

(1993) 07 KL CK 0022

In the High Court Of Kerala

Case No : O.P. No's. 6406 and 6407 of 1993 Confirmed in WA 1048 of 1993

E. Venugopalan Nair and others

APPELLANT

Vs

Returning Officer and others

RESPONDENT

Date of Decision : 21-07-1993

Acts Referred:

Kerala Co-operative Societies Rules, 1969 — Rule 35(3)(c)

Citation : (1993) 2 KLJ 415

Hon'ble Judges : P.K. Balasubramanyan, J

Bench : Single Bench

Advocate : P.G. Parameswara Panicker and P. Gopal, for the Appellant; Johnson Manayani and Govt. Pleader D. Somasundaram, for the Respondent

Final Decision : Allowed

Judgement

P.K. Balasubramanyan, J.—The dispute in these original petitions relates to the rejection of the nomination papers of the petitioners in these original petitions in the election to the Managing Committee of a Co - operative Society scheduled to be held on 22-5-1993. Respondent No, 13 in O.P. No. 6406 of 1993 is the society and petitioners and respondents 2 to 11 there - in are the members. The petitioners in O.P. No. 6407 of 1993 are also members of the society. The Managing Committee of the society consists of nine members. Ext. P1 election notice was issued by the returning officer showing that nine members are to be elected in the election to be held on 22-5-1993. The time fixed for filing the nomination papers was from 1-5-1993 to 6-5-1993. The scrutiny was to take place on 7-5-1993. The petitioners in these original petitions filed nominations in time. When the nominations were taken up for scrutiny according to the petitioners in O.P. No. 6406 of 1993 twenty nomination papers, were accepted and four nomination papers were rejected in their presence. It is the case of the petitioners in O.P. No. 6406 of 1993 that though the nomination were originally accepted by the returning officer, the returning officer corrected the endorsement of acceptance after they left the office of the society and purported to reject their

nominations on the ground that in the nominations they have not duly filled up the date of the election, When a seconder of one of the nominations one Shabul Hameed came to know of these subsequent rejections he immediately represented to the returning officer that the rejection was improper and that the failure to mention the date of election at the top of the nomination paper could not affect the validity of the nominations. As regards the petitioners in O.P. No. 6407 of 1993 their nominations were rejected on the ground that the serial number in the voter's list of the first petitioner was wrongly shown and the serial number of the second petitioner was also wrongly shown. Ultimately when pressed the Returning Officer gave in writing to the petitioners in O.P. No. 6406 of 1993 the reason for the rejection. The said communication issued by the Returning Officer to the petitioners is produced by the petitioners as Ext. P3 in that original petition. The Learned Government Pleader has made available, the file relating to the dispute. It is seen there from, that the nomination papers of the petitioners in O.P. No. 6406 in 1993 would indicate that originally the word was written and later it was made into and the reason was also added above it namely There is no knowing when exactly this was done, whether as alleged by the petitioners after they had left or even while making the original endorsement in the presence of the petitioners since the Returning Officer originally might have thought of accepting them but on second thoughts might have immediately changed his mind and decided to reject them. In the nature of this case I do not think it necessary to go into that controversy and I intend to proceed on the basis that the Returning officer has rejected the nominations of the petitioners in O.P. No. 6406 of 1993 on the ground that they have not filled in the date of the election at the top of the nomination paper in the space left for that purpose.

2. In O.P. No. 6407 of 1993, as noticed by me the reason for the rejection is the error in the serial number of candidate as far as the first petitioner is concerned and of the seconder as far as the second petitioner is concerned.

3. Mr. Gopal appearing on behalf of the petitioners contended that the omission to indicate the date at the top of the nomination paper or the error in the serial number in the case of the petitioners in O.P. No. 6407 of 1993 are defects which are immaterial and cannot affect the validity of the nominations. He also submits that though this court has not granted a stay of the election, this court has ordered that the newly elected body can take charge only after obtaining specific orders from this court. He also points out that since the nomination papers of all these petitioners were rejected there were only nine valid nominations for the nine seats and therefore it became unnecessary to hold the elections. He submits that it is not as if this court will decline to interfere in an election dispute in every contingency He relies on the decisions of this court reported in Joy v. Joint Registrar (1989-1 KLT 854), Devi v. Commissioner Secretary to Government (1991-1 KLT 819), Ravi v. Kottayam Co-operative Urban Bank Ltd. (1993-1 KLT 644) to contend that if it is apparent from the record that the action of the Returning Officer in rejecting the nominations of the petitioners was erroneous, this court could set aside the election itself and could direct the election to be

held on the basis that the nominations of all the petitioners are valid. Considering the nature of the contentions raised in these original petitions in the light of the principles noticed by the decisions referred to above I think that this is a fit case where this court ought to consider the case of the petitioners on the merits and decide the controversy rather than relegating the petitioners to an Election Petition u/s 69 of the Co-operative Societies Act.

4. Mr. Gopal refers to two important decisions of this court one reported in *Anthrayose. P.K. v. Returning Officer and others* (1992 (2) KLT 489) and the other reported in *Abraham v. Returning Officer* (1993-1 KLT 548). In the first of these cases a seal was affixed instead of writing the name of the Society as contemplated by the stipulation in the nomination paper. The nomination was rejected on that ground. A Division Bench of this court held that; the defect was an immaterial one and could not have enabled the Returning Officer to reject the nomination paper involved in that case. In the second of the cases, in the declaration that accompanied the nomination paper, the date of the election was wrongly shown and that was the reason for the rejection of the nomination paper. This court held that the said defect was not a material one and that the rejection of the nomination paper by the returning officer was clearly erroneous. In the O.P. No. 6406 of 1993 it is case of Mr. Gopal that he had showed the date of the election both in the declaration and the affidavit which accompanied the nomination paper and the mere omission to fill up the date of election at the top of the nomination paper was really immaterial. He also points out that the nomination paper was issued in respect of the election which had been fixed by way of a resolution by the Managing Committee of the society and everyone was aware that the nomination related to that particular election. According to him, the space left at the top of the nomination paper to show the date of election was really a surplusage, and that there was no necessity to specify the date of the election at the top of the nomination paper. Tested in the light of the decisions referred to herein before, it appears to me that the contention of Mr. Gopal is clearly sustainable, Mr. Johnson appearing on behalf of the contesting respondents contended that in the light of Rule 36 (3)(e) of the Rules it could be seen that the nomination of the candidates for election shall be made in the form prescribed by the society which on application shall be supplied by the committee to any member free of costs. He submits that nomination papers issued by the society clearly contain space for entering the date of election and the petitioners having failed to fill up that space by putting the date of the election, the rejection of their nomination by the Returning Officer cannot be said to be illegal or improper. He also submits that in the decision reported in *Abraham v. Returning Officer* (1993 - 1 KLT 548) this court had not considered the effect of this provision, He also points out the proviso occurring after Rule 35 (3) (e) indicates the situation where the defect or omission in the nomination, can be ignored. According to him only in the case of incorrect description of the name or the name of the proposer or seconder the nomination should not be rejected if the identity of the candidate or the proposer or seconder is established beyond

reasonable doubt. He in fact submits that the two decisions regarding these aspects require consideration. I am not satisfied that I would be justified in entertaining this request made by Mr. Johnson, in view of the clear reasoning contained in the two decisions challenged by him and with which I respectfully agree. That apart, Mr. Gopal brings to my notice the decision of the Supreme Court reported in Rangilal Choudhury Vs. Dahu Sao and Others, to point out that if the defect is of a technical nature the same is liable to be ignored. He has also relied on the decisions reported in Shanti Swaroop Sharma Vs. Abdul Rehman Farooqui, and Kalidas Karsanbhai Chavda Vs. Vadodara Jilla Panchayat Elections, in support of this proposition. In the light of the observations contained in the two decisions of our court referred to above and the principles recognised by the decisions referred to just before, I am of the view that the failure of the petitioners in O.P. No. 6406 of 1993 to fill in the date at the top of the nomination paper is not a vital defect and is merely a technical defect. In the recent decision reported in the Newspapers relating to the Vice Presidential election, the Supreme Court has indicated that technical defects in the nomination paper filed do not vitiate the election. I also find that the defect pointed out by the Returning Officer is not material in view of the fact that the date of the election was known to everyone and it had also been shown in the declaration and the affidavit that accompanied the nomination paper. Hence it has to be held that the rejection of the nomination papers of the petitioners in O.P. No. 6406 of 1993 is clearly illegal and the election held after rejecting their nominations had therefore only to be set aside.

5. In O.P. No. 6407, the defect as noted above was only the error in the serial number of the first petitioner and the error in the serial number of the second of the second petitioner when compared with the voter's list. There is no case that there was any dispute of identity either regarding the first petitioner or regarding the second to the second petitioner. In view of this going by the proviso occurring after Rule 35(3)(c) of the Rules and the principles accepted earlier it is clear that the Returning Officer was in error in rejecting the nomination of the petitioners in that case as well. As noticed already no election had to be held on 22-5-1993 in view of the fact that there were only nine candidates for the nine seats after rejection of the nominations of the petitioners in both these original petitions. Now that I have found that the rejection of the nominations of the petitioners in these two original petitions was erroneous, the only alternative open to this court is to set aside the election held on 22-5-1993. This court had stayed the taking charge of the newly elected committee until further orders from this court. Now that I have found that the election itself is invalid it necessary follows that the nine members declared elected on 22-5-1993 are not entitled to take office as the members of the Managing Committee. There has to be necessarily a direction to the returning officer to conduct a fresh election on the basis that twenty of the nominations out of the twenty four submitted to him including that of all the petitioners in these two original petitions are valid and to proceed with the elections from that stage and conduct

a poll on the basis of the voter's list already prepared and on the basis that there are twenty valid nominations for the election. The Administrator of the society is directed to pass a resolution in terms of Rule 35 (1) of the rules within two weeks, fixing a fresh date for the election as noticed by the Division Bench in the decision reported in *Madhavan Namboodiri v. Kammaran* (1992 (2) KLT 567) the election can be continued from the stage at which the nominations were taken up for scrutiny in this case and therefore all that is necessary for the administrator to do is to fix a fresh date for election and for the Returning Officer to hold the poll on that date.

The Original Petitions are allowed on the above terms. There will be no order as to costs.