

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No.9655 OF 2016 AND BATCH

COMMON ORDER :

%Dated 02.12.2016

W.P.No.9655 of 2016

M.Mallareddy and two others PETITIONERS
VERSUS

\$ State of Andhra Pradesh, Revenue
(Registrarion-II) Department,
Secretariat, Hyderabad, rep. by its
Principal Secretary to Government
and two others

.... RESPONDENTS

! Counsel for Petitioners : Sri O.Manohar Reddy

^ Counsel for Respondents : Govt. Pleader for Revenue (AP)

< GIST :

> HEAD NOTE :

? Cases referred :

1. AIR 1992 Kerala 152
2. AIR 1991 Kerala 225 (1)
3. (2012) 4 ALD 558 (DB)
4. AIR 2010 Rajasthan 106



THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION NOs. 9655, 13379, 13572, 15434, 17262, 17305,
17327, 17674, 17917, 18724, 19375, 19667, 19857, 20611,
20668, 21545, 21637, 21727, 21784, 21897, 22023, 22139,
22147, 22278, 22289, 22314, 22472, 22868, 22896, 23257,
23390, 23502, 23528, 23529, 23604, 23635, 23895, 23958,
24022, 24098, 24301, 24513, 24924, 37488, 37877, 37908,
37969, 38247, 38299, 38462, 38474, 38627, 38689, 38703,
38719, 38733, 38813, 39103, 39182, 39195, 39455, 39463,
40043, 40154, 40348, 40353, 40370, 40408, 40478, 40567,
40608, 40811, 41037, 41862, 42037, 42035 of 2016

COMMON ORDER :

- 1) Challenging the Memo No.31617/ Regn.II/ A1/ 2012-4, dated 31.08.2015, basing on which the request of the applicants for renewal to practice as notary was rejected by the Chief Secretary to Government, these batch of writ petitions are filed.
- 2) Taking writ Petition No.9655 of 2016 as a lead petition, I proceed to decide the issue.
- 3) The facts in issue are as under:
- 4) In the lead case, the petitioners got enrolled themselves as advocates and subsequently made applications for appointment as notaries. The petitioners were appointed as notaries for a period of five years, which was due to expire on 18.04.2016, 10.07.2016 and 18.07.2016, respectively. They were also granted certificate of

practice. While things stood thus, the petitioners made application for renewal of their licence before the Commissioner and Inspector General of Registration and Stamps, Hyderabad, along with requisite fee. The staff of the Commissioner and Inspector General of Registration and Stamps rejected the request of renewal basing on the memo No.31617/ Regn.II/ A1/ 2012-4, dated 31.08.2015, wherein the Central Government has decided to fix the number of notaries to be appointed in each state. Challenging the said memo, the present writ petitions came to be filed.

5) A counter came to be filed opposing the same. It is contended that as per Rule 8 (4-A) of the Notary Rules, the Government of India has fixed number of Notary Licences to be issued for the composite State of A.P. The total number of notaries fixed for combined state are 1438 (Central 575 + State 863) as per the Notary Rules, 1956, and the State Government may renew the certificate of practice for a further period of five years, on expiry of period of validity. The petitioners were appointed after 2011 and their appointments are in excess of quota, fixed by the Government, vide G.S.R.No.330 (E), dated 09.05.2001. Hence, it is urged that the certificate of practice cannot be renewed since it would be contrary to Rule 8 (4-A) of the Notary Rules, 1956.

6) The main ground urged by the learned counsel for the petitioners is that the said memo is nothing but a replica of Rule 8 (4-A), which was struck down by this Court, as un-constitutional. It is further contended that even if the number of notaries appointed before 09.05.2001 exceeds the number of notaries specified in the

schedule, such notaries have to be continued in view of the Bench Judgment of Kerala High Court in *State of Kerala v. K.U.Narayana Poduval*¹ and also the judgment of a learned Single Judge of Kerala High Court in *A.Gourisankar v. The State of Kerala*² and that the petitioners are entitled for automatic renewal of licence for practicing as notary. It is further contended by the learned counsel for the petitioners that since none of the conditions mentioned in Section 10 of the Notaries Act, 1952, are specified in the impugned memo it is not open for the State Government to refuse renewal of licence.

7) Reiterating the averments in the counter, it is contended by the learned Government Pleader for Revenue that in view of the amendment to sub Rule (2) of Section 5 of the Notaries Act, 1952, wherein a word “shall” is replaced by “may”, the petitioners are not entitled for renewal, as a matter of right. It is represented by him that a discretion is given to the authorities to reject the request for renewal or remove their name from the register in terms of Section 10 of the Notaries Act, 1952. The main argument advanced by the learned Government Pleader is that the appointment of the writ petitioners as notaries do not confer any right on them to get their term extended automatically and the State Government is not precluded from refusing to renew their certificate of notary. In gist, it is his case that the applicants cannot claim renewal of certificates as a matter of right after the amendment, which came into effect from 17.12.1999.

¹ AIR 1992 Kerala 152

² AIR 1991 Kerala 225 (1)

8) In order to appreciate the rival contentions, it would be useful to refer to certain provisions of the Notaries Act, 1952 (for short “the Act”), and the Notaries Rules, 1956 (for short “the Rules”) made therein.

9) Section 3 of the Act confers power on the Central Government to appoint any legal practitioners or other persons who possess such qualification as prescribed, as notaries. Section 4 of the Act deals with maintenance of Registers of Notaries appointed by the Government and every register shall include the details of the person appointed as notary. Section 5 of the Act deals with the entry of names in the register and issuance or renewal of certificate of practice. Section 5 (2) of the Act deals with renewals of certificate of practice, which prescribes that the government appointing the notary, may, on receipt of application and the prescribed fee, renew the certificate of practice of any notary for a period of five years at a time.

10) Section 10 of the Act, which deals with removal of names from the Register, is 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-

- 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 practice 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.

11) Rule-3 deals with qualifications for appointment as a notary, while Rule-4 deals with application for appointment as a notary.

12) Rule-8 deals with appointment of a notary, which is as under:

“8. Appointment of a Notary: (1) on receipt of the recommendations of the interview board the appropriate Government shall consider the recommendation and shall-

- (a) allow the application in respect of the whole of the area to which it relates; or
- (b) allow the application in respect of any part of the area to which it relates; or
- (c) reject the application;

and shall also make such orders as the Government thinks fit regarding the person by whom the whole or any part of the costs of the application including the cost of hearing, if any, shall be borne;

(2) An applicant shall be informed of every order passed by the appropriate Government under sub-rule (1).

(3) Any applicant whose application has been rejected (or allowed in respect of only a part of the area to which it relates, or against whom an order as to costs has been made under sub-rule (1) may within sixty

days of the date of the order, apply to the appropriate Government for reviewing the order and that Government may, after making such further inquiry as it thinks fit, pass such order as it considers necessary.

(4) Where the application is allowed the appropriate Government shall appoint the applicant as a notary and direct his name to be entered in the Register of Notaries maintained by that Government under Section 4 of the Act and issue to him a certificate on payment of prescribed fees authorizing him to practice in the area to which the application relates or in such part thereof as the appropriate Government may specify in the certificate, as a notary for a period of five years from the date on which the certificate is issued to him.

13) Rule 8-B of the Notaries Rules, which deals with Renewal of Certificate of Practice, reads as under:

“The certificate of practice issued under sub-rule (4) of Rule 8 may be renewed for a further period of five years on payment of prescribed fee. An application for renewal of Certificate of Practice shall be submitted to the appropriate Governance before three months from the date of expiry of its period of validity”

14) Keeping in view the above provisions of law, I shall now deal with the following issues.

1. Whether the authorities were right in issuing Memo No.31617/ Regn.II/ A1/ 2012-4, dated 31.08.2015?
2. Whether the renewal of certificate of practice made before the expiry is automatic or whether any discretion is left with the authorities to reject the said application?

15) In order to decide the first issue, it would be useful to extract the contents of the impugned memo, which are as under.

“In the reference first cited, the Ministry of Law, Justice and Company Affairs, Government of India, have informed that the Central Government has decided to fix the number of Notaries to be appointed in each State/Union Territory by the appropriate Government. They have also informed that existing appointments have, however, been saved, if the same already exceed the quota, but further appointments will stand banned. They have furnished a copy of the notification dated 09.05.2001 amending the Notaries Rules to this effect and requested to keep the above change in view while making appointment.

2. The number of Notaries existing in the State were much more than the limit fixed. The request of the State Government to initiate action to enhance/remove limit of Notaries to be appointed in the State is not considered so far.

3. In the above circumstances, with a view to regulate further appointment of Notaries, the Government has decided to withhold further sanctions of Notaries afresh and also renewal requests of Notaries.

4. The Director and Inspector General of Registration and Stamps, Andhra Pradesh, Hyderabad, is requested to take action accordingly. The proposals/applications received for sanction of Notaries and Renewal of Notaries in original, are returned herewith.”

16) A reading of the impugned memo would show that the request for renewal came to be rejected on the ground that the existing appointees exceeded the quota. The said rejection is made the basis pursuant to Rule 8 (4-A), which reads as under:

“Rule 8 (4A) which has been inserted vide G.S.R. 330 (E), dated 09.05.2001 states that the appropriate Government may on and after the ninth day of May, 2001, appoint notaries in a State or Union Territory, as the case may be, not exceeding the number of notaries specified in the schedule. Provided that the number of notaries whose certificate of practice has been renewed under subsection (2) of Section 5 of the Act shall be included in the total number of notaries appointed for the purpose of counting the total number of notaries specified in the Schedule. Provided further that if in a State or Union Territory the number of notaries appointed before the ninth day of May, 2001 exceeds the number of notaries specified in the Schedule, such notaries shall continue to be so appointed in that State or Union Territory, as the case may be.”

17) But, it is to be noted that the validity of said rule came up for consideration before a Division Bench of this Court in *P.K.D. Prasada Rao v. Union of India and others*³ wherein this Court, after considering various provisions of the Act, held as under:

“Applying these eternal principles of immense value to the present case scenario, *firstly*, the reasons for imposing the restrictions on the total number of notaries to be appointed for each State does not appear to bear any relation with the very objective of the statute viz., seeking to regulate the profession of Notaries. *Secondly*, it does not bear any relationship to the assessment of the requirements of each

³ (2012) 4 ALD 558 (DB)

State. In other words, depending upon the size and population of each state as to how many notaries should be appointed, is incapable of a precise calculation or determination. Neither the size of the population or the size of the State has any such bearing on that question. What stands out importantly is the requirement for performing the notarial acts by those practising as notaries, can be dependent upon various social factors and the legal and commercial environment prevailing in the society. Further, from out of the total number of notaries now sought to be sanctioned to each state, there is no guarantee that all of them need to be spread across the breadth and length of the entire state. If a good majority of them are appointed or concentrated only at a particular place or locality, in such a situation, the very object for securing the services of notaries at various places can be frustrated inasmuch as the services of the notaries would not become available at all in certain areas or localities in the nearest future. Further, there cannot be any assurance that the legal or commercial environment prevailing as of now, would remain static and does not improve or grow, in future calling for the requirement of services of Notaries, at such new places. Therefore, we have no hesitation to hold that the imposition of restriction on the maximum number of notaries to be appointed in each State, has in fact no basis or bearing for any evil that is sought to be checked or remedied.

On the contrary, a perusal of Rule 7(3)(b) of the Notaries Rules has clearly indicated that there is enough power vested in the competent authority not to accord fresh appointments, if it is satisfied that no more notaries are required to be appointed in a particular area or locality. After all, the notaries already appointed are required to file the necessary data in Form XVI detailing all the notarial acts done by him during the preceding year before the State Government in terms of Rule 14. In other words, the State and its agencies have enough data before them as to the number of notarial functions performed by each of the notaries, from which data, the quantum of work that was called upon to be performed, can easily be assessed. By appointing a large number of notaries, conceivably there cannot be any problem created for

the State or its administration or the citizens. The services of a professional notary, would only become available to the society in a good measure, should the requirement in that regard be felt. It is therefore clear to our mind that the functions liable to be performed by a professional notary cannot be restricted by imposing a ceiling on the total number of notaries that can be appointed for each State. There is no nexus between the mischief that is sought to be suppressed and fixation of a quota.”

18) In view of the said Division Bench Judgment (3 supra), which has become final, the respondent authorities were totally unjustified in relying upon the impugned memo for rejecting the request for renewal of certificate of practice. On this score alone, the impugned memo is liable to be set aside.

19) The second aspect, which has been canvassed before this Court, is that once an application for renewal is made within the time prescribed, along with requisite fees, the renewal is automatic. Reliance is placed on *State of Kerala v. K.U.Narayana Poduval* (1 supra) and in *A.Gourisankar v. The State of Kerala* (2 supra). The same is refuted by the learned Government Pleader contending that in view of amendment to Section 5 (2) of the Act and insertion of word “may” in place of “shall”, renewal can never be automatic.

20) The two judgments (1 and 2 supra) relied upon by the learned counsel for the petitioners would show that renewal is automatic cannot be countenanced, as those judgments dealt with un-amended Section 5 (2) of the Act, and that Rule 8-B was not in the statute book at that point of time. Situation at present is quite different, in view

of introduction of word “may” in place of “shall” in section 5 (2) of the Act and also with the introduction of Rule 8-B.

21) A conjoint reading of Section 5 (2) of the Act and Rule 8-B of the Rules would clearly show that with the introduction of word “may” an element of discretion is given to the authorities to reject the application for renewal even if the same is made within the prescribed time along with requisite fees. After the amendment, a discretion is vested with the State Government to grant renewal or refuse it, but the said discretion, which has been given to the State Government to reject the request of renewal, should be within the four corners of the Act and it has to be exercised judicially. Once an application for renewal was made within the period prescribed along with the requisite fee and if the case of the applicant does not fall within any one of the categories enumerated in Section 10 of the Act, the authorities have no option except to renew the request. As referred to earlier, Section 10 of the Act gives power to the Government to remove a person as notary from the register maintained by it under Section 4 of the Act, if his case falls under any of the six grounds referred to in Section 10 of the Act.

22) Issue identical to the case on hand came up for consideration before Rajasthan High Court in *Tarun Mehta and others v. State of Rajasthan and others*⁴ wherein the Court held as under:

“It is to be noticed that as per sub-section (2) of Section 5 as it was existing before the amendment introduced by Act 36 of 1999 w.e.f. 17.12.1999 substituting the word “shall” employed therein by word “may”, the entitlement of a person appointed

⁴ AIR 2010 Rajasthan 106

as a notary public once registered as such was automatic on making an application and payment of fee. It is true that after the amendment introduced as aforesaid, a discretion is vested with the State Government to grant the renewal or refuse it. But then, such discretion vested is not absolute and the same has to be exercised judicially. In considered opinion of this Court, having regard to the scheme of the act, even after the amendment introduced as aforesaid, the grant of renewal of the licence for authorization is a rule and the rejection an exception. Therefore, ordinarily, if there is nothing adverse against the person seeking renewal of the certificate of authorization to practice as notary then the same would not be refused.”

23) From the above, it is clear that unless there exists a valid reason for rejection, the renewal has to be granted as a matter of course.

24) It is needless to mention that in case if the application for renewal is sought to be rejected, a notice shall be issued to the aggrieved person, giving him an opportunity to explain the reasons thereof.

25) Having regard to the above, the impugned memo, which is made the basis for rejecting the renewal, is set aside and the writ petitions are allowed with the above observations/ directions.

26) There shall be no order as to costs. Miscellaneous petitions, pending, if any, shall stand closed in the light of this final order.

JUSTICE C. PRAVEEN KUMAR

02.12.2016

Note: L.R. Copy to be marked.

B/ o

gkv