

(2008) 11 KL CK 0053

In the High Court Of Kerala

Case No : Writ Petition (C) No. 34610 of 2008

Abraham K. Mathew and Another

APPELLANT

Vs

Returning Officer to Thariodu and Others

RESPONDENT

Date of Decision : 16-11-2008

Acts Referred:

Citation : (2008) 11 KL CK 0053

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : P.N. Mohanan, for the Appellant; K.C. Santhoshkumar, Government Pleader and P.C. Sasidharan, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—The second Petitioner's name was included in the list of members eligible to vote, prepared and submitted to the Electoral Officer by the chief executive of the third Respondent—a co-operative society, as approved by its committee. The Electoral Officer called for objections, if any, to that list. In the final voters' list, the second Petitioner's name did not appear. Whatever be the ground for her removal from the voters' list, that is an issue which could be taken care of by the competent statutory authorities.

2. Learned Counsel for the Petitioners argued that Clause 4 of Rule 35A of the Kerala Co-operative Societies Rules, 1969, hereinafter, the "Rules", for short, is not in pari materia with the provisions in Rule 35 regarding consideration of objections to the voters' list and therefore the ratio of the decision of the Division Bench of this Court in Kerala State H.W. Co-operative Society Ltd. v. Vadakke Madom Bhahmaswom 1996 (1) KLT 282 does not apply. The argument is that while Rule 35 provides for consideration of the objections and the eligibility of the member to vote, such terms are not explicitly provided in Clause 4 of Rule 35A. It is accordingly argued that the quality of authority of the Electoral Officer in the course of consideration of objections to the preliminary voters' list in terms of Rule 35A(4) is not the same as that of the Returning

Officer empowered to consider objections in terms of Rule 35.

3. It is true that Rule 35A does not use the words "consideration of objections" or "eligibility of members". But a reading of Rule 35A(4) would show that the Electoral Officer shall be responsible for publication of the list of members qualified to vote in the election, in accordance with the provisions of the Act, Rules and Bye-laws. That qualification is to be determined as on a date 60 days prior to the date fixed for the poll. The chief executive of the society is duty-bound to prepare and update the list as per Rules and submit the voters' list duly approved by the committee, to the Electoral Officer. The Electoral Officer, then publishes the preliminary voters' list and is duty-bound to call for objections, if any, to that. He is to publish the final voters' list fifteen days prior to the date fixed for the poll. The final list has to be published in the head office and branches of the concerned society. The chief executive thus prepares what is statutorily called "preliminary voters' list" and the Electoral Officer prepares and publishes the "final voters' list". The comment in the opening part of Clause 4 of Rule 35A is that the Electoral Officer shall be responsible for the publication of the list of members "qualified to vote" in accordance with "the provisions of the Act, Rules and Bye-laws". The Electoral Officer, after publishing the preliminary voters' list, is to call for the objections and then he has to publish the final voters' list. Calling for objections to a preliminary voters' list and the obligation to publish the final list coupled with the duty and responsibility to publish the list of members, who are "qualified to vote" abundantly demonstrate that "calling for objections" is not an empty formality but is intended to achieve the results that would enable the Electoral Officer to discharge his statutory function in terms of the responsibility to publish the list of members who are qualified to vote. Therefore, any objection relatable to the qualification to vote, if raised on publication of the preliminary voters' list, shall be considered by the Electoral Officer. The resultant decision would reflect in the final voters' list. If I were to assume that the legislature has consciously excluded from Clause 4 of Rule 35A, the requirement to consider the objections and also the eligibility to vote, I am afraid that I would be taking the wind off the sails of the Electoral Officer bestowed with the authority and the statutory obligation to call for objections to the preliminary voters' list. He would then be just obliged to call for objections as if it were an empty formality and leave matters there. Precision, finality and conclusions on controversies are the necessary goals that have always to be maintained and ensured in the electoral process. Therefore, the decision of the Division Bench (*supra*) applies in all force to cases coming under Rule 35A also.

4. Having held as above, the question whether the second Petitioner's name was to continue in the final voters' list is not a matter which deserves to be adjudicated upon on facts, by the writ court, on the eve of the election.

5. In so far as the first Petitioner is concerned, this lis depends upon the outcome of the entitlement of the second Petitioner to be included in the final voters' list. The mere fact that the first Petitioner had submitted the nomination as seconded

by the second Petitioner would not prompt this Court to go into the question of the legality of the removal of the second Petitioner's name from the final voters' list. This is for the simple reason that Rule 35A(6)(b) states that every nomination paper shall be signed by two members whose names are included in the voters' list thereby meaning, the final voters' list that comes out in Form 35 following the process prescribed in Sub-rule 4 of Rule 35A. In the case in hand, the final voters' list does not contain the name of the second Petitioner. The date fixed for filing nomination was obviously after the publication of the final voters' list. Any bona fide and reasonably prudent common man who submits nomination for the election has to first ensure that the person who proposes and the one who seconds the nomination are included in the final voters' list. Having not even done that, the first Petitioner cannot claim that the second Petitioner's entitlement to be included in the final voters' list ought to be adjudicated.

In the result, the writ petition fails and is accordingly dismissed. No costs.