

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR

: O R D E R :

1. S. B. Civil Writ Petition No. 15119/2009
(Smt. Asha Bhansali Vs. State of Rajasthan & Ors.)
2. S. B. Civil Writ Petition No. 15800/2009
(Usha Kiran Lohiya Vs. State of Rajasthan & Anr.)
3. S. B. Civil Writ Petition No. 15773/2009
(Ram Singh Mandloi Vs. State of Rajasthan & Ors.)
4. S. B. Civil Writ Petition No. 15155/2009
(Ravinder Nath David Vs. State of Rajasthan & Anr.)
5. S. B. Civil Writ Petition No. 15578/2009
(Dinesh Kumar Goyal Vs. State of Rajasthan & Ors.)
6. S. B. Civil Writ Petition No. 15611/2009
(Mul khraj Suneja Vs. State of Rajasthan & Anr.)
7. S. B. Civil Writ Petition No. 15182/2009
(Gopal Lal Sharma Vs. State of Rajasthan & Ors.)
8. S. B. Civil Writ Petition No. 15183/2009
(Ram Swaroop Gupta Vs. State of Rajasthan & Ors.)
9. S. B. Civil Writ Petition No. 15396/2009
(Surendra Kumar Yadav Vs. State of Rajasthan & Anr.)
10. S. B. Civil Writ Petition No. 15486/2009
(Bantesh Kumar Saini Vs. State of Rajasthan & Anr.)
11. S. B. Civil Writ Petition No. 15499/2009
(Jagdish Prasad Verma Vs. State of Rajasthan & Anr.)
12. S. B. Civil Writ Petition No. 15508/2009
(Bhebha Ram Gurjar Vs. State of Rajasthan & Anr.)
13. S. B. Civil Writ Petition No. 16113/2009
(Bhagwan Singh Vs. State of Rajasthan & Ors.)
14. S. B. Civil Writ Petition No. 15671/2009
(Bhanwari Lal Khulari Vs. State of Rajasthan & Ors.)
15. S. B. Civil Writ Petition No. 15514/2009
(Poonam Chand Ahari Vs. State of Rajasthan & Ors.)
16. S. B. Civil Writ Petition No. 15559/2009
(Brij Mohan Saini Vs. State of Rajasthan)
17. S. B. Civil Writ Petition No. 15565/2009
(Jai Singh Solanki Vs. State of Rajasthan & Anr.)
18. S. B. Civil Writ Petition No. 15580/2009
(Jagmohan Lal Gurjar Vs. The Secretary to Govt. & Anr.)
19. S. B. Civil Writ Petition No. 15625/2009
(Abdul Rahim Khan Vs. The Secretary to the Govt. & Anr.)
20. S. B. Civil Writ Petition No. 15192/2009
(R. N. Bhargava Vs. State of Rajasthan & Ors.)

21. S.B. Civil Writ Petition No. 15193/2009
(Bhanwar Singh Rathore Vs. State of Rajasthan & Ors.)
22. S.B. Civil Writ Petition No. 15217/2009
(Prakash Chandra Gautam Vs. State of Rajasthan & Anr.)
23. S.B. Civil Writ Petition No. 15635/2009
(Zaffar Mohammad Khan Vs. State of Rajasthan & Ors.)
24. S.B. Civil Writ Petition No. 15706/2009
(Devendra Kumar Jain Vs. State of Rajasthan & Anr.)
25. S.B. Civil Writ Petition No. 15710/2009
(Shri Priyavrit Joshi Vs. State of Rajasthan & Ors.)
26. S.B. Civil Writ Petition No. 15737/2009
(Ram Swaroop Vs. State of Rajasthan)
27. S.B. Civil Writ Petition No. 15767/2009
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28. S.B. Civil Writ Petition No. 15849/2009
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29. S.B. Civil Writ Petition No. 16068/2009
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(Syed Tayyab Ali Vs. State of Rajasthan & Ors.)
31. S.B. Civil Writ Petition No. 16112/2009
(Ram Gopal Saini Vs. State of Rajasthan & Ors.)
32. S.B. Civil Writ Petition No. 16114/2009
(Ram Swaroop Sahu Vs. State of Rajasthan & Anr.)
33. S.B. Civil Writ Petition No. 15870/2009
(Om Prakash Vs. State of Rajasthan & Ors.)
34. S.B. Civil Writ Petition No. 15859/2009
(Syed Aziz Naqvi Vs. State of Rajasthan & Ors.)
35. S.B. Civil Writ Petition No. 15821/2009
(Narendra Singh Hada Vs. State of Rajasthan)
36. S.B. Civil Writ Petition No. 15820/2009
(Nemi Chand Garg Vs. State of Rajasthan)
37. S.B. Civil Writ Petition No. 15075/2009
(Badri Prasad Bhardwaj Vs. State of Rajasthan)
38. S.B. Civil Writ Petition No. 14910/2009
(Surendra Kumar Vs. State of Rajasthan & Anr.)
39. S.B. Civil Writ Petition No. 14863/2009
(Jagdeesh Prasad Gupta Vs. State of Rajasthan & Anr.)
40. S.B. Civil Writ Petition No. 14861/2009
(Sita Ram Gupta Vs. State of Rajasthan & Anr.)
41. S.B. Civil Writ Petition No. 14862/2009
(Ramesh Chandra Sharma Vs. State of Rajasthan & Anr.)
42. S.B. Civil Writ Petition No. 15019/2009
(Bashir Mohd. Multani Vs. State of Rajasthan & Anr.)

43. S.B. Civil Writ Petition No. 15031/2009
(Vijay Singh Vs. State of Rajasthan)
44. S.B. Civil Writ Petition No. 14981/2009
(Jagdish Gupta Vs. State of Rajasthan & Anr.)
45. S.B. Civil Writ Petition No. 14980/2009
(Hemant Kumar Yogi Vs. State of Rajasthan & Anr.)
46. S.B. Civil Writ Petition No. 14990/2009
(Kailash Chandra Namdharani Vs. State of Rajasthan & Anr.)
47. S.B. Civil Writ Petition No. 14968/2009
(Surendra Kumar Vs. State of Rajasthan & Anr.)
48. S.B. Civil Writ Petition No. 14985/2009
(Dinesh Kumar Avasthi Vs. State of Rajasthan & Ors.)
49. S.B. Civil Writ Petition No. 14984/2009
(Girraj Singh Vs. State of Rajasthan & Anr.)
50. S.B. Civil Writ Petition No. 15177/2009
(Ghanshyam Sharma Vs. State of Rajasthan & Anr.)
51. S.B. Civil Writ Petition No. 15315/2009
(Satish Kumar Sharma Vs. State of Rajasthan & Anr.)
52. S.B. Civil Writ Petition No. 15316/2009
(Virendra Kumar Agarwal Vs. State of Rajasthan & Anr.)
53. S.B. Civil Writ Petition No. 15314/2009
(Manoj Kumar Arya Vs. State of Rajasthan & Anr.)
54. S.B. Civil Writ Petition No. 14660/2009
(Ashok Kumar Agarwal Vs. State of Rajasthan)
55. S.B. Civil Writ Petition No. 14201/2009
(Bal Mukund Khandelwal Vs. State of Rajasthan & Ors.)
56. S.B. Civil Writ Petition No. 14946/2009
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57. S.B. Civil Writ Petition No. 14931/2009
(Chandra Prakash Sharma Vs. State of Rajasthan)
58. S.B. Civil Writ Petition No. 14932/2009
(Krishan Gopal Sharma Vs. State of Rajasthan)
59. S.B. Civil Writ Petition No. 14909/2009
(Umesh Pal Vs. State of Rajasthan)
60. S.B. Civil Writ Petition No. 14912/2009
(Mahaveer Singh Vs. State of Rajasthan & Anr.)
61. S.B. Civil Writ Petition No. 14911/2009
(Sitaram Nosadar Vs. State of Rajasthan & Anr.)
62. S.B. Civil Writ Petition No. 14913/2009
(Bal Govind Soni Vs. State of Rajasthan & Anr.)

DATE OF ORDER :

December 18th, 2009

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Dr. Mahesh Sharma, Mr. Munish Kumar Sharma, Mr. S.K. Gupta, Mr. Sudarshan Laddha, Mr. Sunil Kumar Singodiya, Mr. Pushpendra Pal Singh, Mr. Biri Singh Sinsinwar, Mr. Gajendra Singh Rathore, Mr. Sharad Purohit, Mr. Raunak Singhvi, Mr. Narendra Singh Dhaka, Mr. R.K. Mathur, Mr. Ajay Kumar Bajpai, Mr. Ram Kumar Sharma, Mr. Omveer Singh Saini, Mr. Amit Singh Shekhawat, Mr. Susheel Sharma, Mr. Arvind Kumar Pareek, Mr. Sanjay Kumar Sharma and Mr. M.K. Jain, Advocates for the petitioners.

Mr. N.A. Naqvi, Addl. Advocate General.
Mr. S.D. Khaspuria, Addl. Government Counsel.

Reportable :

BY THE COURT :

In all the above writ petitions, common question of law on the basis of similar facts is involved, therefore, all these writ petitions are being decided by this common order while taking into consideration facts in S.B. Civil Writ Petition No.15119/2009, Smt. Asha Bhansali Vs. State of Rajasthan & Others.

The case of the petitioner is that he was appointed as Notary under the provisions of the Notaries Act, 1952 (hereinafter, to be called "the Act of 1952") and Notaries Rules, 1956 (hereinafter, to be called "the Rules of 1956"). The petitioner was authorized to practise as Notary in Jaipur city for a period of five years. Said order/certificate of authorization was issued on 28.07.2003. As per the petitioner, she was authorized to practise throughout

Jaipur city and as per the provisions for renewal, before the expiry of the time, an application was moved by the petitioner on 07.07.2008 for renewal of the term as Notary and she has deposited the requisite fee of Rs.500/-.

After submitting the application for renewal, the Deputy Secretary, Law, Government of Rajasthan, Jaipur sent letter to the District Judge, Jaipur requiring certain information about petitioner with regard to renewal of her licence. The District Judge, Jaipur City sent communication on 13.08.2008 to the petitioner to furnish relevant record and register. After receiving the said communication, the petitioner produced all relevant record but, all of a sudden, the petitioner received communication dated 13.11.2009, Annex.-6, in which, the petitioner was intimated about amendments made from time to time in the Act of 1952 and Rules of 1956 and, further, the petitioner was directed to stop the work of Notary with immediate effect since the State Government has decided not to renew the authorization certificate of the petitioner as Notary. The petitioner has placed on record the said communication dated 13.11.2009.

In the communication dated 13.11.2009, it is stated that a decision has been taken by the Government as per relevant amendment in the Act of 1952 and Rules of 1956

not to renew the Notary authorization certificate and petitioner has been restrained from working as Notary with immediate effect.

Learned counsel for the petitioner while attacking upon the order impugned dated 13.11.2009 submits that there is complete procedure laid down in the Act of 1952 and Rules of 1956 to renew the licence after completion of the relevant formalities by the existing Notary. The removal can be made from the register by the Government as per Section 10 of the Act of 1952 and as per Section 5 (2) of the Act, the Government appointing the Notary, may, on receipt of application and prescribed fee, is under obligation to renew the certificate of any Notary for a period of five years at a time.

Further, there is power left with the Central Government under Section 15 to frame rules for renewal of certificate of practice as Notary; and, in exercise of power conferred under Section 15, rules were framed known as Notaries Rules, 1956, according to which, procedure is laid down for entertaining application for appointment of Notary under Rule 8. Under Rule 9 of the Rules of 1956, there is procedure for depositing fee for renewal of certificate of practice as Notary.

Contention of learned counsel for the petitioner is

that petitioner has deposited Rs.500/- and filed application within time for renewal, therefore, State Government was under obligation to renew the certificate of notary in favour of the petitioner. Of course, name of any candidate can be removed at any stage by the Government under Section 10 from the register upon certain grounds which are not in existence in this case. The State Government has arbitrarily rejected the application filed by the petitioner for renewal, that too, without providing any opportunity of hearing to the petitioner, therefore, the order impugned suffered from arbitrariness and illegality. As such, it is prayed that order impugned dated 13.11.2009 may be quashed and set aside.

Learned counsel for the petitioner invited my attention towards judgments reported in AIR 1991 Kerala 225 and 1996 (2) WLC 158. It is submitted by learned counsel for the petitioner that in view of the above judgments, order impugned deserves to be quashed and petitioner is entitled to the relief for quashing order impugned, Annex.-6 dated 13.11.2009.

Per contra, learned counsel for the respondents while inviting attention of this Court towards the reply submits that although the petitioner was given certificate and appointed as Notary under the provisions of the Act and

Rules; but, after expiry of the term, as per provisions of the Act, the petitioner was required to file application for renewal. It is contended that application for renewal of authorization certificate was filed but, in view of the amendment made in the Notary Act, 1952 and the rules made thereunder, a decision was taken by the State Government not to renew the authorization certificate, therefore, the order impugned has been passed.

Learned counsel for the respondents submits that amendment was made vide notification dated 17.12.1999 in Section 5, sub-section (2) and substituted by new provision which reads as under :

"5. Entry of names in the Register and issue or renewal of certificates of practice.-

(1)

(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."

After providing above amendment, in place of word "shall", the word "may" was substituted, in which, it was earlier mandatory for the Government to renew the certificate of practice; but, after amendment, the provision has been

made directory and discretionary. Now, it is not obligatory to grant renewal of certificate of practice. Thus no right vests in the petitioner to get her certificate of practice renewed. Learned counsel for the respondents submits that mere depositing the renewal fee and filing application for renewal of certificate of practice as notary does not create any right that petitioner is entitled for renewal of the certificate of practice.

In para 12 of the reply, it is stated by the respondent State that the Central Government while exercising power conferred under Section 15 of the Act of 1952 amended the Notaries Rules, 1956 and, vide notification dated 14.02.2009, amendments were made in Rules 4, 6, 7 and new Rule 7A was incorporated and Rule 8 has been amended. The Rules of 1956 were further amended vide notification dated 24.09.2009 and certain amendments were made in Rule 4 and Rule 7A of the Rules. Rule 8B is with regard to renewal of certificate of practice and the same is reproduced in the reply at page 11, which runs as 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."

While inviting attention of this Court towards Section 5(2) of the Act of 1952 and Rule 8B of the Rules of 1956, it is submitted by learned counsel for the State that in both provisions discretionary powers have been given to the State Government either to renew the certificate of practice or to reject the application for renewal of certificate for practice as notary. There is no absolute right of the petitioner for renewal of the certificate for practice. Under Section 5(2) of the Act of 1952, earlier word "shall" was incorporated but, after amendment, it is substituted by word "may", therefore, the petitioner cannot claim renewal as a matter of right to practice as Notary. The action of the State Government cannot be questioned because a conscious decision has been taken by the State Government not to renew the certificates of all the practicing Notaries whose period has expired and, now, after amendment, the Notaries shall be appointed as provided under the amended rules. The question of evil or civil consequences does not arise in the case because the Government has now decided to appoint Notaries in

accordance with the amended provisions whereunder new procedure has been laid down for providing equal opportunity to get appointment as Notary to all the Advocates eligible for appointment as per the amended rules, which is in conformity with the requirement of Article 14 of the Constitution. The petitioner cannot claim renewal as a matter of right. As such, there is no force in this writ petition. The decision taken by the Government is in consonance with the provisions of law.

After hearing both the parties and considering the entire record of the case, my adjudication in the matter is as follows :

Admittedly, the petitioners in all these writ petitions are possessing the certificate of Notary issued by the Law & Parliamentary Affairs Department, Government of Rajasthan, Jaipur and all the petitioners filed application for renewal and deposited the fee as provided under Rule 9 of the Rules of 1956; meaning thereby, applications have been filed by the existing Notaries for renewal which have been rejected by verbatim decision in all these cases not to renew the licence.

For the purpose of deciding these case, it is worthwhile to observe that according to Notaries Act, 1952, there is power to appoint Notary left with the

Government and as per Section 5, entries of the names in the register is required to be made and renewal is also provided under the said Section. Under Section 5(2), the Government appointing the notary, may, on receipt of application and prescribed fee, renew the certificate of practice of any Notary for a period of 5 years at a time.

Under Section 10 of the Act of 1952, removal of the names from register is provided. Section 10 of the Act of 1952 reads as follows :

"10. Removal of names from Register.-The Government appointing any notary may, by order, remove from the Register maintained by it under section 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 an 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."

Admittedly, none of the reasons is in existence for denial of

renewal in the impugned order passed by the Government.

It is true that amendment was made by the Central Government vide notification dated 24.12.2009, whereby, certain amendment and insertions were made, according to which, amendment was made in Rule 8 of the Rules of 1956, which reads as under :

"In rule 8 of the said rules, in sub-rule (1), for the words, "On receipt of the report of the Competent Authority the appropriate Government shall consider the report and shall.....", the words, "On receipt of the recommendations of the interview board the appropriate Government shall consider the recommendation and shall....."

meaning thereby, earlier there was provision that at the time of appointment on receipt of the report of the competent authority, the appropriate Government was to consider the report; but, now, after amendment, it is provided that on receipt of recommendation of the interview board, the appropriate Government is required to consider the recommendation of the interview board. As per the reply of the State Government, the decision has been taken on the basis of the above amendment and it has been decided not to renew any licence and to appoint a committee for providing fresh appointment of notaries vide order dated 17.09.2009 which is placed on record as

Annex.-R/2 and applications have been invited vide Annex.R/3 dated 11.11.2009.

In my opinion, the so called amendment has been made in Rule 8(1) of the Rules, under which, appointment of Notary is provided and the above amendment is for the fresh appointment of Notary and not for renewal. For the renewal, in the reply of the State Government, Section 5 (2) of the Act of 1952 and Rule 8B of the Rules of 1956 have been incorporated which is already reproduced in this judgment also; meaning thereby, the applicability of the amendment so made in Rule 8(1) by the Central Government dated 24.02.2009 does not arise. Obviously, upon perusal of the notification, it is revealed that said amendment has been made for the purpose of fresh appointment and not for the purpose of renewal of the certificate of practice. Therefore, although discretion is left with the Government under Section 5(2) and under Rule 8B of the Rules of 1956, the State Government cannot remove or deny renewal if the case of the Notary does not fall under Section 10 of the Act of 1952.

Upon perusal of the impugned order dated 13.11.2009, it is abundantly clear that it has not been passed on the ground that petitioner has acquired disqualification for removal of his name from the register,

but, order impugned has been passed on the basis of so called decision taken by the Government. In my opinion, the decision of the Government is not in consonance with the provisions of the Act of 1952 and Rules of 1956 because discretion given by using the word "may" is required to be exercised judiciously and as per provisions of the Act of 1952 and Rules of 1956.

Here, in this case, though provisions of renewal are in existence and not deleted in the Act of 1952 and Rules of 1956, then, how the renewal application can be rejected by the Government unless the case of the petitioner falls under the disqualification clause under Section 10 of the Act of 1952. In this view of the matter, the decision taken by the Government can be made applicable for fresh appointment and not for the purpose of renewal of the certificate of practice, therefore, no application can be rejected on the ground of such decision which is contrary to the Act of 1952 and Rules of 1956.

As a result of the foregoing discussion, all these writ petitions are allowed. Orders impugned in all the writ petitions issued by the Government declining to renew the certificate of practice as Notary are hereby quashed and set aside. The State Government is directed to decide the applications for renewal of certificate of practice as Notary

afresh and, at the time of deciding the applications, the State Government can take into consideration Section 10 of the Act of 1952, wherein, reasons for removal of the name from the register is provided. In that event also, at least, reasonable opportunity of hearing shall be granted to the applicant who has filed application for renewal.

There shall, however, be no order as to cost

(Gopal Krishan Vyas) J.

Ojha, a.