
(1998) 09 KL CK 0044
In the High Court Of Kerala
Case No : O.P. No. 16914 of 1998

M.D. Hari Babu

APPELLANT

Vs

Returning Officer

RESPONDENT

Date of Decision : 14-09-1998

Acts Referred:

Co-operative Societies Rules — Rule 35(3)(e)(ii)

Citation : (1998) 2 KLJ 724

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : D. Somasundaram, for the Appellant; N. Reghu Raj), for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—The question that has come up for consideration in this case is whether Returning Officer is justified in rejecting the petitioner's nomination under R.35(3)(e)(ii) of the Co-operative Societies Rules, since nomination was not attested by an Advocate/Gazetted Officer. Ext.P1 is the election notification dated 17-8-98 published by the Returning Officer. The notification specifically says that the candidate has to submit nomination paper along with the affidavit duly attested. Registrar has also issued a circular insisting attestation of the affidavit by an Advocate/Gazetted Officer/Rectification Officer.

2. Petitioner's nomination was scrutinised by the Returning Officer on 27-8-1998. On scrutiny it was found that nomination was not filed in compliance with Rule 35(3)(c)(ii) of the Co-operative Societies Rules and was rejected. Aggrieved by the same petitioner has filed this writ petition.

3. The main contention raised by counsel for petitioner is that attestation by Advocate/Gazetted Officer is not a mandatory requirement. Counsel submitted there is no dispute with regard to the identity of the person and nobody has

objected in submitting his nomination. Counsel submitted there is no dispute with regard to the signature of the petitioner. According to him, the right to contest an election is a very valuable right and the attempt of the Returning Officer should be to preserve that right and not to defeat it on technical grounds. Counsel relied on the decision of this court in *Santhosh v. Joint Registrar* 1994 (2) KLT 141 and contended that the attempt of the Returning Officer should be to enable the member to contest, instead of ejecting him at the threshold on the basis of immaterial inconsequential defects or mistakes in the nomination paper.

4. Learned Government Pleader also relied on the above mentioned decision and contended that the signatures in the nomination, declaration and affidavit and also the proper attestation of the affidavit are essential and material elements in the nomination. The necessity of getting his affidavit attested by an authorised officer is highlighted in the election notification as well as in the circular issued by Registrar. Therefore returning officer is justified in rejecting the nomination.

5. The scope of R. 35(3)(c)(ii) of the Co-operative Societies Rules was considered in detail by a learned Judge of this court in *Santhosh v. Joint Registrar*, 1994 (2) KLT 141. Learned Judge held as follows: There should be indeed a very careful and close scrutiny regarding the qualifications and disqualifications of the candidates and as to whether the identity of the candidate, the proposer and the seconder has been established with reference to their membership in the society. It is also true that the signatures in the nomination, declaration and the affidavit as also the proper attestation of the affidavit are essential and material elements in the nomination. But beyond that, a pragmatic and commonsense view has to be taken and technicalities ought not to prevail when otherwise the nominations are without flaw and valid, as in this case.

In the above mentioned decision there was proper attestation by an Advocate. The defect was that the nominations submitted by the petitioners therein did not contain the name of the society in the affidavit in support of the nomination, and in some of the petitioners case, defect was, date of the election was not filled up in the affidavit. There was no case that the Advocate has not attested the affidavit. In the instant case, there is no attestation by an Advocate or Gazetted Officer in the affidavit filed by the candidate.

A candidate who intends to stand for election has to affirm 16 requirements. An extract of the affidavit is shown as follows:

I.....(here enter name).... (here enter father's name) aged ... Member No.....of... do hereby solemnly affirm and state as follows:

1. I have filed nomination paper to stand for election to the committee of the Society which is proposed to be held on...

2. I have read and understood the provisions relating to the qualifications and disqualifications for membership of the committee of the society in the Kerala Co-operative Societies Act, 1969, the Kerala Co-operative Societies Rules, 1969 and

the Bye-laws and the sub rules of this society and I am qualified to stand in this election.

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16. I have no other disqualifications contemplated under the Act, Rules, bye-laws or sub-rules governing this society.

All the above facts are true and correct.

Deponent:

Solemnly affirmed and signed before me by the deponent in my office at.... this the ... day of...

Advocate/Gazetted Officer.

This is a solemn declaration to be made by the candidate who intends to stand for election. Attestation of those solemn declarations by an Advocate or Gazetted Officer cannot be termed as an empty formality. The power to attest the said declaration is given only to an Advocate or to a Gazetted Officer. Advocate is authorised to do so by virtue of his position in the society and knowledge of law and Gazetted Officer is also permitted to do the same by the fact that he is a Government servant. They have to discharge their solemn function by attesting the affidavit. Signing affidavit in the presence of the Advocate or Gazetted Officer attaches the solemnity to the declaration. The same cannot be said to be an empty formality. The necessity of getting the nomination attested by an Advocate or Gazetted Officer was also considered by this court in the above mentioned decision as well as in *Damodaran v. Joint Registrar*, 1989 (1) KLT 858 and also by another learned Judge of this court in *O.P. 3621/81*. In fact, in *Santhosh v. Joint Registrar*, 1994 (2) KLT 141 this court found it as an essential requirement. I am not prepared to accept the contention of the counsel for petitioner that such a requirement is not a mandatory requirement. Under such circumstance, I am of the view, Returning Officer is justified in rejecting the nomination due to non-attestation by Advocate or Gazetted Officer.

Original Petition therefore lacks merits and the same is dismissed.