

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.4142 OF 2016

[Madhu s/o Mahadeorao Illurkar .vs. The Union of India and others]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.S. Deshpande, counsel for the petitioner,
Shri Raj Wakode, counsel for the respondents.

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CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATED : AUGUST 05, 2016.

By this writ petition, the petitioner challenges the order of the respondent no.2-Deputy Legal Advisor and the Competent Authority, Ministry of Law and Justice, Department of Legal Affairs, Notary Section, dated 21.1.2016 rejecting the application made by the petitioner for renewal of certificate of practice as a Notary solely on the ground that the application was not made within six months of the expiry of the certificate, that was valid.

Shri Deshpande, the learned counsel for the petitioner states that the issue involved in this case was also involved in Writ Petition No.1686/2016 and this court, by a judgment dated 28.4.2016 has allowed the said writ petition and directed the respondent no.2 to re-consider the application of the petitioner therein in the light of the provisions of the proviso to Rule 8-B of the Notaries Rules, 1956. It is stated on behalf of the petitioner that though the petitioner was required to make an application for renewal of the certificate for practice in terms of the Rule 8-B of the Notaries Rules, 1956 six months before the expiry of the validity period, the petitioner was not able to make the same within the said period due to the difficulties mentioned by the petitioner in the application for condonation of delay. It is stated that the petitioner could not make the application within time,

due to the reasons beyond his control and since powers are granted to the respondent no.2 by the proviso to Rule 8-B of the Notaries Rules, 1956 to condone the delay and consider the application for renewal, it was necessary for the respondent no.2 to have invoked the powers under the said provision. It is stated that the impugned order, dated 21.1.2016 does not disclose that the respondent no.2 had applied his mind to the application for condonation of delay. It is stated that the petitioner had pointed out sufficient cause for condoning the delay of 43 days in filing the application.

The learned counsel for the respondents states that it is most likely that the respondent no.2 has considered the application for condonation of delay. It is stated that the impugned order was passed on 21.1.2016 after considering the application. It is, however, fairly stated that it is not reflected from the impugned order that the application for condonation of delay was considered.

On hearing the learned counsel for the parties, we find that in view of the provisions of the proviso to Rule 8-B Rule of the Notaries Rules, 1956, the respondent no.2 was empowered to relax the condition in respect of time frame. The power of relaxation could have been exercised by the respondent no.2 in favour of the petitioner after considering the application of the petitioner. The respondent no.2, however, did not advert his mind of the provisions of the proviso to Rule 8-B of the Rules while rejecting the application of the petitioner, solely on the ground that it was belatedly filed. From the impugned order, it does not appear that the respondent no.2 has applied his mind to the reasons stated by the petitioner in the application for condonation of delay and it is not disclosed from the impugned order that the application for condonation of delay was considered by the respondent no.2 before passing the order of

rejection.

Hence, for the reasons recorded herein-above and for the reasons recorded in the judgment, dated 28.4.2016 in Writ Petition No.1686/2016, we partly allow this writ petition. The impugned order is quashed and set aside. The respondent no.2 is directed to re-consider the application of the petitioner in the light of the provisions of the proviso to Rule 8-B of the Notaries Rules, 1956 and pass an appropriate order within six weeks. Order accordingly. No costs.

JUDGE

JUDGE

Gulande, PA

CERTIFICATE

“I certify that this order uploaded is a true and correct copy of original signed order.”

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