

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

WP(C).No. 27684 of 2012 (I)

PETITIONER:

C.K.RAJENDRAN, AGED 59 YEARS
ADVOCATE, MANAKKATTU HOUSE, KALAVAMKODAM P.O
CHERTHALA.

BY ADV. SRI.M.P.MOHAMMED ASLAM

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY, DEPARTMENT OF LAW
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.695001

2. THE SECRETARY
DEPARTMENT OF LAW, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.695001

3. MINISTER FOR LAW
GOVERNMENT OF KERALA, OFFICE OF THE MINISTER FOR LAW
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.695001

4. MR.A.FRANCIS
ADVOCATE, 'MANGALATH', KAITHAVANA.P.O
ALAPPUZHA.688001

5. MR.T.S.SURESH
ADVOCATE, 'SREEKRISHNA', WEST OF AVALOOMADAM
THATHAMPALLI.P.O, ALAPPUZHA.688013

6. MS.ASHAMOL S., ADVOCATE, SREEPADAM (NIKARTHIL)
KOMALAPURAM O.O., ALAPUZZHA 688538

7. MS.LIGI GOPINATH, ADVOCATE, PUTHENPURAYIL,
VAYALAR.P.O., CHERTHALA 6885336

R1 -R 3 BY NOUSHAD THOTTATHIL, GOVERNMENT PLEADER
R7 BY ADV. SRI.K.P.KAMALAKARA BABU
R7 BY ADV. SRI.N.KRISHNA PRASAD
R4 BY ADV. SRI.ROY CHACKO

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

WP(C).No. 27684 of 2012 (I)

APPENDIX

PETITIONER'S EXHIBITS

P1: COPY OF COMMUNICATION NO.1356/H2/2010/LAW DATED 23.2.2011

P2: COPY OF THE COVER THAT CONTAINED ORIGINAL OF EXT.P1 COMMUNICATION

P3: COPY OF THE CHALAN RECEIPT DT.4.3.11

P4: COPY OF POSTAL RECEIPT DT.4.3.11

P5: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE R2
DT.24.5.11

P6: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE R3
DT.6.7.11

P7: COPY OF COMMUNICATION NO.1356/H2/2010/LAW DT.17.1.12 ISSUED BY R2
TO THE PETITIONER

P8: COPY OF THE ORDER OF THE HON'BLE HIGH COURT IN WPC 13638/12
DT.26.6.12

P9: COPY OF THE ORDER PASSED BY R3 WITHDRAWING THE ORDER APPOINTING
THE PETITIONER AS NOTARY 8.11.11

P10: COPY OF THE REPLY RECEIVED BY THE PETITIONER TO THE QUERIES MADE
BY HIM UNDER THE RIGHT TO INFORMATION ACT DT.28.7.12

7TH RESPONDENT'S EXHIBITS

R7(A): COPY OF THE COMMUNICATION DT.30.4.12

R7(B): COPY OF THE ORDER APPOINTING THE RESPONDENT AS A NOTARY
DT.11.7.12

RKC

TRUE COPY

PA TO JUDGE

P.V.ASHA, J.

.....
W.P.(C) No.27684 of 2012
.....

Dated this the 27th day of July, 2015

JUDGMENT

Aggrieved by Exts.P7 and P9 intimations, the petitioner has filed this writ petition, praying for a direction to respondents 1 to 3 to issue Certificate of Practice to petitioner as Notary in Alappuzha District under sub rule 4 of rule 8 of the Notaries Rules, 1956.

2. The petitioner, who is a practising lawyer in Cherthala, submitted an application for appointment as Notary under section 3 of the Notaries Act in accordance with Rule 4(1) of Notaries Rules, 1956. The petitioner had been interviewed as provided under rule 7 of the Notaries Rules and thereafter he received communication from the Government of Kerala, Law (H) Department as per letter No.1356/H2/2010/law dated 23.2.2011, by which he was directed to remit a sum of ₹1,000/- in the Government Treasury towards fee for issue of Certificate of Practice as Notary in Cherthala Taluk. The petitioner submits that he received the said communication on 1.3.2011, applied for

W.P.(C) No.27684 of 2012

:2:

chalan before the Sub Treasury, Cherthala on 3.3.2011, since 2.3.2011 was a holiday and the Treasury issued chalan in the afternoon of 3.3.2011 and he remitted requisite fee on 4.3.2011 as per Ext.P3 and sent the receipt as per Ext.P4 on 4.3.2011 itself.

3. The petitioner submits that even though the respondents received receipt of chalan on 7.3.2011 itself, Certificate of Practice was not issued to him. He therefore submitted several representations before the Government as per Exts.P5, P6 etc. requesting for issuance of Certificate of Practice.

4. The Law Secretary as per Ext.P7 letter dated 17.1.2012 informed the petitioner that the order dated 22.2.2011 made on his application to appoint him as Notary was reviewed by Government on 8.11.2011 and the said order dated 22.2.2011 stands withdrawn as there was no vacancy on the date of production of the chalan. It was further stated that maximum number of Notaries which can be appointed by Government of Kerala as provided under Rule 8(4)(A) of the Notaries Rules, 1956 were appointed by the Government as on the date of

W.P.(C) No.27684 of 2012

:3:

receipt of chalan. The chalan receipt furnished by the petitioner was accordingly returned to him.

5. The petitioner submits that thereupon he immediately approached this Court in W.P.(C) No.13638 of 2012, which was later withdrawn with liberty to file fresh writ petition. In this writ petition, the petitioner has further produced circulation note of the Law Department as Ext.P9 which relates to the appointment of the petitioner as Notary, remittance of fee on 3.3.2011 for Certificate of Practice etc.. The note contains a remark in writing by the Minister that there was no vacancy of Notary at the time of appointment of the aforesaid 25 and therefore the orders issued earlier are withdrawn.

6. It is pointed out that along with the petitioner 24 others were also appointed and none of these 25 persons were appointed as Notaries. According to the petitioner, since it was already ordered that he was appointed as Notary and there was no other formality except issuing of Certificate of Practice, there is no relevance for the filling up of vacancies subsequent to his appointment or filling up of the vacancy by the time he remitted

the prescribed fee.

7. The Government have filed counter affidavit pointing out that the maximum number of Notaries that the State could appoint is only 845 at the relevant time. It further states that the total number of Notaries having valid Certificate of Practice as on 1.1.2011 in the State was 743. The said list includes the names of Notaries who are in possession of valid Certificate of Practice as on 1.1.2011. Therefore 102 Notaries could have been appointed by the Government as per statistics as on 1.1.2011, if the pending renewal applications were not considered. It is further stated that from 1.1.2011 to 1.3.2011 Government appointed 83 Notaries and directed to appoint 25 persons as Notaries including the petitioner. 19 vacancies were to be reserved for considering the pending renewal applications. It was found that the decision to appoint the petitioner was in excess of the number of 845 allowed by the Central Government. Under the above circumstances, Government reviewed the decision and withdrew the same as there was no vacancy for appointment on the date of production of chalan receipt. It is again stated that as

on 1.3.2011 there existed 845 Notaries already appointed by the State Government which was the maximum that is permissible under rules. It is further stated that appointments made after 24.4.2012 were the vacancies which arose subsequent to the order of appointment in the petitioner's file, due to various reasons such as death or removal of Notaries from the Register of Notaries. In short, the contention of the Government is that the initial decision to appoint the petitioner was taken without considering 19 applications for renewal. The said decision was withdrawn seeing the pending applications and seeing that there were maximum number of Notaries at the relevant time and no further appointment could be made.

8. I heard learned counsel appearing for the petitioner, the learned Government Pleader and the learned counsel appearing for respondents 4 to 7.

9. Learned counsel for the petitioner submits that no reliefs are sought against respondents 4 to 7 and that they were impleaded only to show that they were being appointed subsequent to the cancellation of appointment of the petitioner.

10. The learned Government Pleader as well as the learned counsel for the contesting respondents pointed out that identical issue was considered by this Court in ***Sugathan Vs. Union of India*** [2014 (3) KLT 33]. The petitioner therein was one of the 25 Advocates who were denied appointment as Notary in identical circumstances. This Court did not interfere with the decision of the Government and the writ petition was disposed of with a direction to the 2nd respondent therein to consider the application submitted by the petitioner therein in accordance with the relevant provisions of the Notaries Rules, 1956 as amended by Notaries (Amendment) Rules, 2009 and to take appropriate decision thereon.

11. The learned counsel for the petitioner submits that the issue raised herein was not raised or considered in the aforesaid judgment. In this case, the petitioner was informed that the vacancies were filled up by the time the chalan receipt reached the respondents. In other words there would have been a vacancy in case the chalan reached earlier. The case of the petitioner is that such a reply was not available there and that

issue was not considered in the said case.

12. On a perusal of the judgment, it is seen that the petitioner in this case as well as the petitioner covered by the aforesaid judgment- ***Sugathan Vs. Union of India*** (*supra*), was one of the 25 Advocates who were initially informed of their appointment as Notaries but subsequently got orders of cancellation on the ground that maximum number of 845 Notaries already existed as per the Rules at the relevant time. In the above circumstances, I am bound to follow the aforesaid judgment rendered by the learned Single Judge.

In the above circumstances, I find that there is nothing illegal in cancellation of the appointment in the case of the petitioner, as intimated in Ext.P7. However respondents 1 and 2 shall consider the application of petitioner for appointment as Notary in accordance with the relevant provisions of the Notaries (Amended) Rules, 2009 and to pass orders in accordance with law with notice to the petitioner. In case further application or details are necessary from the petitioner in accordance with the amended rules the respondent shall call for the same from him.

W.P.(C) No.27684 of 2012

:8:

The said proceedings shall be completed within a period of three months.

The writ petition is accordingly disposed of.

Sd/-
P.V.ASHA,
JUDGE.

rkc