



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.(MD)No.6424 of 2014

and

M.P.(MD)No.1 of 2014

PV Kathiravan

... Petitioner

-Vs-

The Secretary to Government of Tamil Nadu,
Law (Admin) Department,
St. George Fort, Chennai-09.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to quash the GO (Ms)No.439 Law Department dated 19.08.2013 on the file of the respondent and to direct the respondent to issue certificate of Practice as a Notary, Madurai City for further period of 5 years.

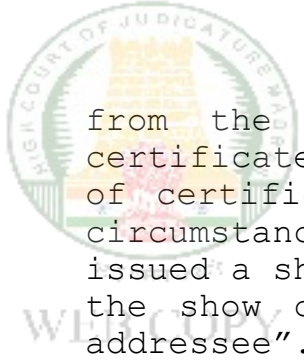
For Petitioner : Mr.Sathish Kumar,
for Mr.B.Chandran
For Respondent : Mrs.J.Padmavathi Devi,
Special Government Pleader.

ORDER

The Writ Petition has been filed challenging the order dated 19.08.2013 removing the petitioner's name in the Register of Notaries.

2.According to the petitioner, he is an Advocate enrolled in 1987. He was appointed as a Notary on 08.03.2002 and Certificate of Practice was also issued. Subsequently, it was renewed for five years upto 07.03.2012 vide order dated 13.04.2007. Thereafter, the petitioner did not renew the licence. Hence, by the impugned G.O. (Ms)No.439, Law Department dated 19.08.2013, the petitioner's name has been removed from the Register of Notaries, Madurai City. Challenging the said order, the present Writ Petition has been filed.

3.The respondent has filed counter affidavit stating that under rule 8-B of the Notaries Rules, 1956, a notary should file an application for renewal of Certificate of Practice before six months



from the date of expiry of its period and the petitioner's certificate expired on 07.03.2012, but he did not apply for renewal of certificate by paying necessary prescribed fee. In the above circumstances, under rule 8-B of the Notary Rules, the respondent issued a show cause notice for removal of the petitioner's name, but the show cause notice was returned with an endorsement "No such addressee". Since the petitioner did not come forward to renew the licence, the respondent has removed the petitioner's name from the Register of Notaries under clauses (b) and (f) of Section 10 of the Notaries Act, 1952 read with rule 8-B of the Notaries Rules, 1956.

4.The learned counsel appearing for the petitioner submitted that the petitioner has been functioning as a Notary for 12 years without any remarks. Only due to inadvertent, the petitioner failed to apply for renewal of certificate. However, as per the proviso of rule 8-B of the Notaries Rules, the Government has discretion to renew the notaries certificate of practice, but the respondent without given any opportunity of hearing, removed the petitioner's name from the Register. The learned counsel for the petitioner further submitted that the petitioner is ready and willing to submit an application seeking renewal of certificate under rule 8-B of the Notaries Rule and the Government may be directed to consider his application for renewal.

5.Per contra, the learned Additional Government Pleader appearing for the respondent would contend that since the petitioner failed to apply for renewal of practice under rule 8-B, the petitioner's name has been removed and he cannot sought for renewal of the licence.

6.I have heard the learned counsel for the petitioner, the learned counsel for the respondent and perused the materials available on record carefully.

7.The rule 8-B of the Notaries Rules speaks about the renewal of certificate of practice, which reads as follows:-

"8-B. Renewal of certificate of practice.- 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 Government before [six months] from the date of expiry of its period of validity:

Provided that the appropriate Government may, after considering the reasons stated in the application, relax the condition of submission of application for renewal of certificate of practice before the above specified period."

8.As per rule 8-B of the Notaries Rules, an application for renewal should be made before six months from the date of expiry of its period of validity. However, the proviso of the rule 8-B says that the Government has power to relax the above conditions, after



considering the reasons stated in the application for renewal. In the instant case, the petitioner has submitted that due to inadvertent, he did not file an application for renewal, but, before removing the name of the petitioner in the notaries, no enquiry was conducted and no notice was sent to him. However, it is stated that in the counter affidavit, even though the notice has been sent to the petitioner, it is returned with an endorsement "No such addressee". In the above circumstances, in the interest of justice, this Court deem it appropriate to set aside the order passed by the respondent, the matter is remanded back to the respondent for fresh consideration and liberty is given to the petitioner to make an application for renewal of the licence by giving valid reasons for non-submission of application in time. On filing of any such application, the respondent is directed to consider the same and pass orders on merits and in accordance with law.

9. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSIII)

/True Copy/

Sub-Assistant Registrar

To

The Secretary to Government of Tamil Nadu,
Law (Admin) Department,
St. George Fort, Chennai-09.

+One cc to The Special Government Pleader, SR.No.42648

+One cc to Mr.B.Chandran, Advocate, SR.No.42731

Myr

RL/4C/3P/SV/MMS/SAR4/13/2/2018

W.P (MD) No.6424 of 2014