

(2005) 11 KL CK 0055
In the High Court Of Kerala
Case No : Writ Petition (C) No. 25481 of 2003

Asokan

APPELLANT

Vs

Law Secretary

RESPONDENT

Date of Decision : 28-11-2005

Acts Referred:

Notaries Act, 1952 — Section 4, 5(2)
Notaries Rules, 1956 — Rule 8, 8(1), 8(4A)

Citation : (2006) 1 KLT 201

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : K. Subash Chandra Bose, for the Appellant; Augustine Joseph, Government Pleader, for the Respondent

Judgement

K. Balakrishnan Nair, J.—The petitioner was a Notary Public, appointed by the State Government for the revenue district of Kollam. His initial appointment was for a period of three years from 18.09.1984. The certificate of practice as Notary was renewed in 1987, for a further period of three years. When he applied for renewal of the same in 1990, the said application was rejected by the Government, by Ext.P9 communication. The petitioner challenged Ext.P9 before this Court by filing O.P.9811/1590. The said O.P. was allowed by Ext.PI 1 judgment. So, his certificate of practice was again renewed up to 18.9.2002. He submitted an application on 12.8.2002, for renewal of the said certificate. That application was rejected by Ext.P12 communication. The relevant portion of Ext.P12 reads as follows:

You are informed that since the quota fixed for renewal of the Certificate of Practice of Notaries in Kollam district, on the basis of the number of Notaries fixed for appointment by the State Government under the Notaries Rules, 1956 has completely been exhausted, your application referred to above cannot be considered and hence it is hereby rejected.

Pursuant to Ext.P12, Ext.P13 notification was issued by the Government,

removing him from the register of Notaries. This Writ Petition was filed, challenging Exts.P12 and P13, on the ground that the fixation of the number of Notary Public in 2001 will not affect the existing Notaries, as evident from Rule 8 of the Notaries Rules, 1956. Therefore, the petitioner seeks to quash Exts.P12 and P13.

2. A statement has been filed on behalf of the 1st respondent. Since the Government of India have limited the number of Notaries in Kerala to 375 from 9.5.2001, fresh applications and renewals were rejected, to bring down the number to 375. Therefore, the petitioner's application for renewal was rejected, it is submitted.

3. Heard the learned Counsel on both sides. Rule 8 of the Notaries Rules, 1956 is the relevant Rule, which is applicable to renewal of certificates of the existing Notaries. The said Rule reads as follows:

8. Appointment of a notary :-

(1) On receipt of the report of the competent authority, the appropriate Government shall consider the report and shall-

- (a) allow the application in respect of the whole of the area to which it relates; or
- (b) allow the application in respect of any part of the area to which it relates; or
- (c) reject the application;

and shall also make such orders as that Government thinks fit regarding the persons by whom the whole or any part of the costs of the application including the cost of hearing, if any, shall be borne;

(2) An applicant shall be informed of every order passed by the appropriate Government under Sub-rule (1).

(3) Any applicant whose application has been rejected or allowed in respect of only a part of the area to which it relates or against whom an order as to costs has been made under Sub-rule (1), may within sixty days of the date of the order apply to the appropriate Government for reviewing the order and that Government may, after making such further inquiry as it thinks fit, pass such order as it considers necessary.

(4) Where the application is allowed, the appropriate Government shall appoint the applicant as a notary and direct his name to be entered in the Register of Notaries maintained by that Government u/s 4 of the Act and issue to him a certificate on payment of prescribed fees authorising him to practise in the area to which the application relates or in such part thereof as the appropriate Government may specify in the certificate, as a notary for a period of three years from the date on which the certificate is issued to him.

(4A) The appropriate Government may on and after the ninth day of May, 2001, appoint notaries in a State or Union territory, as the case may be, not exceeding

the number of notaries specified in the Schedule:

Provided that the number of notaries whose certificate or practice has been renewed under Sub-section (2) of Section 5 of the Act shall be included in the total number of notaries appointed for the purpose of counting the total number of notaries specified in the Schedule.

Provided further that if in a State or Union Territory the number of notaries appointed before the ninth day of May, 2001 exceeds the number of notaries specified in the Schedule, such notaries shall continue to be so appointed in that State or Union Territory, as the case may be.

(5) The Register of Notaries shall be in Form II-A and the Certificate of Practice shall be in Form II-B.

4. The number of Notaries included in the schedule for the State of Kerala, which could be appointed by the Kerala Government is 375. Going by the 1st proviso to Sub-rule (4A), if the number of Notaries as on 9.5.2001 exceeds 375, the total number of Notaries permissible for the State shall be computed, taking into account those additional numbers also. The 2nd proviso says, the Notaries, who exceed the prescribed number on 9.5.2001, can continue to practise. In view of the above position, the restriction imposed as per Rule 8(4A) will apply in the case of appointment of fresh Notaries. So, the decision of the Government rejecting the petitioner's application is unsustainable. Accordingly, Exts.P12 and PI 3 are quashed, the 1st respondent is directed to renew the certificate of practice of the petitioner in accordance with law within two months from the date of receipt of a copy of this judgment. His name shall be included in the register of Notaries maintained by the State Government also.

The Writ Petition is disposed of as above.