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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.01.2022

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.19669 of 2017

and

W.M.P.No.21225 of 2017

D.Ravichandran

... Petitioner

Vs.

- 1.The Secretary to Government of India,
Ministry of Law and Jusitce,
Department of Legal Affairs,
New Delhi - 110 001.
- 2.The Joint Secretary to Government of India,
Ministry of Law and Justice,
Department of Legal Affairs (Notary Cell),
R.No.439 'A', 4th floor, Shastri Bhavan,
New Delhi - 110 001.
- 3.Deputy Legal Adviser and Competent Authority,
Ministry of Law and Justice,
Department of Legal Affairs (Notary Cell),
R.No.439 'A', 4th Floor, Shastri Bhavan,
New Delhi - 110 001.

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for all the records pertaining to letter F.No. 5(2199)/2008-NC dated 29.03.2016 of the 3rd respondent and quash the same as unlawful and illegal and further issue writ or order or directing the 3rd respondent to issue renewal of certificate of Notary practice for a period of five years from 10.06.2015 to the petitioner.

For Petitioner : Mr.P.Veeraraghavan

For Respondents : Mr.B.Sudhir Kumar
Senior Panel Counsel

O R D E R

This Writ Petition has been filed to issue a Writ of Certiorari, to call for the records pertaining to letter F.No. 5



(2199)/2008-NC dated 29.03.2016 of the 3rd respondent and quash the same and direct the 3rd respondent to issue renewal of certificate of Notary practice for a period of five years from 10.06.2015 to the petitioner.

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2. The petitioner is a practicing Advocate at Puducherry and he has submitted application on 04.09.2008 for appointment as Notary Public by the Government of India. He was selected and appointed as Notary by the 3rd respondent for a period of 5 years viz., 11.06.2010 to 10.06.2015. Later, on 03.08.2015, he submitted his renewal application stating the reason that he was suffering from Lumbar Disc prolapse and due to the same, he was not submitted his renewal application in time i.e., before the expiry of six months as per Rule 8 B of Notaries Rules, 1956. But his application was rejected without assigning any valid reasons. Thus, he submitted a request letter on 26.05.2016 for reconsideration of his application along with other enclosures and the same was also not replied. Aggrieved over the same, the petitioner is before this Court by virtue of the present writ petition.

3. Mr.B.Sudhir Kumar, the learned Senior Panel Counsel appearing for the respondents would submit that the petitioner has not made the application in time, but later requested to review the impugned order. He pointed out that as per the Notaries Rules, 1956, the petitioner has to apply for renewal of his Certificate of practice to the Government, six months prior to the expiry of the Notary License and in the present case, the petitioner has not made any such application, six months prior to the expiry of his Certificate. The 3rd respondent received the application after expiry of six months period and no explanation was given by the petitioner for the said delay.

4. Heard the learned counsel appearing for the petitioner and the learned Senior Panel Counsel appearing for the respondents.

5. Section 8 (B) of the Notary Rules Act, 1956 states that within six (6) months period, the petitioner has to file the application. Section 8 (B) clearly states that an application for renewal of certificate of Practice shall be submitted to the appropriate Government before three months from the date of expiry of its period of validity. But in the present case, the petitioner has filed the application after the expiry of six months period from the expiry of his Notary License. However, in the present case, the said section was not considered by the respondents. 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:



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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

(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.

6. 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. At the most, the rules could be considered as only a directory but not mandatory to reject the application.

7. Even as per the Section 8 (B), the respondents are empowered to condone the delay in filing the application for renewal and they have condoned the delay in similar issues in some cases but in the present case, the petitioner's application was rejected without assigning any valid reasons. The reasons assigned for the delay in filing the application appears to be genuine and the same is condonable. Therefore, the impugned order passed by the 3rd respondent in F.No. 5(2199)/2008-NC dated 29.03.2016, which in the opinion of this Court, cannot be sustained and the same is liable to be quashed.

8. Accordingly, the Writ Petition stands allowed and the impugned order passed by the 3rd respondent on 29.03.2016 in



F.No.. 5(2199)/2008-NC, is hereby set aside. The 3rd 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.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Pns

To

1. The Secretary to Government of India,
Ministry of Law and Jusitce,
Department of Legal Affairs,
New Delhi - 110 001.
2. The Joint Secretary to Government of India,
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+1cc to Mr.B.Sudhir Kumar, Advocate, S.R.No.2569

W.P.No.19669 of 2017
and
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KSM(CO)
CT 16/02/2022