WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.[MD]No.7507 of 2013

S.P.Mahadevan ... Petitioner

Vs.

1.The Secretary to the Government,
Law (Administration) Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2.The District and Sessions Judge,
Sivagangai District,
Sivagangai - 630 560. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings in G.O.Ms.No.222 Law (Administration) Department dated 19.03.2013, on the file of the first respondent herein and to quash the same and direct the first respondent to consider for the appointment of the petitioner as Notary for his extension to Tirupattur or Sivagangai District on his Memorial dated 02.09.2011 made by the petitioner to the first respondent within a time frame as may be fixed by this Court.

For Petitioner : Mrs.Jessi Jeeva Priya
for M/S.N.Subramanian
For Respondent No.1 : Mr.R.Murugan
Additional Government Pleader
For Respondent No.2 : Mr.T.S.Mohammed Mohideen

O R D E R

The petitioner is an Advocate enrolled at the Member of Bar Council of Tamil Nadu and Pondicherry in 1990, [Enrollment No.MS.No.671/1990]. According to him, he was in active practice along with his father at Melur, Madurai District. While he was practicing at Melur, Madurai District, he had applied to the first respondent seeking permission to practice as a Notary under the provisions of the Notaries Act, 53 of 1952. In response to his application, the petitioner was appointed as Notary vide G.O.Ms.No.346 dated 09.09.2008, in the entire district of Madurai.

https://hcservices.ecourts.gov.in/hcservices/

2.As a consequence of his appointment, the petitioner has been practising as a Notary at Melur, in Madurai District and other places in the District. According to the petitioner he started practice in Thirupattur also as he developed clientele in Sivagangai District. In the course of time, the petitioner has picked up his practice at Thirupattur and also the district headquarters in Sivagangai.

3.In the above circumstances, the petitioner applied to the first respondent through the second respondent vide his application dated 02.09.2011, for permission to practice as a Notary in the Sivagangai District as well. The petitioner has submitted all the supportive materials in terms of the Act and the Rules.

4.At the time when he had applied seeking permission, there were only two Advocates in Thiruppattur, practicing as Notaries and those persons were not sufficient to meet the legal requirements of the district. While the petitioner was hoping to be granted permission, in terms of his legitimate practice, to his surprise and dismay, he had received G.O.Ms.No.222 Law (Administration) Department dated 19.03.2013, informing him that the second respondent herein had submitted a report as if there were already 20 Notaries practicing and therefore, the request of the petitioner cannot be acceded to. Challenging the same, the petitioner is before this Court.

5.Learned Counsel appearing for the petitioner submitted that the rejection order of the first respondent cannot be countenanced both in law and on facts, for the simple reason that the petitioner had obtained information under the Right to Information Act, wherein he was informed by communication dated 07.05.2019, that as many as 19 advocates have been granted permission to practice as Notaries vide G.O.Ms.No.51, Law (Admin) Department dated 25.02.2019. A copy of the Government Order has also been enclosed along with the typed set of documents. He would therefore submit that the earlier rejection of his representation by the first respondent in 2013 cannot be sustained as on date and hence, implore this Court to pass appropriate direction.

6.Learned Counsel for the second respondent states that the competent authority to consider the claim of the petitioner is the first respondent.

7.Despite several chances and opportunities given to the first respondent, there was no response from the first respondent and it is needless to mention that the writ petition is of the year 2013 and has been pending for more than seven years. In any event, the fact of the matter is that in the year 2013 as many as 19 advocates have been granted permission. In all fairness, the first respondent ought to have considered the application of the petitioner.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

Accordingly, necessary permission for him to practice as Notary in Sivagangai District also ought to have been issued.

8.Even otherwise, the petitioner has already been practicing as a Notary in Melur and in other parts of Madurai District and when he has diversified his practice in other neighbouring areas, his practice as Notary cannot be restricted to a particular region or area. Although, the first respondent had a discretion in granting permission depending on the number of advocates practicing as a notary, nevertheless, the discretion so exercised cannot be arbitrary.

9.As the facts would disclose, as many as 19 advocates have been granted permission to practice as Notaries and in such circumstances, the denial of permission to the petitioner is without any justification and cannot be countenanced either in law or fairness. For the said reason, this Court is of the view that the petitioner has made out a case for grant of the relief sought for in the present writ petition.

10.For the above said reasons, the impugned G.O.Ms.No.222 Law (Administration) Department dated 19.03.2013, of the first respondent is hereby set aside. The first respondent is consequently directed to consider the application of the petitioner said to have been submitted by him originally on 02.09.2011, and grant necessary permission for him to practice as a Notary in Sivagangai District. The first respondent is further directed to pass appropriate orders in this regard, within a period of four [4] weeks from the date of receipt of a copy of this order.

11.The Writ Petition stands allowed, accordingly. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Secretary to the Government,
Law (Administration) Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

2.The District and Sessions Judge,
Sivagangai District,
Sivagangai - 630 560.

+1 CC to M/s.T.S.MOHAMED MOHIDHEEN, Advocate (SR-14791[F] dated 31/03/2021)

+1 CC to M/s.SPL GP (SR-14991[F] dated 01/04/2021)

+1 CC to M/s.P.JESSI JEEVA PRIYA, Advocate (SR-15226[F] dated 01/04/2021)

W.P.[MD]No.7507 of 2013

31.03.2021

(CO)
HB(24.04.2021) 4P 6C

https://hcservices.ecourts.gov.in/hcservices/