

(2002) 07 AP CK 0099
In the Andhra Pradesh High Court
Case No : Writ Petition No. 9936 of 2002

S. Venkatesham

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 29-07-2002

Acts Referred:

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

Citation : (2002) 5 ALD 268 : (2002) 5 ALT 170

Hon'ble Judges : B. Prakash Rao, J

Bench : Single Bench

Advocate : Challa Seetaramaiah, for M.Y.K. Rayudu, for the Appellant; P. Rajagopal Rao, Government Pleader for Revenue for Respondent Nos. 1 and 2 and L. Prabhakar Reddy, Additional SC for Central Government, for the Respondent

Final Decision : Allowed

Judgement

B. Prakash Rao, J.—The petitioner, who is a practising advocate and holding Notary registration, seeks a writ of mandamus directing the first respondent to renew his Notary Certificate as per Section 5(2) of the Notaries Act, 1952 (for short "the Act").

2. Briefly, the petitioner enrolled himself as an advocate in the year 1968 and has been practising as such. Subsequently, he was appointed as a Notary by the respondent No. 1 on 29-5-1984 and was granted initially the said certificate for a period of three years. Thereafter, the said certificate was being renewed once in three years and thus he has been functioning as a Notary for the last about 18 years without any complaints of whatsoever nature. However, as the existing period of renewal was coming to an end on 29-5-2002, he filed an application on 3-1-2002 u/s 5(2) of the Act to the respondent No. 1 through the Commissioner and Inspector-General of Registration and Stamps, Andhra Pradesh, Hyderabad for the purpose of renewal for a further period of three years along with the required challan of Rs. 500/- and other required certificates. It is now

represented that on the basis of the said application, the competent authority has recommended in favour of the petitioner on 11-3-2002 after submission of the necessary records by the petitioner on 17-1-2002 in pursuance of an earlier memo dated 9-1-2002 for submission thereof. However, the complaint of the petitioner is that no action is being taken by the respondent No. 1 herein. Hence the writ petition.

3. In the counter-affidavit sworn to by one C. Padmanabha Murthy; the Deputy Inspector-General (Law) in the Office of the Inspector-General of Registration and Stamps, Andhra Pradesh, Hyderabad, it has been admitted that the petitioner's application was submitted to the Government as per the letter dated 2-4-2002 of the second respondent. However, the only objection raised is that having regard to the newly inserted Sub-rule (4-A) in Rule 8 of the Notaries Rules, 1956 made under the Act, the number of notaries is restricted and the existing notaries are in excess of the number specified in the schedule and, therefore, no orders are being passed and the application is kept pending. It is" also the case of the respondents in the said counter that under the proviso thereto, the question of granting renewal beyond the prescribed number of notaries is not permissible.

4. Heard Sri Challa Seetaramaiah, the learned senior Counsel for the petitioner and also Sri P. Rajagopal Rao, the learned Government Pleader for Revenue.

5. Having considered the submissions made on either side, the question which falls for consideration in this writ petition is as to whether the petitioner, who is an existing notary, is entitled for renewal of the certificate of practice as per Section 5(2) of the Act and the newly inserted Sub-rule (4-A) of Rule 8 of the Rules.

6. For the purpose of deciding the question, it is relevant to notice subsection (2) of Section 5 of the Act, which reads as follows:

"(2) Every such notary who wishes to continue to practice after the expiry of the period for which his certificate of practice has been issued under this section shall, on application made to the Government appointing him and payment of the prescribed fee, if any, be entitled to have his certificate of practice renewed for three years at a time."

7. On a reading of the aforesaid provision, there is no embargo or any restriction imposed by the statute at the time of renewal in the case of an existing notary. However, it only reflects that the renewal is only on the wishes of the existing notary to continue to practice after the expiry of the period for which his certificate of practice has been issued earlier. Under the newly inserted Sub-rule (4-A) of Rule 8, the Government has restricted the maximum number of notaries to be appointed with effect from 9-5-2001. The quota fixed for the State of Andhra Pradesh is 575. The said Sub-rule reads as follows:

"(4-A) The appropriate Government may on "and after the 9th 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 of 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 9th 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."

8. On a reading of the aforesaid Sub-rule, the object appears to only restrict the number of notaries and accordingly under the first proviso thereto, it is contemplated that the total number of notaries renewed u/s 5(2) of the Act should be in consonance with the total number of notaries specified in the schedule. Under the second proviso, it is further contemplated that if the number of notaries appointed prior to 9-5-2001 exceed the number of notaries specified in the schedule, such notaries shall continue to function. There is no specific restriction against renewal under these rules. Therefore, the method of restricting the number of notaries whenever they are found to be in excess to the number shown in the schedule is only by restricting the grant of fresh certificates. The second proviso, in fact, reiterates the continuance of the existing notaries. Of course, it is totally a different matter as to how under the delegated legislation the quota can be fixed in the absence of any such power conferred under the statute. Since this aspect is not canvassed in this writ petition, it is not necessary to go into the same. Admittedly, in this case, there is no allegation against the petitioner. It is not the case of the respondents herein that the petitioner's certificate of practice is sought to be terminated on any such grounds as are available to them under the provisions of the Act.

9. The learned Government Pleader sought to rely on the judgment rendered by a learned single Judge of this Court in *Parchuri Kishore Vs. Government of A.P. and Another*, wherein considering the provisions of Section 15 of the Act vis-a-vis Rule 8(4-A) of the Rules, it was held that the prescription of maximum number of notaries to be appointed as per the schedule will not have application to the appointments made prior to the date of insertion of the new sub-rule. In that case, the petitioner made an application for being appointed as a notary on 16-12-2000, the proposal for his appointment was made before the date of amendment and he was appointed on 5-7-2001. However, on the subsequent correspondence with the Commissioner and Inspector-General of Registration and Stamps, Hyderabad for crediting of the requisite fee to enable the certificate to be issued, the Government sought to rely on the amended provision on the ground that it is not proper to appoint in excess of the maximum number as prescribed thereunder. Interpreting the expression "proposal of the competent authority" and its effect, and the new sub-rule having come into force

subsequently, it was held that the petitioner therein is entitled to the certificate of practice.

10. In the other decision in *A. Sambi Reddy Vs. Government of A.P. and Another*, , the same learned Judge while considering Rule 8 (4-A) held that having regard to the maximum number fixed for the notaries, no application can be entertained after the amendment in excess of the number prescribed. In that case, the petitioner submitted the application on 8-9-2000 for fresh grant of certificate of practice and the proposal to appoint the petitioner as notary was made after the date of insertion of Sub-rule (4-A). Therefore, applying Sub-rule (4-A), this Court refused to accede to the petitioner's request.

11. In *State of Kerala and Vs. K.U. Narayana Poduval and etc. etc.*, , a Division Bench of the Kerala High Court considering the provisions of Section 5(2) of the Act, held that the Parliament has deliberately included the word "shall" and the words "be entitled" u/s 5(2) and therefore, the said provision is mandatory and the right of renewal is automatic and there is no discretion vested in the Government to restrict the right of renewal to two renewals.

12. Having regard to the aforesaid decisions and especially on the face of the very provisos as contemplated under sub-rule (4-A), it is difficult to accept the submission made by the learned Government Pleader that the said restriction would create any bar or constitute any impediment in regard to renewal. If such approach is sought to be imported, it runs contrary to and goes beyond the substantive provision u/s 5(2) of the Act. Hence the newly inserted Sub-rule (4-A) requires to be read down. Across the Bar, it was mentioned by the learned Government Pleader that there are about 1200 notaries in the State of Andhra Pradesh who are holding the certificate of practice as on this date and the said figure is more than double the quota which is specified in the schedule under the new sub-rule.

13. As rightly held by this Court in *Parchuri Kishore 's case (supra)*, the bar can be made applicable only as against fresh applications having regard to the excess number of existing notaries over and above the quota and cannot have application at the stage of renewals more so having regard to the second proviso to Sub-rule (4-A) which reiterates the continuance of the notaries appointed before 9-5-2001.

14. It has been pointed out across the Bar that there is also an amendment to Sub-section (2) of Section 5 whereby the word "shall" has been replaced with the word "may". However, having regard to the facts and circumstances of the case, it has to be held that the said expression would not in any way weaken the entitlement of the existing notaries to have their certificates renewed. Thus, on a reading of both the amended provisions u/s 5(2) and the second proviso to Sub-rule (4-A) of Rule 8 of the Rules, it has to be held that the respondents cannot reject the renewal merely on the ground of fixation of quota.

15. Accordingly, the writ petition is allowed and the respondents are directed to

consider the case of the petitioner for renewing the Certificate of Practice as Notary. No costs.