

(2003) 10 BOM CK 0032
In the Bombay High Court
Case No : Writ Petition No. 4136 of 2003

Shubhakaran Muralidharji Dhanuka

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 16-10-2003

Acts Referred:

Notaries Act, 1952 — Section 5(2)

Citation : (2004) 1 ALLMR 899 : (2004) 2 BomCR 571 : (2004) 1 MhLj 14

Hon'ble Judges : N.H. Patil, J; B.B. Vagyani, J

Bench : Division Bench

Advocate : R.R. Mantri, for the Appellant; E.P. Sawant, Government Pleader, for the Respondent

Final Decision : Partly Allowed

Judgement

B.B.Vagyani, J.—Heard.

2. Rule. Rule made returnable forthwith. With consent of parties, taken up for final hearing forthwith.

3. The petitioner started legal practice as an Advocate in the year 1968. The petitioner came to be appointed as a Notary under the Notaries Act, 1952 by the respondent No. 1 for Aurangabad district on 31-8-1988. The petitioner has been practising as a Notary since then and has got his certificate renewed from time to time. His last renewal was on 31-8-1997. Until 1999, there was no provision for removal of name for want of renewal.

4. The Notaries Act was amended on 17-12-1999 and the period of validity of certificate is extended to five years from three years. According to the petitioner, the amendment is retrospective in application.

5. On 31-8-2000, the petitioner wrote a letter to the respondents and asked to inform him whether the certificate granted to him stands renewed for five years as per the amended provision or he has to apply afresh together with the

prescribed fees. However, the respondents did not give any reply to the petitioner. The respondents neither removed the confusion of the petitioner nor asked the petitioner to submit the application for renewal.

6. The petitioner, by way of abundant precaution, deposited renewal fees of Rs. 500/- on 7-2-2001. The amount was accepted by the respondents without protest. The petitioner continued to practice as a Notary and submitted a fresh application on 8-7-2002 for further renewal for five years. As per the guidelines issued by the State Government dated 18-12-2001, the Government neither informed the petitioner that his practice as a Notary after 31-8-2000 was unauthorized nor the Government debarred the petitioner from practising as a Notary.

7. The respondents issued a letter to the petitioner on 5-8-2002 in connection with renewal of the Notary Certificate and asked the petitioner to remain present on 17-8-2002. However, abruptly the said letter dated 5-8-2002 was cancelled on 13-8-2002. On the same day i.e. on 13-8-2002, a show cause notice was served on the petitioner and was informed that he has neither applied for renewal nor paid the prescribed fees of Rs. 500/- for such renewal, as required u/s 5(2) of the Notaries Act, 1952 read with Rule 9 of the Notaries Rules, 1959 vide entries at GSR No. 870(E) published in Government of India Gazette dated 8th July 1997 and the Government Circular No. 4167/E dated 18-12-2001 issued by the Government of Maharashtra. The petitioner was called upon to show cause within 15 days from the date of receipt of said letter as to why his name should not be removed from the register of Notaries maintained by the State Government u/s 4 of the Notaries Act, 1952.

8. The petitioner by his letter dated 19-8-2002, gave reply to the Government. The petitioner informed by reply letter that his son was sick for few months and ultimately expired on 28-6-2000. Because of long drawn sickness of the son and ultimate demise of son, the petitioner could not act promptly for renewal of his certificate. He also informed the respondents that he was under impression that the period of certificate was deemed to have been extended upto five years in view of the amendment. He also informed the authorities that he had already paid Rs. 500/- on 7-2-2001 as the fees for renewal. The petitioner finally requested the authorities to renew the certificate.

9. However, the respondents rejected the prayer of the petitioner for renewal of the certificate and decided to remove the name of the petitioner from the register. Accordingly, the name of the petitioner was removed from the register and notification dated 14-11-2002 was published in the Government Gazette. As per the rules, the petitioner was informed about removal of his name from the register by letter dated 12-12-2002.

10. Feeling aggrieved by the removal of name of the petitioner from the register, the petitioner has filed this writ petition.

11. In response to the notice, one R.R. Bangale, Deputy Secretary (Legal) has

filed affidavit in reply for and on behalf of respondents Nos. 1 and 2. The para wise remarks are given in the affidavit in reply. It is made clear in the affidavit in reply that there is no provision of deemed renewal. The amendment does not automatically renew the certificate of the petitioner. According to the respondents, the petitioner should have applied for renewal within a period of one month prior to the date of expiry of the certificate of practice, as per the guidelines issued by the State Government on 18-12-2001. It is admitted on behalf of the respondents that the petitioner had deposited Rs. 500/- towards renewal of the certificate on 7-2-2001. However, the certificate was not renewed in absence of application. It is further admitted on behalf of the respondents that the petitioner no doubt applied for renewal on 8-7-2002. That application was not considered because the prescribed fee of Rs. 500/- was not sent along with the application. It is also said in the affidavit in reply that there is no provision of condonation of delay and the petitioner should have submitted his application for renewal on or before 31-8-2000,

12. We gave anxious consideration, to the rival submissions made at the Bar. It is emerged out from the record that the petitioner was prompt in the past in the matter of renewal of his certificate. He was first time appointed as a Notary in the year 1988 and since 1988, he got renewed the certificate periodically promptly. The last certificate was to expire on 31-8-2000, On 31-8-2000 the petitioner submitted an application to the respondents and sought clarification in view of the recent amendment in Section 5 of the Notaries Act, 1952. Before amendment, the period of certificate was three years and by amendment, the period of certificate is extended to five years. The petitioner remained under the impression that his earlier certificate which was to expire on 31-8-2000, was renewed automatically because he did not receive any reply from the respondent. The confusion of the petitioner was not removed by the respondents. The respondents did not ask the petitioner to submit an application for renewal along with prescribed fees of Rs. 500/-.

13. It is interesting to note that the Government published names of practising Notaries in the Gazette as per Section 6 of the Notaries Act, 1952. The copy of the Government Gazette is placed on record at Annexure H page 29. The name of the present petitioner stands at Sr. No. 5, so far as Aurangabad district is concerned. In January 2002, the respondents published the name of the petitioner as a practising Notary. Because of publication of the name of petitioner as a practising Notary in the Government Gazette, the earlier impression of the petitioner was confirmed. There is no satisfactory explanation as to why the name of the petitioner was published in the Government Gazette in January 2002 as a practicing Notary. After publishing the name of the petitioner in the Government Gazette as a practising Notary in January 2002, it is not now open for the respondents to contend that the petitioner should have applied for renewal within a period of one month prior to the date of expiry of the certificate of practice i.e. one month prior to 31-8-2000. It is also not satisfactorily explained as to why the confusion in the mind of the petitioner was not removed

by the respondents when he sought clarification by application dated 31-8-2000.

14. The petitioner deposited Rs. 500/- with the respondents on 7-2-2001. The respondents retained the amount without any protest. Thereafter in January 2002, the respondents published the name of the petitioner in Government Gazette as a practicing Notary. It is material to note that the petitioner submitted another application on 8-7-2002 for renewal of the certificate. In response to that application, the petitioner was called in the matter of renewal of his certificate by letter dated 5-8-2002 and was asked to remain present on 17-8-2002. However, abruptly the said letter dated 5-8-2002 was cancelled on 13-8-2002. On 13-8-2002 itself, a show cause notice was issued to the petitioner and thereafter the name of the petitioner was removed from the register of Notaries on the ground that the prescribed fees of Rs. 500/- were not paid by the petitioner.

15. Very strange stand is taken by the respondents. When there was application on 31-8-2000, the respondents have made out a case in the affidavit in reply that the certificate was not renewed because application was not accompanied by the prescribed fees of Rs. 500/-. When there was a fresh application on 8-7-2002, the Government has taken a stand that Rs. 500/- were not paid along with the said application and, therefore, prayer for renewal was not considered. The Government has conveniently failed to take into consideration that on 7-8-2001 the petitioner had already deposited Rs. 500/- and without any protest, the concerned authorities have retained the amount. The factual position comes to this that petitioner submitted application on 31-8-2000 and Rs. 500/- were paid by the petitioner thereafter i.e. on 7-2-2001.

16. Too technical view cannot be taken in such matters. When there was an application on 31-8-2000, the concerned authorities could have treated the said application for renewal of the certificate and could have asked the petitioner to tender prescribed fees of Rs. 500/-. It is to be noted that renewal of certificate of Notary is a routine matter. It is not the case of the respondents that the petitioner has committed any misconduct. It is not the case of the respondents that the petitioner did not apply for removal of his name from the register.

17. In the case of Firoz M. Battiwala Vs. State of Gujarat and Another, , the Gujarat High Court has held that there is no legal provision prescribing any period of limitation for making an application for renewal of Notary Certificate. It is also held that the application for renewal is liable to be submitted within a reasonable time. It is further observed that rejection solely on the ground of limitation is not proper.

18. It is clearly seen that the respondents have removed the name of the petitioner from register of Notary without any valid reason. The action on the part of the respondents is arbitrary. No doubt, the renewal of certificate of Notary is a matter of discretion. It is well settled legal position that the discretion is required to be exercised in a judicious manner. Taking into consideration the

factual matrix of the case, we are of the opinion that the discretion is not exercised in a judicious manner.

19. In the result, the writ petition is partly allowed. The Notification dated 14-11-2002 regarding removal of name of the petitioner from the Register of Notary is hereby quashed and set aside. Similarly, the letter of information of removal of name dated 12-12-2002 is also quashed and set aside. The respondents are directed to consider the application for renewal of certificate for practising as a Notary, on merits and according to the law, in the light of the observations made in this judgment and in accordance with the provisions of Section 5(2) of the Notaries Act, 1952. We do not find any reason as to why the Government should not renew the certificate within a period of eight weeks from the date of receipt of writ of this Court or the certified copy of this judgment, whichever is earlier. The period of practice after 31-8-2000 is treated to be valid. Rule made absolute partly. Ham dust allowed.