
(2023) 11 KL CK 0102
In the High Court Of Kerala
Case No : Writ Appeal No. 1921 Of 2023

Advocate Rajesh Kumar C.

APPELLANT

Vs

Prasad M. Cherian

RESPONDENT

Date of Decision : 10-11-2023

Acts Referred:

Kerala Co Operative Societies Act, 1969 — Section 69, 69(2)(c)

Citation : (2023) 11 KL CK 0102

Hon'ble Judges : Anu Sivaraman, J; C. Pratheep Kumar, J

Bench : Division Bench

Advocate : Nisha George, George Poonthottam, Arun Chandran, T.P. Pradeep, C.M. Nazar

Final Decision : Dismissed

Judgement

Anu Sivaraman J.

1. Heard the learned Senior Counsel for the appellant as well as the learned counsel appearing for respondents 1 to 9, the learned standing counsel appearing for respondents 10 and 11 as well as the learned counsel appearing for the 12th respondent Society.

2. This appeal is preferred against the judgment of the learned single Judge refusing to exercise jurisdiction in the matter of acceptance of nominations of the contesting party respondents herein for contesting the elections to the Managing Committee of the 12th respondent society. It is contended by the learned Senior Counsel for the appellants that out of the 30 nominations submitted, the Returning Officer published a list of 28 candidates, whose names were liable to be accepted. As evidenced by Exhibit R12(n) communication dated 16.10.2023, the Secretary of the Society was required to forward the details of disqualification, if any, under the Cooperative Societies Act, Rules or the bylaws of the Society in the case of the persons named in the list. It is submitted that the 12th respondent forwarded Exhibit P4 communication dated 17.10.2023

pointing out the details. Exhibit P4 would show that respondents 1 to 9 were disqualified for contesting the election. However, in spite of Exhibit P4 communication and Exhibit P6 objections submitted by the appellants, the nominations of respondents 1 to 9 were accepted.

3. The learned Senior Counsel appearing for the appellants would contend that in view of the fact that no further enquiry was required at the hands of the Returning Officer and since it was apparent that respondents 1 to 9 in the writ petition clearly suffered disqualification for contesting the election, the act of the Returning Officer in having accepted the nominations was clearly illegal. It is, therefore, contended that the said question ought to have been considered by the learned single Judge and the judgment, inasmuch as it relegates the appellants to the appellate remedy under Section 69 of the Act, which is far from efficacious, is completely unjustified.

4. Reliance is placed on the decisions of Division Bench of this Court in *Abraham v. Returning Officer* [1993 KHC 90] and *Prodair Air Products India Private Limited v. State of Kerala* [2023 (3) KHC 1]. A decision of the Bombay High Court in *Sulaiman Fakruddin Ansari v. S.B.Kulkarni* [AIR 1963 Bom183] as also a recent decision of a Division Bench of this Court authored by one among us (Anu Sivaraman J) in W.A.No.1719 of 2023 is also relied on. It is contended that the election would stand compromised if ineligible persons are permitted to contest the elections and that in such circumstances, the learned single Judge ought to have interfered with the illegal orders of the Returning Officer. It is further contended that the finding of the learned single Judge that there are disputed questions of fact involved is also totally unjustified and incorrect.

5. The learned counsel appearing for the respondents contends that the contesting party respondents had disputed Exhibit P4 and had raised specific contentions with regard to their eligibility. It is contended that the 9th respondent had raised a contention that he had approached the Secretary to accept deposits, but the Secretary declined to accept the same. It is contended that the deposit had been accepted before the nomination was submitted which is sufficient for a valid nomination. It is contended that respondents 7 and 8 had raised specific contentions that they were not served with notices from the bank and that the notice issued by the Sale Officer is not sufficient to disqualify them. It is argued that the decisions relied on by the learned counsel for the appellants are all in respect of cases where nominations were illegally rejected by the Returning Officer. It is only in such cases that this Court has exercised jurisdiction. It is contended that even the last decision relied on is a matter of rejection of nomination. It is stated that since the question whether the party respondents were qualified and eligible to vote at the election is a clear question of fact and since the said question could not have been decided by the Returning Officer in the time available for scrutiny of nominations, there was no error in acceptance of the nominations or in the judgment of the learned single Judge.

6. The learned Government Pleader as well as the learned standing counsel for

the State Cooperative Election Commission would support the contentions of the contesting party respondents. It is argued that the consequence of interference in the orders of the Returning Officer would be an interference in the election process which is not contemplated in the exercise of the powers of judicial review.

7. Section 69 of the Cooperative Societies Act provides for a specific machinery for resolution of disputes in respect to a cooperative society. Section 69(2)(c) provides that any dispute arising in connection with the election of the Board of Management or any officer of the society shall also be deemed to be a dispute. Such dispute is to be referred to the Cooperative Arbitration Court within one month from the date of the election. It is, therefore, clear that there is specific power in the Cooperative Arbitration Court to consider any dispute with regard to conduct of election to the Managing Committee of the Society.

8. In the decisions relied on by the learned counsel for the appellant that is, the decision in Abraham v. Returning Officer as well as the judgment in W.A.No.1719 of 2023, the questions raised were with regard to the rejection of nominations of members eligible to contest the election. Even in a case where there is an alternate remedy available, the existence of an alternate remedy per se would not be a bar for entertainment of a writ petition. This Court in Prodair Air Products India Private Limited v. State of Kerala has clearly held that where the controversy is a purely legal one and does not involve questions of fact, but only questions of law, then the writ petition should not be dismissed on the ground of the availability of an alternate remedy.

9. The availability of an alternate remedy, therefore, is a matter to be considered by the writ court exercising the power of judicial review taking note of the specific factual and legal situations available in the case on hand.

10. The learned counsel for the respondents has placed reliance on the Bench decisions of the Apex Court in Shaji K Joseph v. V. Viswanath and others [2016 (2) KHC 33] and of this Court in Subramanian v. Devicolam Taluk Plantation Workers Cooperative Credit Society [2004 KHC 1392].

11. In Subramanian v. Devicolam Taluk Plantation Workers Cooperative Credit Society it is was held that a dispute which arose during the scrutiny of the nomination papers with regard to the eligibility of the contesting respondents to contest the election was a question which is liable to be raised under Section 69 of the Cooperative Societies Act.

12. In Kuttiyachan Joseph and another v. P.V.Manoharan and others [2018(4) KHC 14] this Court found that the instance of rejection of nomination papers was a matter which could be considered in a writ petition, but errors having the effect of interfering with the free flow of a scheduled election cannot be so considered and should be raised in an election dispute. It was held therein as follows:-

"The invalidation of the act of the Returning Officer who accepted the nomination even if on doubtful grounds would certainly impede the process of election and

does not in any manner smoothen it.”

13.The decision in Jayavarma K v. State Co-operative Election Commission and others [2017 (2) KHC 190] where an observation to the same effect had been rendered is also placed before us. It is contended that though the operative directions in the said judgment had been set aside by the Apex Court, the findings with regard to the availability of an efficacious alternate remedy under Section 69(3) of the Act was not interfered with.

14.The decision of the Gujarat High Court in Raghubhai Munjibhai Mungra v. Jamnagar District Co-opertive Bank Ltd and others [2021 KHC 5777] is also relied on to contend that the acceptance of a nomination by the Returning Officer can be challenged only in an election dispute and not before a writ court. It was held as follows:-

“As could be immediately noticed, the improper rejection or acceptance of nomination paper is one of the clear grounds mentioned in the Rule for declaring the election to be void. It is therefore permissible for the petitioner to get adjudicated his objections to the acceptance of nomination of respondent No.5 and challenging his election by filing the election petition.”

15.The same view has been expressed by the Apex Court in Shri.Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another v. State of Maharashtra and others [2001 KHC 1667], which has been referred to by the learned single Judge in the judgment under appeal.

16.Having considered the contentions advanced and in view of the fact that what is under challenge is a decision of the Returning Officer refusing to reject the nominations, we are of the opinion that the said issue is to be agitated by the appellants by raising a dispute after elections are over. We notice that the learned single Judge had considered all the questions raised before him and come to the conclusion that in view of the fact that what was under challenge was an order refusing to reject nominations, the matter could not have been considered in the writ petition and that questions of fact arise which are liable to be considered in an election petition.

17.In the light of the decisions relied on, we are of the opinion that the said finding cannot be said to be vitiated in any manner. The writ appeal fails and the same is accordingly dismissed.