
(2002) 07 MAD CK 0043
In the Madras High Court
Case No : Writ Appeal No. 1710 of 2002

Suriya @ Beatrice Michael

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 30-07-2002

Acts Referred:

Notaries Act, 1952 — Section 10, 15, 2, 3, 4
Notaries Rules, 1956 — Rule 13, 3, 4, 6, 7

Citation : (2003) 1 LW 202 : (2003) WritLR 10

Hon'ble Judges : B. Subhashan Reddy, C.J;D. Murugesan, J

Bench : Division Bench

Advocate : S. Shyamala, for the Appellant; V. Raghupathi, Government Pleader, for the Respondent

Judgement

D. Murugesan, J.—This writ appeal is directed against the order in W.P.No.5090 of 1995 dated 3.8.2001 dismissing the writ petition filed

by the appellant. Following are the few facts leading to the filing of the writ appeal.

2. The appellant was enrolled as an Advocate in the Madras Bar Council on 28.6.67. Her name was entered in the register of notaries maintained

by the State Government u/s 4 of The Notaries Act, 1952 (hereinafter referred to as "the Act"). She was also issued with the certificate by the

State Government authorizing her to practice as notary with effect from 23.3.87 for a period of three years upto 22.3.90. The said certificate was

renewed for a further period of three years upto 22.3.93. The appellant remitted the fee on 24.8.92 for further renewal, which was encashed by

the respondent on 25.8.92 much prior to the expiry of the period for which the appellant was given the certificate of practice. The appellant

however, did not make application along with the renewal fee but, such application was in fact sent on 1.8.93, indisputably after the expiry of the period for which she was given the certificate of practice and the same was acknowledged on 27.8.93. Since the said application was not

disposed of, the appellant made a representation on 24.3.94 and a further reminder on 7.7.94 for disposal of her application for renewal.

Thereafter, the appellant was served with the order dated 7.2.95 removing her name from the register of notaries in exercise of power u/s 10(b) of

the Act". The said order was challenged by the appellant in the writ petition which came to be dismissed on 3.8.2001 on the ground that the

period of three years for which the renewal was sought had already expired. It is against this order the present writ appeal has been filed.

3. Mrs. S. Shyamala, learned counsel for the appellant submitted that the order removing the name of the appellant from the register of notaries on

the ground that the appellant had not paid any prescribed fee required to be paid is unsustainable inasmuch as the appellant had paid the necessary

fee for renewal as early as on 24.8.92 much prior to the period for which the certificate of practice was issued. The learned counsel further

submitted that in any case, in the absence of any period of limitation prescribed either under "the Act" or under The Notaries Rules (hereinafter

referred to as "the Rules") to make an application for renewal, the application dated 1.8.93 ought to have been considered. Hence, the order

removing the name of the appellant on the ground that the appellant did not apply within a period of three years from the date of issue of the

certificate of practice is unsustainable. Finally, the learned counsel submitted that u/s 5(2) of "the Act", renewal is automatic.

4. Mr. V. Raghupathi, learned Government Pleader appearing for the respondent, on the other hand, submitted that when the period of certificate

of practice itself was restricted to three years, unless an application for renewal was filed within the said period, the appellant was not entitled to

renewal as a matter of right as the renewal was not automatic. The learned Government Pleader therefore, submitted that there is nothing wrong in

removing the name of the appellant from the register of notaries, as there was no request for renewal before the expiry of the period for which the

certificate of practice was issued.

5. Having heard the respective counsel and in view of the rival submissions, the following points arise for consideration.

(1) Whether an application made for renewal beyond the period of three years from the date on which the certificate of practice was issued could

be entertained and considered?

(2) Whether payment of fee without there being any application would entitle the notary for consideration of renewal of certificate of practice? and

(3) Whether the renewal of certificate of practice is automatic?

6. For better appreciation of the issues and disposal of the writ appeal, the following few relevant provisions of "the Act" could be conveniently

extracted hereunder:-

Section 3 - Power to appoint notaries:

The Central Government, for the whole or any part of India, and State Government, for the whole or any part of the State, may appoint as notaries

and legal practitioners or other persons who possess such qualifications as may be prescribed.

Section 4 - Registers:

(1) The Central Government and every State Government shall maintain, in such form as may be prescribed, a register of notaries appointed by

that government and entitled to practise as such under this Act.

(2) Every such register shall include the following particulars about the notary whose name is entered therein, namely:-

(a) his full name, date of birth, residential and professional address;

(b) the date on which his name is entered in the register;

(c) his qualifications; and

(d) any other particulars which may be prescribed.

Section 5 - Entry of names in the register and issue or renewal of certificates of practice:

(1) Every notary who intends to practise as such may on payment to the government appointing him of the prescribed fee, if any, be entitled-

(a) to have his name entered in the register maintained by that government u/s 4; and

(b) to a certificate authorizing him to practise for a period of five years from the date on which the certificate is issued to him.

(2) The government appointing the notary, may, on receipt of an application and the prescribed fee, renew the certificate of practice of any notary for a period of five years at a time.

Section 9 - Bar of practice without certificate:

(1) Subject to the provisions of this section, no person shall practise as a notary or do any notarial act under the official seal of a notary unless he holds a certificate of practice in force issued to him u/s 5:

PROVIDED that nothing in this sub-section shall apply to the presentation of any promissory note, hundi or bill of exchange for acceptance of payment by the clerk of a notary acting on behalf of such notary.

(2) Nothing contained in sub-section (1) shall, until the expiry of two years from the commencement of this Act, apply to any such person as is referred to in proviso to clause (d) of section 2:

PROVIDED that in relation to the State of Jammu and Kashmir the said period of two years shall be computed from the date on which this Act comes into force in the State.

Section 10 - Removal of names from register:

The government appointing any notary may, by order, remove from the register maintained by it u/s 4 the name of the notary if he-

- (a) makes a request to that effect; or
- (b) has not paid any prescribed fee required to be paid by him; or
- (c) is undischarged insolvent; or
- (d) has been found, upon inquiry in the prescribed manner, to be guilty of such professional or other misconduct as, in the opinion of the government, renders him unfit to practise as a notary; or
- (e) is convicted by any court for an offence involving moral turpitude; or
- (f) does not get his certificate of practice renewed.

7. The object of "the Act" is to regulate the profession of notaries. Section 3 of "the Act" enables the Central Government to appoint notaries and

legal practitioners or other persons who possess qualification as prescribed for the whole or any part of India and the State Government for the

whole or any part of the State. Rule 3 of "the Rules", prescribes the qualifications which reads thus:-

No person shall be eligible for appointment as a notary unless on the date of the application for such appointment-

- (a) he had been practicing at least for ten years as a legal practitioner, or
- (b) he had been a member of the Indian Legal Service under the Central Government, or
- (c) he had been at least for ten years,--
- (i) a member of Judicial Service; or
- (ii) held an office under the Central Government or a State Government requiring special knowledge of law after enrolment as an advocate; or
- (iii) held an office in the department of Judge, Advocate General or in the legal department of the armed forces.

In this context, both the Central Government and State Government shall maintain registers of notaries u/s 4 of ""the Act"". Such registers shall

include the name of the notary, date of birth, residential and professional address, the date on which the name is entered in the register, qualification

and other particulars as may be prescribed. A person may be appointed as notary u/s 3 of ""the Act"" on an application under Rule 4 of ""the Rules"".

A procedure is contemplated for making application. Once such application is received, the competent authority shall examine the same as to

whether the applicant possesses qualification and is entitled to be appointed as notary. Under Rule 7 of ""the Rules"", in the event, the competent

authority is of the view that the application should be rejected, it should inform the applicant. In case it decides to recommend, it shall make a

report to the appropriate Government recommending that either the application may be allowed for the whole or any part of India to which the

application relates or that it may be rejected. Once such a report is received from the competent authority, by exercising the power under Rule 8 of

the Rules"", the appropriate Government shall either allow the application or reject the same. In the event the appropriate Government accepts the

recommendations of the competent authority, it shall appoint such person as notary and directs the registration of the name in the register

maintained for the notaries.

8. A notary whose name is registered u/s 4 of ""the Act"" is entitled to get a certificate authorizing him/her to practice for a period of three years from

the date on which the certificate is issued on payment of prescribed fee. The

period of three years was substituted as five years by the Notaries

Amendment Act 1999. Such certificate of authorization can be renewed for a further period of three years before the amendment and for a period

of five years after the amendment on an application and payment of prescribed fee.

9. A combined reading of Sections 3, 4 and 5 of "the Act" read with Rules 3, 4, 6, 7 and 8 of "the Rules", it is manifestly clear that only such of

those notaries appointed by either the Central Government or the State Government u/s 3, are entitled to have the names entered in the register

maintained by the respective Governments u/s 4 read with Rule 8(4) of "the Rules", and are entitled to the certificates authorizing to practice.

Scheme of the enactment and the rules ensure greatest scrutiny even before the name is entered in the register of notaries. Once the name is

entered in the register of notaries, it is final but subject to provision of Section 10 of "the Act". Instances by which the Government may remove the

name from the register are contemplated u/s 10 of "the Act". A detailed procedure that should be followed before removal of the name from the

register of notaries is also contemplated under Rule 13 of "the Rules". Reliance of reason outside the purview of Section 10 for removal of the

name of a notary from the register can have no legal sanction. Non-filing of application for renewal within the period for which certificate of

practice was issued is not one of the reasons enumerated under that section. Basing such reason for removal of name from the register would be

outside the ambit of the provision and cannot be sustained in law.

10. Sub-section (1) of Section 5 relates to the entitlement of a notary for registering the name in the register of notaries and for issue of certificate

of practice for the first time by making payment of prescribed fee. No further enquiry is contemplated for either entering the name in the register or

for issue of certificate. No limitation is also prescribed for a notary appointed to make the above request. In the event a request is made, the

Government is empowered to direct the name to be entered in the register and also issue a certificate of practice. When once the Government

decides to issue the certificate, it shall be for a fixed period of five years and there is no option for the Government to either reduce or increase the

period.

11. Sub-section (2) of section 5 of "the Act" relates to the renewal of the certificate of practice. It enables the Government appointing the notary to renew the certificate of practice for a further period of five years after the amendment on receipt of application and prescribed fee. The said section does not contemplate any period of limitation for making an application for renewal. No rule also prescribes any such period of limitation. In the absence of prescribed period by which an application for renewal should be made, a notary who is armed with a certificate authorizing him/her to practice for a fixed period is not disentitled to make an application for renewal even after the expiry of the period for which the certificate of practice was issued. It is settled law that the words of a statute should be understood in their plain natural and literal meaning. Further, any departure from the said rule may lead to unwarranted expansion and restricted meaning of the words employed in the section. It must therefore, necessarily be held that the period prescribed u/s 5(1)(b) of "the Act" insofar it relates to the certificate of practice cannot be extended to an application filed u/s 5(2) of "the Act" for renewal of the said certificate of practice. For the above reasons, we are of the considered view that sub-section 2 of Section 5 of "the Act" does not prescribe any period of limitation to make application for renewal of certificate of practice. Our attention was also drawn to the judgment of R. Jayasimha Babu, J. in *S. Ramanarayanan Vs. The State of Tamil Nadu and Another*, ". The learned Judge while considering the delay in making the application for renewal of certificate of practice which had expired observed that under the scheme of "the Act", once a legal practitioner is selected and appointed as notary, and such person has not ceased to be a legal practitioner, he is entitled to continue as a notary as long as he wants, subject to his applying for with the prescribed fee for renewal of his certificate of practice at the end of each of the three years period. The learned Judge has also observed that no period of limitation is set out in the Act or the Rules for seeking renewal and in the absence of any such specification, it must be held that the notary has a right to seek renewal within a reasonable time after the expiry of the certificate of practice. For all the above reasons, we answer the first issue in the affirmative.

12. Coming to the second issue, under sub-section (1) of Section 5, a notary is entitled to get his name registered in the register of notaries

maintained either by the Central Government or State Government on payment of prescribed fee. That section contemplates registration of the names only on payment of prescribed fee. However, sub-section (2) of Section 5 mandates an application also to be made along with payment of prescribed fee. The respondent is under obligation to consider the request for renewal only on compliance of sub section (2) of Section 5 in the form of an application seeking for renewal along with payment of prescribed fee. Both the application and the prescribed fee are mandatory for a notary to seek for a certificate of practice. In the absence of any one of the above will certainly disentitle the notary from seeking for a certificate of practice. Admittedly, the appellant had only paid the prescribed fee without any application. In the absence of an application enclosed along with the prescribed fee, mere payment of fee cannot be considered as compliance of sub-section (2) of Section 5 and hence a notary who does not comply with sub-section (2) of Section 5 cannot stake his/her claim for renewal of certificate of practice as of right. Hence, we answer the second issue in the negative.

13. Coming to the third issue, as already discussed, a legal practitioner appointed as a notary is automatically entitled to seek for registration of the name in the registers maintained either by the Central Government or State Government. When the Legislature intended a detailed scrutiny of application for appointment of notary, it left to the Central Government to frame rules u/s 15 of "the Act" in respect of the qualification, filing of application for appointment of notary. In fact, by virtue of the said rule making powers, the Central Government also framed The Notaries Rules, 1956. Rule 3 relates to qualification for being appointed as a notary and Rule 4 relates to applications for appointment as notary and for registration of names. Our attention was not drawn by the learned Government Pleader as to any of separate provisions of "the Act" or "the Rules" enabling either the Central Government or the State Government for insisting a further application and the scrutiny thereof before the name is entered in the registers. A plain reading of sub-section (1) of Section 5 would indicate that every notary who intends to practice, on payment to the Government appointing him/her with the prescribed fee, if any, be entitled to for the registration and for issue of the certificate of practice. The only

condition for the entitlement u/s 5 is the appointment of legal practitioner as notary u/s 3 of "the Act" and the procedures contained in Rules 6, 7

and 8 of "the Rules". Hence, in our considered view, when once a notary is appointed u/s 3 of "the Act", he/she is entitled to automatically have the

name entered in the register maintained by the Government u/s 4 and also for issue of certificate of practice of course, for the period restricted u/s

5(1)(b) of "the Act". Equally, under sub-section (2) of Section 5 of "the Act", the renewal is automatic but subject to an application and the

prescribed fee in this regard is filed by the notary so long as the name of the notary is not removed from the registers on the reasons contained in

Section 10 of "the Act". We have held that on the facts of this case invoking the provisions u/s 10(b) of "the Act" for removing the name of the

appellant from the register of notaries is unsustainable. Hence, the renewal under sub-section (2) of Section 5 is automatic. In fact, a similar view

has been taken by a Division Bench of the Kerala High Court in "State of Kerala and Vs. K.U. Narayana Poduval and etc. etc.", ". Hence, we

answer the third issue in the affirmative.

14. Applying the above principle to the facts of the present case, it is to be seen that the appellant was appointed as a notary u/s 3 of "the Act" by

the State Government. A certificate of practice was also issued to her on 23.3.87 for a period of three years i.e., upto 22.3.90 and the said

certificate of practice had been renewed for a further period of three years from 23.3.90 to 22.3.93. Though the appellant paid the prescribed fee

on 24.8.92 before the certificate of practice expired, it is an admitted case that the appellant did not enclose the application for renewal along with

the fee. In view of our finding that in the absence of any period of limitation prescribed, the application for renewal made even after the expiry of

the period for which the certificate of practice was issued cannot be rejected, the application made by the appellant on 1.8.93 received by the

respondent on 4.8.93 ought to have been considered. By the impugned order, the respondent has not only refused to entertain the application on

the ground that it was not filed within a period of three years but also removed the name of the appellant from the register of notaries maintained u/s

4 of "the Act". The reason given by the respondent to remove the name of the appellant from the register that the appellant had not paid any

prescribed fee required to be paid by her, in our considered view, is only a misapplication of the provision. Section 10(b) of "the Act

contemplates the removal of names from the register when a notary who intends to practice is entitled to have his/her name entered in the register

maintained by the Government u/s 4 on payment of prescribed fee. The non-payment of prescribed fee relates to the failure of the notary to make

necessary payment for the purpose of Section 5(1)(a) of "the Act". Applying the provision of Section 10(b) to a case of renewal u/s 5(2) of "the

Act" is totally unsustainable as there is no provision for removal of a notary from the register for non-filing of application for renewal of certificate of

practice. The scheme of "the Act" is very clear inasmuch as notaries are appointed by the Central or State Governments and only such of those

notaries appointed are entitled to get their names registered in the register maintained by the respective Governments and also are entitled to get a

certificate of practice. Equally, only a notary whose name has been entered in the register maintained by the State Government is entitled to get the

certificate of practice. Denial of the right for renewal on the given reason cannot be sustained. For the above reason, we find that the impugned

order passed u/s 10(b) of "the Act" is totally unsustainable and is liable to be set aside.

15. For the foregoing reasons, we are of the considered view that G.O.Ms.No.55, Law Department, dated 7.2.95 is unsustainable and

accordingly, we set aside the same. As a necessary corollary, the respondent has to renew the certificate of practice to the appellant enabling her

to continue as a notary. There will be no order as to costs.