

---

**(2001) 06 KL CK 0034**

**In the High Court Of Kerala**

**Case No : W.A. No. 2314 of 1998 and connected cases**

Alibava

APPELLANT

Vs

Returning Officer

RESPONDENT

---

**Date of Decision :** 21-06-2001

**Acts Referred:**

**Citation :** (2001) 3 ILR (Ker) 6 : (2001) 2 KLJ 286

**Hon'ble Judges :** T.M. Hassan Pillai, J;P.K. Balasubramanyan, J

**Bench :** Division Bench

**Advocate :** T.R. Ramachandran Nair, P. Ravindran and T. Krishnanunni, for the Appellant; M. Sasindran, M.R. Rajendran Nair, K. Ramakumar, T. Ramprasad Unni and M.R. Sabu, Government Pleader, for the Respondent

**Final Decision :** Dismissed

---

## **Judgement**

P.K. Balasubramanyan, J.—These Writ Appeals are filed by the petitioners in O.P.Nos. 20144 of 1998, 19543 of 1998 and 20195 of 1998 respectively. The petitioners, the appellants had filed nominations for election to the managing committee of the second respondent Co-operative Society. The Society had adopted a form of nomination. That form included an affidavit to be sworn by the intending candidate, to be signed by the candidate and to be attested by one of the officers referred to therein. In the case of the petitioners, the appellants in all these cases, the affidavits were not signed by them. The result was that on objections being raised, the Returning Officer rejected their nominations. Feeling aggrieved by that rejection, they filed the Original Petitions before this Court. Two learned single Judge of this Court rejected the challenge of the potations, the appellant, on the ground that the rejection of the nominations by the Returning Officer was justified in view of the fact that the petitioners, appellants, had failed to sign the affidavits that were part of the nomination papers. The correctness of the view thus taken by the learned Single Judge is challenged in these Writ Appeals.

2. It may be noted that on the rejection of the nomination of the appellants

herein, the only other set of nominations were accepted and those candidates were declared elected to the Managing Committee by the Returning Officer. Those thus declared elected are also sought to be impleaded in the Writ Appeals. Those Petitions are not opposed and they have been impleaded as additional respondents. The appellants have made a further prayer at the hearing that if the case of the appellants were to be upheld by this Court, the declaration of the election of those candidates may be set aside by this Court. This is on the basis that they had been declared elected during the pendency of these proceedings.

3. Under S. 27 of the Kerala Co-operative Societies Act the final authority of a society vests in its general body. Under S. 28 of the act, the general body can appoint a managing committee for a period not exceeding five years (as recently amended) in accordance with the bye-laws of the society and entrust the management of the affairs of the society to that committee. Under S. 29 of the Act, the annual general body meeting of the society had also to elect in the prescribed manner the members of the committee other than the nominated members. It is pursuant to this that the election was proposed to the concerned Co-operative Society. R. 35 of the Co-operative Societies Rules framed in exercise of the powers conferred on the Government under S. 109 of the Act, deals with the procedure regarding the conduct of election to the committee of societies. R. 35(3)(a) of the Rules contemplates the giving of the intimation regarding the details of election of the members of the committee by the Returning Officer, after the society had resolved to hold the election, fixed a date for the same and the Registrar had appointed a Returning Officer for the conduct of the election. The committee in office has also to prepare a list of members qualified to vote at the election and the list was to be supplied by the society to any member on payment of the prescribed fees. Under R. 35(3) (c)(i) of the Rules, the nomination of the candidates for the election had to be made in the form prescribed by the society, which on application shall be supplied free of cost by the committee to the member who seeks it. Clause (ii) provides that every nomination paper shall be signed by two members whose names are included in the list of members as proposers. The nomination should also contain a declaration signed by the candidate to the effect that he is willing to stand for the election. Clause (d) of R. 35(3) provides that no member shall be nominated as a candidate for the election to the committee of the society if he is ineligible to vote or if he does not possess the necessary qualifications specified in the bye-laws of the society or is qualified to be a member under the provisions of the Act and the Rules. It may be noted that in terms of R. 35(3) (i) of the Rules, the societies had to prescribe a form, in which the nomination of candidates for election shall be made. Some confusion appears to have arisen in respect of the form to be adopted for prescribed by the societies. This led to issuance of Circular No.3/71 dated 28.4.1971 by the Registrar of Co-operative Societies. This Circular has been produced as directed by this Court in W.A. 2316 of 1998. That Circular stated that as per the existing practice there was no source of information to enable the Returning Officer to decide on his own motion as to the

validity of a nomination paper. That difficulty can be removed if the candidate himself furnishes along with the nomination paper, an affidavit to the effect that he possesses the necessary qualification for the membership of the committee of the society and that he has not incurred any of the disqualifications enumerated in the Kerala Co-operative Societies Act and the Kerala Co-operative Societies Rules. The societies were requested to incorporate such an affidavit in the nomination papers do not contain such an affidavit. This Circular, issued on 28.4.1971, was adopted by most of the Co-operative Societies. It was certainly adopted by the present Co-operative Society. Thus, the nomination form prescribed by the Society contained an affidavit swearing to the facts referred to in that affidavit. That affidavit is produced along with the Original Petition, O.P. 19543 of 1998, as Ext. P4. A look at Ext. P4 shows that it is a solemn affirmation by a candidate that he is not disqualified in any manner from contesting the election to the managing committee of the society. It seeks to specify each qualification and seeks an affirmation by the candidate that he has not incurred any disqualification.

4. In that case on hand, admittedly the petitioners-appellants had not signed the affidavit that was thus made part of the nomination paper. On objection being taken, the Returning Officer rejected the nomination papers on that ground. It was feeling aggrieved by that rejection that the Original Petitions were filed before this Court. It was contended on behalf of the petitioners that the affidavit prescribed by the society or adopted by the society, was not an essential part of the nomination which itself contains a separate declaration as contemplated by the relevant provisions of the Act and the Rules to the effect that the proposed candidate is not disqualified and then the affidavit was a mere surplusage and the non-signing of that affidavit cannot lead to the rejection of the nomination papers. It was alternatively contended that R. 35 of the Rules prescribes the statutory requirements for the making of a valid nomination and if those requirements are fulfilled, a nomination cannot be rejected merely on the ground that a particular society has, in addition to those requirements, added another requirement of an affidavit being sworn to by the proposed candidate. It is also contended that so long as the requirement of filing an affidavit is not made part of the bye-laws of the society in terms of R.5 of the Co-operative Societies Rules, with particular reference to clause (s), it could not be said that it is a mandatory requirement for a valid nomination to sign an affidavit and submit it along with the nomination paper. The learned single Judges, in the judgments under appeal took the view that the affidavit was part of the form adopted by the society in term of the society in terms of the direction contained in R. 35(3)(c)(i) of the Co-operative Societies Rules and hence the affidavit forms an integral part of the nomination paper of a candidate who proposes to contest the election. The Court held that this requirement also becomes part of the statutory requirement since the format or form of nomination is adopted by the society in terms of the mandate contained in R. 35(3)(c)(i) of the Co-operative Societies Rules. In two of the Judgments under appeal, the learned Judge also took note of the fact that

a co-operative society is not a creature of the Co-operative Societies Act or the Rules, but is an association which has come into existence, which is governed by the Act and the Rules and it has the authority to prescribe a format for itself so long as the same does not in any manner conflict with the provisions of the Act and the Rules. Thus holding that the affidavit proposed is part of a valid nomination paper and the failure to sign the affidavit made the nomination paper defective, liable to rejection, the Original Petitions were dismissed.

5. In *Santhosh v. Joint Registrar* (1994(2) KLT 141) a learned single Judge of this Court dealing with the question whether an affidavit was part of a nomination paper, held that the affidavit was part of a nomination paper if it had been prescribed or adopted by the society in question. The learned Judge then held:

"The affidavit sets forth this affirmation in greater detail with specific reference to the various qualifications and disqualifications under the rules and the bye-laws. Though this is the position, and they serve more or less the same purpose, since the affidavit is also a requirement of the form prescribed by the society, necessarily that has also to be properly executed and attested for the purposes of a valid nomination. But that does not mean that any immaterial defect therein should be blown out of proportion to entail rejection of the nomination itself."

In the judgment under appeal in W.A. 2314 of 1998, the learned Single Judge has referred to and followed this decision and has taken the view that the nomination was rightly rejected, since the candidates had not signed the affidavit that was part of the nomination paper.

6. What is contended on behalf of the appellants is that even without the affidavit, the nomination paper prescribed, includes a declaration containing the essential requirements which are elaborated in the affidavit and since that declaration has been duly signed and attested as required, it must be taken that the nomination submitted by the appellants were proper and sufficient in the eye of law especially in the context of R. 35 of the Co-operative Societies Rules. Decisions were cited to suggest that an affidavit may not really be necessary or that an affidavit could be considered to be a surplusage. In *Damodaran v. Joint Registrar* (1989 (I) KLT 858) it was held that non-affixing of the seal of the Advocate in the affidavit cannot lead to rejection of the nomination paper and a rejection on that ground would be improper. In *Abraham v. Returning Officer* (1993 1 KLT 548) one of the cases that was dealt with, was a case where the affidavit had not been signed. Their Lordships set aside the rejection of the nomination paper. But, it can be seen on a scrutiny of that decision that the question was not considered in the context of R. 35(3)(c)(i) of the Rules and the question was not considered in the context of R. 35(3)(c)(i) of the Rules and the question whether the affidavit formed an essential part of the nomination since the format had been adopted by the society, was also not considered. It is, therefore, not possible to understand the decision in *Abraham v. Returning Officer* (1993 (1) KLT 548) as an authority for the position that the affidavit is a surplusage or is unnecessary or its requirement can be dispensed with by a

Returning Officer who is called upon to scrutinise the nomination. In *P. Panicker v. Venugopalan Nair* (1993 (2) KLT 641) it was stated that the proviso to R. 35(3) (e)(ii) of the Rules was not exhaustive and there could be cases outside the proviso. As we noticed, one of the decisions has directly answered the question that was raised before the learned Judges in the Original Petitions, that are the subject matter of these Writ Appeals and that is raised before us in these Writ Appeals. Therefore, the decisions referred to above cannot be relied on for the position that the non-signing of the affidavits by the candidates cannot lead to the rejection of their nomination papers.

7. Neither the Act nor the Rules prescribe any format for a nomination to be made by a member who aspires to become a member of the managing committee of a co-operative society. The rules has left that to the society concerned. It is open to the society to prescribe the necessary form of nomination for election to the managing committee of that society. No doubt, it turned out that due to some confusion or other, clarifications were sought for and certain circulars or instructions were issued by the Registrar of Co-operative Societies. Whatever it be, the nomination paper adopted by the society in question contains not only a declaration in the facing page of the nomination paper, but also an affidavit to be sworn to by the candidate as a part of the nomination paper. No doubt, it is described as "Form of Declaration to be submitted along with Nomination Paper". But, from that description alone, it is not possible to hold that that affidavit is not part of the nomination paper. Infact, with respect, we are inclined to agree with the view of T.L. Viswanatha Iyer, J. in *Santhosh v. Joint Registrar* (1994 (2) KLT 141) on that aspect. In terms of R. 35(3)(c)(i) of the Co-operative Societies Rules, the affidavit has thus become part of the nomination prescribed or adopted by the society concerned. It is, therefore, clear that it is part of the nomination paper and a valid submission of the nomination would include subscribing to the affidavit which we have found to be part of the nomination paper. There is nothing in the Rules or the Act which prevents a society from adopting this form of nomination. As observed by one of the learned Judges in the judgment under appeal, it is open to the general body of a society to prescribe the form of nomination for election to its managing committee. No provision in the bye-law amendment to the bye-law of the society is needed. If so, in these cases, it is clear that the appellants had omitted to sign the affidavit that was part of the nomination paper adopted by the society and in that context, the Returning Officer was fully justified in rejecting those nominations. We find that the view taken by the learned Judges does not call for any interference in this appeal.

8. We may also notice that the affidavit prescribed serves a salutary purpose. The affidavit only insists on the candidate solemnly affirming that he has not incurred the various specified disqualifications contemplated by the Act, the Rules and the bye-laws. The election to the societies in the State are fought in a "no holds barred" fashion. Uprightness and integrity are not the hallmarks of the process. This is clear from the various cases that come before this Court and the

various improprieties alleged as having taken place. It is probably in this context that the Registrar of Co-operative Societies issued Circular 3/71 suggesting that the filing of an affidavit would be necessary and should be adopted by the societies so as to at least pin down the candidates who submit nominations to the facts sworn to by them in that affidavit. Therefore, it cannot be said that the prescribed affidavit is mere surplusage or that it does not serve salutary purpose. We are, therefore, of the view that the affidavit is certainly an essential part of the nomination and it aims at keeping out those who are disqualified from contesting the election, leading to disputes under S.69 of the Co-operative Societies Act, which themselves take years to resolve, so that by the time the resolution takes place, the disqualified person who got elected, could serve out his term as a member of the managing committee. If an attempt is made to eliminate such contingency, it can only be considered as an act in furtherance of the object sought to be achieved by the Act and the Rules. Therefore, we have no hesitation in rejecting the argument that the affidavit is a mere surplusage and it cannot be considered to be an essential or integral part of the nomination paper.

In the light of what we have stated above, we affirm the decisions of the learned Single Judges and dismiss these appeals. We make no order as to costs.