
(1986) 10 KL CK 0008

In the High Court Of Kerala

Case No : O.P. No. 5520, 5527 and 6157 of 1986

K.P. Vijayan and Others

APPELLANT

Vs

Returning Officer and another

RESPONDENT

Date of Decision : 12-10-1986

Acts Referred:

Co-operative Societies Act, 1912 — Section 20
Co-operative Societies Rules — Rule 35

Citation : (1986) 23 KLJ 1091

Hon'ble Judges : K. Sukumaran, J

Bench : Single Bench

Advocate : K.K. Babu and V.N. Prabhakaran, for the Appellant; George Varghese Kunnathanam, P.C. Joseph, P. jojo Bernard, Kurian George Kannathanam and Mammen George Kannathanam, for the Respondent

Final Decision : Allowed

Judgement

K. Sukumaran J.

1. These three writ petition raise the same point. The question involved relates to the acceptance of a nomination paper presented by a candidate at an election to the Committee of a Co-operative Society. The election to the Committee of the Pattom Colony Service Co-operative Society was scheduled to be held on 3-8-1986. The petitioners in all the three writ petitions had filed their nominations within the prescribed time. They were scrutinised by the Returning Officer. Sixteen out of the nomination papers were rejected for various defects. The nomination of the three petitioners was rejected on the ground that the proposer and the seconder of the nomination had proposed and seconded the other candidates too. The view taken by the Returning Officer is challenged in these writ petitions.

2. O. P. Nos. 5520/86 and 5525/86 were filed on 29-7-1986. By order dated 30-7-1986, this court directed notice to be served by special messenger and posted the hearing of the cases on 1-8-1986. After hearing counsel for the

petitioners and the learned Government pleader, this court passed an interim order of stay on 1-8-1986, as a prima facie case about the basic illegality in the election procedure was made out. It was felt having regard to the circumstances, that the election if allowed to be proceeded with, would entail wasteful expenditure of time and energy.

3. O.P. No. 6157/1986 was filed on 22-8-1986 raising the identical challenge.

4. Section 20 of the Co-operative Societies Act and Rule 35 of the Co-operative Societies Rules are the relevant statutory provisions to be considered in answering the question raised in the original petition. Section 20 of the Act provides that every member of the Society shall have one vote in the affairs of the Society. The exercise of the vote is to be made in person, u/s 21. Section 109 confers on the Government the power to make rules. Clause (xi) of sub-section 2 of that section refers to the election of members of the committee by the general body of a society. Rule 35 referred to be is one among the relevant rules made in exercise of the above statutory power. The Returning Officer has to intimate the members about the details of the election to the committee. The number of vacancies to be filled up and other details have to be included in the intimation so sent. The voters list has to be prepared and finalised in the manner provided under Rule 35 (b). Clauses (c) to (h) cover various aspects connected with the nomination of candidates and arrangement for election when the number of candidates whose nomination papers are declared valid exceed the number to be elected for any area or constituency. Rule 35 (c) is particularly relevant in this context, and it reads:

(c)(i) 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 cost.

(ii) Every nomination paper shall be signed by two members whose names are included in the list of members. One of the members shall sign the Form as proposer and the other as seconder for the nomination. The nomination paper shall also contain a declaration signed by the candidate Proposed for election to the effect that he is willing to stand for election.

(iii) Every nomination paper shall be presented in person or sent by registered post acknowledgement due, by the candidate himself or by his proposer or seconder to the Returning Officer, so as to reach him before the date and hour specified in item (iv) of the notice referred to in clause (a). The Returning Officer shall enter on the nomination paper its serial number and certify the date and hour at which the nomination paper is received by him and shall immediately give a written acknowledge for the receipt of the nomination paper. Any nomination paper which is not delivered or received on or before the date and time fixed for its receipt shall be rejected.

5. There is no case that the petitioners are ineligible to be nominated in terms of clause (d). The scrutiny of the nomination papers and the rejection thereof are

dealt with in clause (e). That rule reads:

(e) (i) On the day following the date fixed for the receipt of nomination papers, the Returning Officer shall take up the scrutiny of the nomination papers. The candidate or his proposer or his seconder may be present at the time of the scrutiny of nomination papers;

(ii) The Returning Officer shall examine the nomination papers and shall decide objection which may be made by any person in respect of any nomination and may, either on such objection or on his own motion and after such summary inquiry, if any, as he thinks necessary, reject any nomination:

Provided that the nomination of a candidate shall not be rejected merely on the ground of an incorrect description of his name or of the name of his proposer or seconder or of any other particulars relating to the candidate or his proposer or seconder as entered in the list of members referred to in clause (b) if the identity of the candidate or proposer or seconder as the case may be is established beyond reasonable doubt;

(iii) The Returning Officer shall give all reasonable facilities to the contesting candidates or their proposers, or seconders, as the case may be, to examine all the nomination papers and satisfy themselves that the inclusion of the name of the contesting candidate is valid

(iv) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same, as the case may be, and if the nomination paper is rejected, he shall record in writing a brief statement of his reasons for such rejection;

(v) The Returning Officer shall not allow any adjournment of the proceedings except when such are interrupted or obstructed by riot or affray or by causes beyond his control.

6. The grounds referred to in clause (d) would indubitably be valid grounds for the rejection of nomination. Proviso to clause (ii) of clause (e) emphasises that a nomination shall not be rejected on trifling grounds such as an incorrect description of the name of the candidate or of the name of the proposer or seconder or any other members relating to those persons, if the identity of the concerned person is established beyond reasonable doubt.

7. Neither the Government pleader nor counsel who appeared for the contesting respondent was able to refer to any provision in the Act or the Rules which precludes the same person from proposing or seconding more than one candidate. The fact that a person has got only one vote u/s 20 does not mean that he cannot propose or second more than one candidate. Success in the election would certainly depend upon the voting strength he could demonstrate in the electoral arena. That in turn rests on the popularity and goodwill the candidate could commandeer from among the voters. The name or fame of the proposer or the seconder is irrelevant in reckoning the victory of the contestants

in the election. In a sense, the proposal and the seconding are only preliminaries for a candidate to get entry into the election area. There does not appear to be any objection in the members of the society enabling more than one contestant to enter the election field, by their proposing and seconding such a plurality of candidates. Once the candidates are in the election field, certainly all members including the proposer and the seconder would be able to exercise only one vote and that too in person, as indicated in Sections 20 and 21 of the Act. It is thus evident that a candidate duly proposed and seconded by the two members of the Society would not be disqualified to be a contestant for the mere reason that the proposer and the seconder had proposed and seconded one or more other candidates too. It may be noted that a nomination paper could be sent either in person or by registered post. From the practical angle, one candidate who gets a proposer and a seconder for his nomination may send it by registered post. Once he has so complied with the requirements of the rules, his nomination must ordinarily be treated as a valid nomination in the absence of other enumerated disqualifying factors. The fact that the same proposer and the seconder had on a later occasion chosen to propose and second another candidate should not result in the invalidation of both the nominations. An interpretation which leads to anomalous and absurd results will have necessarily to be avoided. I am therefore of the view that the rejection of the nomination papers in the case of the three petitioners by the Returning Officer was totally unjustifiable. The rejection of the nomination was without jurisdiction. The petitioners' nomination has, therefore, to be treated as valid and proper. The only step in the election which had to be invalidated is the rejection of the nomination. There is no complaint about any of the other or antecedent actions of the Returning Officer or of the Society. It is, therefore, not necessary to repeat all the steps taken for the election to the society. It would be sufficient that the further steps after the acceptance of the nomination are taken for a final election. The Returning Officer shall be entitled to take further steps to notify the actual date of election, on the basis of the final list of nominations in the light of the decision rendered herein.

The writ petitions are allowed as indicated above.