

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

WP(C).No. 26472 of 2014 (H)

PETITIONER:

**AISHA BEEVI T.A. @ AYSHA YOUSEFF,
ADVOCATE, 20/832, "AYSHAS",
MATTALIL TEMPLE ROAD, KADAVANTHRA,
COCHIN - 682 020.**

**BY ADVS.SMT.MOLLY JACOB
SMT.RABIA BEEGAM T.K.
SRI.JOBI.A.THAMPI
SMT.M.KABANI DINESH
SMT.SITHARA SHAMSUDEEN**

RESPONDENT:

**STATE OF KERALA,
REPRESENTED BY SECRETARY,
LAW DEPARTMENT, SECRETARIAT,
TRIVANDRUM - 695 001.**

BY GOVERNMENT PLEADER SRI.GIKKU JACOB

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14-12-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1 : TRUE COPY OF THE NOTIFICATION PERTAINING TO THE APPOINTMENT OF THE PETITIONER AS NOTARY DATED 11.12.2000.
- EXHIBIT P2 : CERTIFICATE OF PRACTICE DATED 11.12.2000 ISSUED TO THE PETITIONER ON HER APPOINTMENT AS NOTARY UNDER NOTARIES ACT 1952.
- EXHIBIT P3 : TRUE COPY OF THE NOTICE DATED 28.10.2004 ISSUED BY THE ADDL.LAW SECRETARY.
- EXHIBIT P4 : TRUE COPY OF THE APPLICATION DATED 09.09.2005 FOR RENEWAL OF CERTIFICATE OF PRACTICE.
- EXHIBIT P5 : TRUE COPY OF THE CERTIFICATE OF PRACTICE RENEWED FOR A FURTHER PERIOD OF 5 YEARS DATED 04.02.2006.
- EXHIBIT P6 : TRUE COPY OF THE APPLICATION DATED 22.09.2010 FOR RENEWAL OF CERTIFICATE OF PRACTICE.
- EXHIBIT P7 : TRUE COPY OF THE RECEIPT NO.183 ISSUED BY THE SUB TREASURY, ERNAKULAM DATED 15.09.2010 FOR REMITTANCE OF RS.500/- TOWARDS RENEWAL FEE.
- EXT. P7(A) : TRUE COPY OF THE RELEVANT PAGE OF THE NOTARIAL REGISTER.
- EXHIBIT P8 : TRUE COPY OF THE REPRESENTATION DATED 23.02.2011 SUBMITTED BY THE PETITIONER.
- EXHIBIT P9 : TRUE COPY OF THE RELEVANT NEWS ITEM DOWNLOADED FROM THE WEBSITE OF THE HINDU DAILY.
- EXHIBIT P10 : TRUE COPY OF THE JUDGMENT DATED 21.03.2011 IN WP(C) NO.8745/2011.
- EXHIBIT P11 : TRUE COPY OF THE ORDER 12.04.2011 IN EXT.P10 JUDGMENT.
- EXHIBIT P12 : TRUE COPY OF THE JUDGMENT IN WP(C) 13945 OF 2011 DATED 30.01.2014.
- EXHIBIT P13 : TRUE COPY OF THE ORDER DATED 30.06.2014 REJECTING THE REQUEST FOR RENEWAL.
- EXHIBIT P14 : TRUE COPY OF THE LIST OF NOTARIES IN THE WEB-SITE OF THE KERALA GOVERNMENT WWW.KERALAWSEC.ORG-NOTARIES-ERNAKULAM IS DOWNLOADED AS ON 21.04.2011.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

W.P.(C) No.26472 of 2014

Dated this the 14th day of December, 2015

JUDGMENT

The writ petition is filed challenging a decision of the Government in rejecting the application submitted by the petitioner for renewal of the Certificate of Practice as Notary.

2. The reason for rejection of renewal is that the petitioner has done attestations after the expiry of Certificate of Practice and thereby violated the provisions of Section 9 of the Notaries Act, 1952 (for short, the 'Act').

3. The petitioner's case is that she applied for renewal of the Certificate of Practice on 22.9.2010. The date of expiry of the Certificate of Practice was on 11.12.2010. It appears that the inspection was conducted on 19.1.2011. The inspection team found that the petitioner has done notarial work after the expiry of the certificate without renewal order.

4. The petitioner submits that she had done four notarial works on the bona fide belief that the renewal would be granted with effect from the date of expiry as was done previously. Since the renewal was delayed, the petitioner filed this writ petition. Thereafter, a decision was taken by the Government to reject the renewal application.

5. It appears that the Government took time to take a decision of renewal. The Government had taken a decision of renewal as enblock is in respect of 209 Notaries.

6. The violation of Section 9 of the Act is the reason cited against the petitioner. Section 9 of the Act reads as follows:

Bar of practice without certificate:- (1)

Subject to the provisions of this section, no person shall practice as a Notary or do any notarial act under the official seal of notary

unless he holds a certificate of practice in force issued to him under Section 5:

Provided that nothing in this sub-section shall apply to the presentation of any promissory note, hundi or bill of exchange for acceptance or payment by the clerk of a notary acting on behalf of such notary.

(2) Nothing contained in sub-section (1) shall, until the expiry of two years from the commencement of this Act, apply to any such person as is referred to in proviso to Cl.(d) of Section 2;

Provided that in relation to the State of Jammu and Kashmir the said period of two years shall be computed from the date on which this Act comes into force in that State.

7. The above provision is actually related to an embargo to practice as a Notary otherwise than with the aid of the Certificate of Practice. No doubt, any such practice will have to be deprecated.

8. However, renewal is not automatic, it is a discretion. Therefore, the Government while exercising discretion in renewing Notary certificate, this aspect also can be adverted. However, while exercising discretion, the Government will have to consider this aspect in the light of Section 10 of the Act which provides for the removal of the Notary. Section 10 of the Act reads as follows:

Removal of names from register:- The Government appointing any notary may, by order, remove from the Register maintained by it under section 4 of 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 undischarged insolvent; or
- d. has been found, upon the inquiry in the prescribed manner, to be guilty of some professional or other misconduct as, in the opinion of the Government, renders him unfit

- to practice as notary; or
- e. is convicted by any court for an offence involving moral turpitude; or
- f. does not get his certificate of practice renewed.

9. Certainly, the attestation without renewed certificate would come within the ambit of Section 10 of the Act as well, provided, it amounts to a professional misconduct. Here, it is apparently, the petitioner acted bona fide with a hope that the certificate will be renewed. The misconduct has to be differentiated from bona fide mistake or negligence. The misconduct, referred in Section 10 of the Act is having an element of moral turpitude. It is seen from the records, more than one year, the Government did not respond to the request for renewal. The Government ought to have communicated about the decision without much delay. In such circumstances, this Court is of the view that the action of the petitioner though

can be treated as misfeasance or having overtone of negligence, cannot be termed as a misconduct as contemplated under Section 10 of the Act.

Thus, the impugned order is set aside by directing the respondents to renew the certificate within a period of two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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