

CWP No.16603 of 2016

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.16603 of 2016
Date of decision: 02 .08.2017**

Neeraj Kumar Maheshsari ...Petitioner

Versus

Union of India and another ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. M.K.Singla, Advocate,
for the petitioner.

Ms. Sheenu Sura, Advocate,
for the respondents.

Rakesh Kumar Jain, J.

The petitioner has challenged the order dated 29.03.2016 by which his application for renewal of his license to practice as Notary under the Notaries Act, 1952 (hereinafter referred to as the "Act") has been declined.

The petitioner was appointed as a Notary under the Act and was authorized to practice as such in District Faridkot for a period of five years. He applied for renewal of certificate of practice as Notary on 07.09.2015 but his request was rejected on 09.03.2016 on the ground that his application for renewal was received on 18.09.2015, which was supposed to have been sent by the petitioner six months before the expiry of his term i.e. on or before 16.03.2015, as required under Rule 8B of the Notaries (Amendment) Rules, 2014 (hereinafter referred to as the "Rules"). Rule 8B of the Rules is

reproduced for the ready reference:-

“8B. 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 specific period.”

It is averred in the petition that the petitioner had started construction of his new office in his residence at Jaito in March, 2015 and at the same time started renovation of his office at the District Courts, Faridkot and due to that reason, he had to shift his office temporarily. The work was finally completed in August, 2015 and at that time, he came to know that his certificate of practice as Notary is going to expire on 15/16.09.2015 and then he immediately prepared a draft of ₹1,000/- and sent his application for renewal through registered post on 07.09.2015. It is, thus, submitted that the delay was not intentional and also averred that he is the only earning hand of the family to look after his parents, minor daughters and wife. It is also submitted that the Rules were amended in the year 2014 in which it is provided that application has to be filed six months prior to the date of expiry of license.

Counsel for the petitioner has submitted that earlier, as per Rule 8B of the un-amended Rules of 1956, the period was of three months but by virtue of notification dated 04.03.2014, time of three months, stipulated in Rule 8B, has been enhanced to six months. It is alleged that the certificate of practice was valid till 16.09.2015 but the petitioner approached the appropriate

government with renewal application on 07.09.2015, which was received in the Ministry on 18.09.2015 and, thus, there was delay of six months and two days.

According to the respondents, the Rules came into force on 04.03.2014 and, thus, were applicable to the case of the petitioner. The respondents have relied upon an order passed by this Court in the case of **Pritpal Singh vs. Union of India and others**, CWP No.27445 of 2015, decided on 05.01.2016.

Counsel for the petitioner has submitted that the respondents have not adverted to the proviso to Rule 8B while passing the impugned order, as per which the appropriate government has the jurisdiction to relax the condition of submission of the application within the specific time after considering the reasons stated in the application.

On the other hand, counsel for the respondents has further submitted that the appropriate government had no occasion to look into the reasons for condoning the delay in applying for renewal of license as no such reason was mentioned by the petitioner in his application.

I have heard learned counsel for the parties and examined the available record with their able assistance.

Writ petitions are regularly being filed in various Courts including this Court by the Notaries who do not apply for renewal of license in time in terms of Rule 8B, referred to above, giving reasons for not applying within the prescribed time and have been asking for relaxation in terms of proviso to Rule 8B.

I would refer to various orders passed by this Court and the other High Courts in this regard.

In the case of **Lokesh Bhandari vs. UOI and another**, CWP No.2807 of 2016, decided on 10.03.2016, the Notary was a practicing advocate for the last 33 years in District Courts at Rupnagar. He was appointed as Notary for a period of five years on 28.07.2000 and his certificate of practice was renewed twice for a period of five years i.e. upto 28.07.2010 and 28.07.2015. He alleged that he fell ill and detected blood cancer and because of his serious illness, he could not apply within the prescribed time as there was delay of 2 months and 29 days. The said writ petition was disposed of by this Court on the ground that there is no deliberate lapse on the part of the petitioner as he was suffering from chronic disease and his past conduct shows that he got the license renewed in time, therefore, direction was issued to the appropriate government to reconsider his renewal application sympathetically, while exercising the powers vested in them in terms of proviso to Rule 8B.

In the case of **Rajiv Johar vs. Union of India and another**, CWP No.2021 of 2016, decided on 02.03.2016, the license/certificate to practice was to expire on 08.11.2015. The application was filed on 07.09.2015. The delay allegedly occurred because of illness of the father of the petitioner, who had expired on 03.01.2016. The petitioner therein also gave reasons to the respondents while his application was under consideration that though he was required to apply six months before the expiry date and there is a delay of about 3 months but it was because of his father's sickness, who remained bed-ridden for eight months, and his wife had suffered slip disc problem. It was also alleged that he was the only person to look after them and, therefore, he could not apply in time. These were the reasons, which were allegedly not considered by the appropriate government while rejecting the

application only on the ground that the application was not filed within the period of six months. Thus, this Court remanded the matter back to the competent authority to decide it again after looking into the reasons given by the said petitioner and apply its discretion under Section 8B.

In the case of **Nirmal Singh vs. Union of India and others**, CWP No.17973 of 2016, decided on 09.05.2017, it was noticed by the Court that when the application was moved by the petitioner therein, he specifically mentioned therein *“that due to misplace of certificate of practice of Notary Public could not be renewed before three months of date of its expiry i.e. 13.4.2015”*. This Court had found that the appropriate authority had not looked into this aspect of the matter for the purpose of exercising its discretion in terms of the proviso to Rule 8B and, thus, the matter was remanded.

In the case of **Neelam Sharma vs. Union of India**, W.P.(C) 8503/2015, decided on 11.09.2015, the Delhi High Court has held that the appropriate authority should have looked into the reasons for delay set out in the application before taking the decision. The matter was, thus, remanded with certain directions.

In the case of **Ranjith Kumar T.C. vs. Union of India**, WP(C) No.30974 of 2015, decided on 17.11.2015 by the Kerala High Court, there were three applicants who did not apply for renewal of their certificate within the prescribed period. Although nothing has been mentioned in the order but by observing that *“considering the nature of explanation and the nature of delay”*, the matter was remanded back for reconsideration.

In the case of **Pritpal Singh vs. Union of India and others**, CWP No.27445 of 2015, decided on 05.01.2016, the applicant was a Notary at

Rajpura. The reason assigned by him was that he was not aware of the amendment that the period of three months have been changed to six months. The said petition was dismissed by this Court on the ground that ignorance of law much-less the amendment cannot be an excuse for the petitioner, who was not only an advocate but was also practicing as a Notary and was supposed to have the knowledge at least of the amendment in the Rules governing his certificate.

From the resume of the aforesaid various decisions, it is apparent that this Court has generally remanded the case back to the appropriate government for taking a fresh decision after considering the reasons assigned in the application for the delay in filing the application within the prescribed time.

For example, in **Lokesh Bhandari's case (supra)**, the petitioner himself was suffering from blood cancer. In **Rajiv Johar's case (supra)**, the petitioner had brought to the notice of the appropriate government that his father was bed-ridden, who was 85 years old and his wife suffered from the slip disc problem. In **Nirmal Singh's case (supra)**, the petitioner brought to the notice of the appropriate government that he had misplaced the certificate, therefore, he could not apply within the prescribed time. In **Neelam Sharma's case (supra)** and in **Ranjith Kumar's case (supra)**, the Court also found that there were sufficient reasons for not applying in time but in **Pritpal Singh's case (supra)**, this Court did not come to the rescue of the petitioner because the reason given by him in the writ petition was that he was not aware of the period within which he had to apply, therefore, it was held that for an advocate, that too a Notary, ignorance of the amendment in the Rules is of no excuse.

Rule 8B, dealing with the renewal of certificate of practice, has two parts. The first part deals with the renewal provided the application for renewal is filed six months prior to the date of expiry of the period of validity of the certificate. The second part confers the discretion upon the appropriate government of relaxing the condition of submitting the application before six months of the expiry of the period of validity in case it is satisfied with the reasons stated in the application.

Thus, according to the proviso to Rule 8B of the Rules, the Notary, who has filed the application for renewal of his license beyond the period prescribed in the first part of Rule 8B, has to state reasons in his application filed for renewal for relaxing the conditions of submission of application within the prescribed time, which may be considered by the appropriate government for relaxation.

In the present case, the petitioner had made the following averments in the application dated 07.09.2015, submitted by him for renewal of his license:-

To

The Competent Authority/Secretary
Notary Cell, Department of Legal Affairs,
Ministry of Law & Justice
Faridkot.

Sub: Renewal of Certificate of practice as Notary (Regn. No.8267, issued Wide File No.5(1106)/09-NL).

Respected Sir,

I want to say that I have been issued Notary Certificate (Regn. No.8267, issued Wide File No.5(1106)/09-NL) and Practising as notary Public since 16.09.2010 in Distt. Faridkot, Punjab. Now 5 years are about to expired and the Certificate of Practice needs Renewal to Practice as Notary in a proper manner. So, I am sending my request through this application with relevant

documents. Kindly renew the same as early as possible.

Thanking You

Your's Faithfully

Sd/- In English
Neeraj Kumar Maheshwari
M:09316700001
01635232776”

The petitioner did not give any reason for the delay on his part and has rather pleaded the cause of delay in the writ petition, which is apparently after-thought and a lame excuse.

Rule 8B is very clear wherein it is provided in the proviso that the reasons have to be stated in the application. If no reason is given, then no blame can be put on the appropriate government for not considering that reason.

Thus, in the aforesaid facts and circumstances, I would hold that whenever an application is submitted by a Notary under Rule 8B of the Rules for renewal of his certificate of practice, beyond the prescribed time, by giving reasons for moving the said application beyond the prescribed time, then in that circumstance, the appropriate government shall consider the reasons stated in the application for seeking the relaxation of the condition of submission, at the time of taking a decision about the grant of renewal.

If this procedure, as directed by this Court, is followed, it would not only reduce the litigation but also satisfy the applicant and also the proviso to Rule 8B.

However, insofar as the present petition is concerned, since the petitioner did not give any reason in his application for not filing it within the prescribed time, therefore, there is no fault on the part of the appropriate

government for not considering the application of the petitioner in terms of the proviso to Rule 8B and hence, the application, which was found totally beyond the prescribed period, has rightly been rejected.

The writ petition is, thus, hereby dismissed, though without any order as to costs.

August 02, 2017
vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No