

(2001) 03 KAR CK 0093
In the Karnataka High Court
Case No : Writ Petition No. 5069 of 2001

Jakkanagouda B. Patil

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:

Notaries Act, 1952 — Section 5

Citation : (2001) 2 KCCR 1415

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : V.T. Rayaraddi, for the Appellant; A. Padmanabhan, High Court Government Pleader, for the Respondent

Judgement

V. Gopala Gowda, J.—The Petitioner was appointed as a Notary by the Respondent is before this Court seeking for issuance of a writ of mandamus to the Respondent to consider his application at Annexure "C" dated 17.1.2001 requesting for grant of renewal to the post of Notary of Lingusugur taluk, Raichur District contending that his appointment of the notary would be expired on 21.1.2001 and is entitled for renewal to the post of notary u/s 5 of the Notaries Act of 1952. The application has not been considered by the Respondent despite the fact that the same was submitted in time. Therefore the Learned Counsel for the Petitioner submits that the statutory duty cast upon the Respondent for consideration of the said application has not been discharged by it. Therefore he submits that this is a fit case for writ of mandamus.

2. Learned Counsel for the Petitioner submits that placing reliance upon the judgment of this Court reported in John D'Souza Vs. State of Karnataka, wherein the conferment of power upon the Respondent for renewal of notary is a discretionary power that cannot be indefinitely postponed. The Respondent shall not indefinitely postpone his application for renewal. If the period of notary mentioned in the certificate is expired this Court has exercised discretionary power and granted the relief of continuing the notary till the consideration of the

application. Therefore learned Counsel has prayed this Court for giving direction to the Respondent that Petitioner may be permitted to continue as a notary. Learned Government Pleader Mr. Padmanabhan submits that the application of the Petitioner was not considered by the Government as it has received a complaint making certain allegations against the Petitioner in discharging his duties as a Notary. They will ascertain the truth or otherwise of the complaint and pass appropriate orders after obtaining necessary report from the Jurisdictional District Judge as required under the provisions of the Act and the rules. Therefore he submits that an appropriate direction may be issued to the Respondent for consideration of the application of the Petitioner at Annexure "C". In so far as the relief that the Petitioner shall continue and function as a Notary is concerned, he has strongly opposed that, till the consideration of his application which power is conferred upon the government under the provisions of the Act and Rules, therefore, that power has to be exercised only by that authority till that power is exercised by the Respondent the Petitioner shall not be permitted to discharge his duties as a Notary. After hearing the Learned Government Pleader and perusing the application of the Petitioner vide Annexure "C" under provisions of Section 5 of the Act, this Court proceeds to pass the following order.

Nodoubt that Petitioner has got right of renewal of the Notary after expiry of the period on 21.1.2001 the Respondent has not considered the application on the ground that there was a complaint against him. Since Government Pleader has submitted that his application will be considered in accordance with law after ascertaining the truth or otherwise of the complaint submitted against the Petitioner. In this view of the matter, it would be proper and appropriate for this Court to direct the Respondent consider the application for renewal of the Notary post in accordance with Section 5 of the Act and the relevant rules framed thereunder. In so far as the other relief that was sought for by the learned Counsel for the Petitioner in this petition to continue him as Notary till pending consideration of his application is concerned, this Court cannot grant such direction in this petition for the reason that the Apex Court in the case of M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others, at paragraph 82 law has been laid down by it stating that "Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing robes of judicial discretion and pass orders solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles". In the view of the law laid down in the aforesaid case by the Apex Court the reliance placed upon the judgment of this Court in John D'Souza's case referred to supra, is not helpful to the case of the Petitioner and this Court shall not exercise discretionary power in this petition giving direction to the Respondent to continue the Petitioner as a Notary till his application is considered for the reason that the Apex Court in the judgment referred to supra the question of law is clearly laid

down regarding the exercise of discretionary power by this Court and further for one more reason namely that there is an allegation against the Petitioner regarding his functioning as a Notary. This Court shall not exercise its discretionary power in favour of the Petitioner. Therefore the relief sought for by the Petitioner to continue him as a Notary till pending consideration of the application at Annexure "C" cannot be granted. Hence I pass the following order:

Writ Petition is allowed. A writ of mandamus is given to the Respondent to consider the application of the Petitioner at Annexure "C" keeping in view the right conferred upon the Petitioner u/s 5 of the Act and the relevant rules thereunder after ascertaining the truth or otherwise of the complaint lodged against him. Petitioner's application shall be disposed of within 12 weeks from the date of receipt of this order.