THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.11402 OF 2011

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Revenue.

2. The present writ petition came to be filed seeking issuance of writ of *mandamus* declaring the action of respondents 1 to 3 in issuing G.O.Ms.No.1441, Revenue (Regn.II) Department, dated 21.12.2010 without considering the representations made by the petitioner on 25.01.2005, 17.11.2005 and 19.08.2010, as illegal, void and against the provisions of Notaries Act, 1952 (for short, 'the Act') and consequently to set aside the said G.O., which was served upon the petitioner on 18.04.2011.

3. The averments in the affidavit filed in support of the writ petition would show that the petitioner was appointed as a Notary for Metpally Village of Karimanagar District vide G.O.Ms.No.204, Revenue (Regn.II) Department, dated 25.02.1994, which was being extended from time to time. The Certificate of Practice as Notary was renewed under an endorsement, dated 18.09.2002, for a further period of five years, with effect from 25.02.2000. It is said that seeking further renewal, the petitioner is said to have paid an amount of Rs.500/- by way of challan through State Bank of Hyderabad on 24.01.2005 and enclosing the same, made an application for renewal of licence. The 2nd respondent i.e., the Commissioner Inspector General of Registration & Stamps, Hyderabad, addressed a letter to the District Registrar, Karimnagar, on 11.02.2005 requesting the petitioner to pay the

renewal fee under the correct “head of account” and submit the original challan for taking necessary action. Again, the petitioner paid another sum of Rs.500/- vide challaan No.211, dated 17.11.2005 towards renewal fee of his Notary Certificate and addressed a letter to the 2nd respondent. While things stood thus, the District Registrar of Assurance, Karimnagar, issued a Memo, dated 24.08.2005 for collection of deficit stamp duty, which is subject matter of challenge in W.P.No.19135 of 2008. Later, he addressed another letter, dated 19.08.2010, to the 2nd respondent furnishing the details of challans and also enclosed another challan No.3571, dated 19.08.2010, for Rs.500/- seeking renewal of licence for Notary. On 21.12.2010 the 2nd respondent issued the impugned G.O., removing the name of the petitioner from the Register of Notaries. Challenging the said G.O., the present writ petition came to be filed.

4. A counter came to be filed by the respondents opposing the averments made in the affidavit filed in support of the writ petition. It is sated that the 3rd respondent instructed the petitioner to pay deficit amount of Rs.85,590/- which he failed to collect from the parties thereto. In view of the above, the request of the petitioner for renewal of licence was not sent to the 1st respondent. It is said that the petitioner went on practising as a Notary without possessing a valid licence till he was removed in the month of February, 2010.

5. It is further said that since huge deficit reflects adversely on the efficiency of the Notary in discharge of his duties as a Public Notary, the Government has therefore deleted the name of the

petitioner from the Register of Notaries under Section 10(d) of the Act. The Notary has attested Settlement deeds, conveyance deeds containing actionable claims, which are compulsorily registerable under Section 17 of the Registration Act, 1908, in spite of specific instructions of the 2nd respondent directing the Notaries to refrain from attesting such deeds. By this deficiency, the parties were driven to litigation and also became associated with the rejection of these instruments from being tendered in evidence in view of the bar under Section 49 of the Registration Act, 1908. It is said that the petitioner has violated the norms and standards expected of a professional in discharge of the professional duties which was ruled as misconduct by the Apex Court.

6. For better appreciation of facts, it would be useful to refer to Section 10 of the Act, which reads as under:

> "**10. Removal of names from Register**.—The Government appointing any notary may, by order, remove from the Register maintained by it under section 4 the name of the notary if he—
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> (a) makes a request to that effect; or
>
> (b) has not paid any prescribed fee required to be paid by him; or
>
> (c) is an undischarged insolvent; or
>
> (d) has been found, upon inquiry in the prescribed manner, to be guilty of such professional or other misconduct as, in the opinion of the Government, renders him unfit to practise as a notary; [or]
>
> (e) is convicted by any court for an offence involving moral turpitude; or
>
> (f) does not get his certificate of practice renewed.]

From the reading of the above provision, it is clear that the name of a Notary can be removed if he fails to make a request for renewal or fails to pay the prescribed fee to be paid by him or if any inquiry is pending against him or if he is guilty of professional or other misconduct. None of the grounds mentioned under Section 10 of the Act find place in G.O.Ms.No.1441, dated 21.12.2010.

7. The main ground for deletion of the name of the petitioner from the Register of Notaries is that he has not sought for renewal of the Certificate of Notary for practice after its expiry. The same appears to be incorrect for the reasons that the petitioner made an application on 24.01.2005 seeking renewal of his licence as Notary by paying the requisite Court Fee by way of challan in State Bank of Hyderabad; when the concerned person has not forwarded his application to the 1st respondent for renewal, another challan for Rs.500/- was sent in the month of November; when the District Registrar of Assurance, Karimnagar, issued a Mmeo, dated 23.08.2005 for collection of deficit stamp duty, the petitioner again paid Rs.500/- through challan No.3571, dated 19.08.2010. Therefore, it cannot be said that the petitioner failed to make a request for renewal of licence by paying necessary fee. Hence, the impugned G.O., is liable to be set aside.

8. At this juncture, the learned Government Pleader for Revenue submits that another writ petition in W.P.No.19135 of 2008 filed by the petitioner, which is identical to the facts in issue, is still pending. But, it is to be seen that the said writ petition has nothing to do with the case on hand though the petitioner in both the cases is one and the same. The said writ petition was filed against an order canceling the licence, which has to be dealt with separately.

9. For the aforesaid reasons, the Writ Petition is allowed setting aside the G.O.Ms.No.1441, dated 21.12.2010, issued by the 2nd respondent.

Consequently, Miscellaneous Petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

Date:20.01.2016
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