UNION OF INDIA
REPRESENTED BY SECRETARY
MINISTRY OF LAW AND JUSTICE,
DEPARTMENT OF LEGAL AFFAIRS, SASTHRI BHAVAN
NEW DELHI - 110 001.**
- 2. DEPUTY LEGAL ADVISOR AND COMPETENT AUTHORITY,
MINISTRY OF LAW AND JUSTICE
DEPARTMENT OF LEGAL AFFAIRS, NOTARY SECTION
SHASTHRI BHAVAN, NEW DELHI - 110 001.**
- 3. JOINT SECRETARY,
UNION OF INDIA, DEPARTMENT OF LEGAL AFFAIRS,
NOTARY SECTION, SHASTHRI BHAVAN, NEW DELHI - 110 001.**

**R1 TO R3 BY ADV. SRI.M.A.VINOD, CGC
BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 26-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT-P1:- TRUE COPY OF THE CERTIFICATE OF PRACTICE ISSUED BY THE
COMPETENT AUTHORITY (NOTARIES) GOVERNMENT OF INDIA,
MINISTRY OF LAW AND JUSTICE, DEPARTMENT OF LEGAL AFFAIRS,
NEW DELHI.**

**EXHIBIT-P2:- TRUE COPY OF THE APPLICATION DATED 08/01/2015 SUBMITTED BY
THE PETITIONER BEFORE THE 3RD RESPONDENT.**

EXHIBIT-P3(SERIES)- TRUE COPY OF THE REMINDER DATED 28/04/2015.

**EXHIBIT-P4:- TRUE COPY OF THE LETTER DATED 24/04/2015 ISSUED BY THE 2ND
RESPONDENT.**

**EXHIBIT-P5:- TRUE COPY OF THE NOTIFICATION DATED 04/03/2014 BEARING
NUMBER G.S.R 150(E) PUBLISHED IN THE GAZEETTE OF INDIA.**

EXHIBIT-P6:- TRUE COPY OF THE AFFIDAVIT SUBMITTED BY THE PETITIONER.

**EXHIBIT-P7:- TRUE COPY OF THE OFFICE MEMORANDUM DATED 16/06/2015 ISSUED
BY THE 2ND RESPONDENT.**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.S.TO JUDGE

bp

A.MUHAMED MUSTAQUE, J.

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Dated this the 26th Day of November, 2015

J U D G M E N T

The petitioner is a Notary appointed by the Union of India. The petitioner's term expired on 06/06/2015. He submitted an application dated 08/01/2015 for renewal. That has been rejected stating that the application is belated. Exhibit P4 is the order of rejection. It is stated that the petitioner has not applied for renewal well before the six months of expiry of the certificate, as required under the Notaries Rules, 1956 read with Notaries (Amendment) Rules, 2014.

2. Section 5(2) of the Notaries Act, 1952 contemplates that the Government may on receipt of the application, renew the certificate of practice of any notary for a period of five years at a time. The Notaries Act as such do not provide period of limitation for submitting the application. By virtue of Section 15 of the Notaries Act, the Central Government framed rules to carry out the purpose of the Notaries Act. These Rules inter-alia provides procedures for making application as well as matters related to the fees, form of registers and matters connected to the Notary. The Rule, therefore, has to be understood in the context of procedures for making

application and cannot be taken as a rigour of limitation, that would apply. The procedural Rule is always understood as an aid to substantial provision.

3. The procedure as prescribed by the amended Rules, i.e., Rule 8B shows that the application for renewal of certificate of practice shall be submitted to the appropriate Government before six months from the date of expiry of its period of validity. The proviso therein contemplates the power of the Government to relax the condition of submission of the application for renewal of certificate of practice, if not submitted before the above specified period. The petitioner's licence period expired on 06/06/2015. It is seen from the records that the application was submitted on 08/01/2015. If the dates as above are reckoned, there shall be a delay of 32 days in submitting the application. The petitioner has sworn an affidavit as Exhibit P6 to condone the delay. It is submitted that it is on account of his mistake the delay occurred. It is also to be noted that the amended provision came into effect only on 04/03/2014. The pre-amended provision would clearly indicate that the period for submission of the application was "before three months" instead of before "six months" from the date of expiry of the period of validity of the certificate of practice. If the period of three months is reckoned, the petitioner's application was within

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time. According to the petitioner, it was a *bona fide* mistake. Though, the petitioner cannot pretend ignorance as to the Rule, it forms a *bona fide* mistake on the side of the petitioner. It is already noted that the Rules are in the nature of procedures and it cannot frustrate substantial provision of renewal. Further, the period cannot be taken as a period of limitation. Taking note of the fact the Union Government has sufficient power to condone any delay and based on the affidavit produced as Exhibit P6, the delay ought to have been condoned. Therefore, the impugned order is set aside. There shall be a direction to the respondents to consider the application of the petitioner in accordance with law as though it has been received within time. Needful shall be done within two months.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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