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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.12.2021

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.30095 of 2017
and
W.M.P.No.32670 of 2017

G.Palani

... Petitioner

Vs.

The Deputy Legal Advisor and
Competent Authority,
Ministry of Law & Justice,
Department of Legal Affairs,
Notary Section, Shastri Bhavan,
New Delhi - 110 001.

... Respondent

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records from the respondent Authority relating to the impugned order dated 12.10.2015 made in F.No.A.12011/40/2015 NC. and quash the same and consequently direct the respondent to allow the petitioner to practice as Notary continuously.

For Petitioner : Mr.P.Solomon

For Respondents : Mr.Venkatasamy Babu
Central Government Standing Counsel

ORDER

This Writ Petition has been filed challenging the impugned order dated 12.10.2015 made in F.No.A.12011/40/2015 NC and quash the same and consequently direct the respondent to allow the petitioner to practice as Notary continuously.

2. The case of the writ petitioner is that he had been appointed as Notary under the Notaries Act, 1952 and authorized to practice as such, in and throughout Chennai Metropolitan Area, Tamil Nadu, for a period of five years starting from 21.09.2010 to 20.09.2015. He further submits that before the expiry of his Notary License, he made an



application before the respondent on 11.06.2015 i.e., 3 months prior to the date of expiry of his license. He made an application for renewal in terms of Section 5 (1) of the Notaries Act, 1952. However, the same was rejected on the ground that the petitioner has not made an application for renewal before 6 months prior to the completion of Notary License, in terms of Section 8 (B) of Notary Rules 1956. It is further contention of the petitioner that he made an application for renewal, three (3) months prior to the expiry of his Notary License, but the same was rejected. According to the petitioner, the Act does not say anything about the period in which Notary Application has to be made for the purpose of renewal. Challenging the same, the petitioner is before this Court.

3. The learned counsel appearing for the respondent would submit that in terms of Section 8 (B) of the Notary Rules Act, 1956, the petitioner has to make his application six (6) months prior to the expiry of his Notary License. But in the present case, the petitioner has submitted his application on 11.06.2015 i.e., three (3) months prior to the expiry of Notary License. Therefore, he submits that his application is liable to be rejected, in accordance with the provisions of the Notary Rules.

4. Heard the learned counsel appearing for the petitioner and the learned Central Government Standing Counsel appearing for the respondent and perused the materials available on record.

5. The fact remains that the Notary License has been granted to the petitioner for a period of 5 years from 21.09.2010 to 20.09.2015. On perusal of Section 8 (B) of the Notary Rules Act, 1956, the petitioner has to file the application six (6) months prior to the expiry of the Notary License, but here, the petitioner submitted his application three (3) months prior to the expiry of the Notary License. The issue to be decided in this matter as to whether the petitioner's application for renewal dated 11.06.2015 which is a just three (3) months prior to the expiry of the Notary License, can be considered by the respondent or not?

6. Section 8 (B) of the Notary Rules Act, 1956 states that within six (6) months period, the petitioner has to file the application. But in the present case, the petitioner has filed the application three (3) months prior to the expiry of his Notary License. Under these circumstances, it is relevant to extract Section 5 (1) of the Notaries Act, 1952.

"Section 5 : Entry of names in the Register and issue or renewal of certificates of practice:

1. Every notary who intends to practice as such

(may), On payment to the Government appointing him



of the prescribed fee, if any, be entitled -

(a) to have his name entered in the Register maintained by that Government under Section 4; and

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(b) to a certificate authorising him to practice for a period of (five years) from the date on which the certificate is issued to him. The Government appointing the notary, may, on receipt of an application and the prescribed fee, renew the certificate of practice of any notary for a period of five years at a time. State Amendment Section 5A: Maharashtra: After Section 5, insert the following:-
"5A. Special Provision regarding Register of Notaries for the State of Maharashtra. - (1) Notwithstanding anything contained in this Act, the State Government of Maharashtra may, by order published in the Official Gazette, amend the Register, maintained before the 1st day of May 1960 by the State Government of Bombay, by deleting therefrom the name of any notary whose professional address as recorded in the Register, falls outside the State of Maharashtra: Provided that, before passing any order as aforesaid, the State Government of Maharashtra shall make such inquiry as it deems necessary, and give an opportunity to the person concerned to make his representation, if any.

7. On a reading of Section 5 (1) of the Notaries Act, 1952, it is very clear that this Section does not say anything about the fixation of time limit for the purpose of making an application to renew the notary license. Therefore, this Court is of the view that the fixing the time limit for making an application for renewal by way of Rules is beyond the scope of Section 5(1) of the Notaries Act, 1953. However, in the present case, the Rule has not been challenged by the petitioner. Therefore, it could be considered as only a directory but not mandatory to reject the application.

8. In the present case, the petitioner has made an application well before the expiry of the notary license i.e., 3 months prior to the expiry of the notary license. Any application in the case of renewal can be made before the expiry of the original licence. However, contrary to the Section 5 (1) of the Notaries Act, 1952, the impugned order has been passed by the respondent on 12.10.2015 in F.No.A.12011/40/2015 NC, which in the opinion of this Court, cannot be sustained and the same is liable to be quashed.

9. Accordingly, the Writ Petition stands allowed and the impugned order passed by the respondent on 12.10.2015 in F.No.A.12011/40/2015 NC is hereby set aside. The respondent is directed to consider the petitioner's application afresh and renew the Notary license in favour of the petitioner, within a



period of eight (8) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

Pns

To

The Deputy Legal Advisor and
Competent Authority,
Ministry of Law & Justice,
Department of Legal Affairs,
Notary Section, Shastri Bhavan,
New Delhi - 110 001.

+1cc to Mr.P.Solomon, Advocate SR. No.64496

W.P.No.30095 of 2017

and

W.M.P.No.32670 of 2017

VSNII (CO)

PR (03/01/2022)