
(2011) 04 UK CK 0008

In the Uttarakhand High Court

Case No : Writ Petition No. 529 (M/S) of 2011

Rajeev Kumar

APPELLANT

Vs

State of Uttarakhand and another

RESPONDENT

Date of Decision : 25-04-2011

Acts Referred:

Notary Rules, 1956 — Rule 8(4), 8(B)

Citation : (2011) 3 UC 2271 : (2011) 1 UD 481

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Tarun Agarwala, J.—Heard Sri Hari Mohan Bhatia, the Learned Counsel for the petitioner and Sri R.C. Arya, the learned Brief Holder for the respondents.

2. The petitioner was granted a licence of a notary by the appropriate Government under the Notaries Rules, 1956 for a period of five years, which was to expire on 17th February, 2010. Prior to its expiry, the petitioner applied for renewal of his licence on 12th January, 2010. The said application was rejected by the authority by an order dated 9th February, 2010 indicating that the petitioner had not complied with Rule 8B of the Notary Rules, 1956 and that the delay in filing the application for renewal of the licence was not explained by the petitioner. The petitioner thereafter made an appropriate representation explaining the delay for not filing the application within the stipulated period. This application was again rejected by the appropriate authority by its order dated 13th January, 2011. The petitioner, being aggrieved by the aforesaid orders, has filed the present writ petition.

3. A counter affidavit has been filed by the respondents indicating their stand. The respondents submitted that the petitioner did not comply with the provisions of Rule 8B of the Notary Rules, 1956 and that the reasons were not given by the petitioner for the delay in filing the application for renewal of his licence. The

genesis of the controversy raised in the petition requires the interpretation of Rule 8B of the Notary Rules, 1956. For facility, the said provision is quoted here under:

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 three 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 specified period.

4. According to the said Rule, the application for the renewal of the certificate of practice is required to be submitted to the appropriate Government before three months from the date of expiry of its period of validity. In the present case, the petitioner had applied prior to the expiry of the period of its validity, but not before three months. The submission of the respondents that the aforesaid provision is mandatory is patently erroneous. The proviso to Rule 8B indicates that in an appropriate case, after considering the reasons, the appropriate Government may relax the condition of submission of the application, that is to say, that the period of three months can be relaxed by the Government in appropriate cases. The provision makes it apparently clear that Rule 8B is not mandatory, namely, that the period of three months for the submission of the application for the renewal of the licence is not mandatory.

5. In the light of the aforesaid, an application can be filed even after three months and if reasons are given, the appropriate Government can relax the condition of submission of the application. In the present case, admittedly the petitioner did not supply the reasons for the delay in filing the application for renewal of his licence and consequently, on the representation made, the petitioner supplied the reasons indicating that he could not file the application within the stipulated period on account of the illness of his son. The authority had not considered this reason and rejected his representation without applying its mind.

6. Considering the aforesaid fact, the Court finds that admittedly the application was moved prior to the expiry of the period of validity of the licence. The authority should be liberal and should not approach the situation in a mechanical and arbitrary manner. Once the application was filed within the stipulated period and the reasons having been supplied, the authority should have taken a liberal approach and should have condoned the delay.

7. In the circumstances of the case, the Court finds that cause was sufficiently shown by the petitioner and the delay ought to have been condoned. In the light of the aforesaid, the Court is of the opinion that the impugned orders cannot be sustained and are quashed. The writ petition is allowed and the matter is

remitted to the authority concerned to consider the application of the petitioner for renewal of his licence under Rule 8B of the Notary Rules, 1956 and pass appropriate orders within four weeks from the date of the production of a certified copy of this order.