

(2010) 09 KL CK 0018
In the High Court Of Kerala
Case No : Writ Petition (C) No. 20856 of 2010

Nalinam

APPELLANT

Vs

Joint Registrar

RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Co-operative Societies Rules, 1969 — Rule 35, 35(3)
Penal Code, 1860 (IPC) — Section 353, 427

Citation : (2011) 2 KLT 991

Hon'ble Judges : C.T. Ravikumar, J

Bench : Single Bench

Advocate : T.C. Suresh Menon, for the Appellant; K.C. Santhosh Kumar, Government Pleader and P.N. Mohanan, for the Respondent

Judgement

C.T. Ravikumar, J.—The Petitioners are the members of the Changanacherry Co-operative Women's Welfare Society Ltd.K. No. 1062(for short "the Society" only). The election to the Board of Directors of the Society was scheduled to be held on 12.7.2010 as per Ext. P1 election notification dated 14.6.2010. The nominations were proposed to be submitted on 1.7.2010 before the second Respondent between 11 a.m. and 1 p.m. The contention of the Petitioners is that they have constituted independent panel for the purpose of election and went to the office of the second Respondent on 1.7.2010 at 12.45 p.m. and they have submitted their nomination papers. However, the nomination paper submitted by the 9th Petitioner alone was accepted citing the reason that by the time the others reached for submission of nomination papers, time fixed for acceptance of nomination was over. Thereupon, they have lodged Ext. P6 complaint against the refusal to accept their nominations before the second Respondent. In short, the grievance of the Petitioners is against the refusal on the part of the second Respondent to accept their nomination papers. As already noticed, their specific contention is that they had actually submitted the nomination papers within the time specified in the election notification. At any rate, according to them, the

second Respondent, the Returning Officer should have accepted the nomination papers and then proceeded to consider whether it is liable to be accepted or rejected.

2. Admittedly, the maximum number of members of the Board of Directors is 9, the split up being eight from general constituency and one from Scheduled Caste constituency. The second Respondent has not accepted the nomination papers of eight candidates and accepted the nomination paper of the 9th Petitioner and thereby, virtually reduced the election process to a farce. In short, on account of such action on the part of the second Respondent, the democratic process was thwarted and no election was virtually held to the democratic institution at the root level, it is contended.

3. A counter-affidavit has been filed in this Writ Petition by the second Respondent. Eight other persons whose nomination papers were accepted by the second Respondent got themselves imp leaded in this Writ Petition as additional Respondents 5 to 12. However, they did not file any statement/affidavit apart from the affidavit that accompanied the petition for imp leading. In the counter-affidavit filed by the second Respondent, it has been stated that as per Ext. P1 election notification, nominations shall be submitted before the Returning Officer between 11 a.m. and 1 p.m. on 1.7.2010. According to the second Respondent, the Petitioners herein except the 9th Petitioner approached the second Respondent for submitting their nomination papers only after 1 p.m. The second Respondent has admitted the fact that he had refused to receive the nomination papers from Petitioners 1 to 8 on the ground that they came to him to submit the application only after 1 p.m. It is further stated there under that the 9th Petitioner had submitted nomination at 1 p.m. on 1.7.2010 and therefore, the same was accepted. He had categorically denied allegation of the other Petitioners that all of them came together and submitted the nomination papers. It is stated in the counter-affidavit as hereunder:

The 9th Petitioner Suseela Panicker submitted a nomination at 1 p.m. on 1.7.2010 and that was acknowledged by the second Respondent and therefore allegation of the Petitioners that they have submitted 9 nomination papers together is against the facts.

4. In essence, the contention in the counter-affidavit is to the effect that the second Respondent had refused to accept the nomination papers as the Petitioners turned up in his office for the purpose of submitting nomination papers only after 1 p.m. It is further alleged in the counter-affidavit that the sixth Petitioner had taken the valid nomination papers which were placed on the table of the second Respondent and torn them up. In connection with the said incidence, the second Respondent had lodged a complaint to the police and accordingly, crime No. 423/2010 under Sections 353 and 427 of the Indian Penal Code was registered. The stand of the second Respondent is that he had not done anything illegal or arbitrary by refusing to receive the nominations presented before him after the time fixed for submission of nomination papers.

5. I have heard the learned Counsel for the Petitioners, the learned Government Pleader and also learned Counsel for additional Respondents 5 to 12. The contention raised on behalf of additional Respondents 5 to 12 is that only the nomination paper submitted by the 9th Petitioner was found valid. According to them, considering the fact that the maximum number of committee members is only nine and there are only nine valid nominations, there is no need to conduct election. Therefore, the additional Respondents 5 to 12 and the 9th Petitioner can be declared as elected without conducting election. They have submitted their nomination papers on 1.7.2010 in between 12 and 12.30 p.m. According to them, as is obvious from the affidavit that accompanied their petition for impugning, the 9th Petitioner came to the office of the society at about 1 p.m. and submitted nomination. In the said affidavit, it is contended by him that Petitioners 1 to 8 actually came to the society to submit their nominations only on 2.7.2010 and tried to manhandle the Returning Officer for not accepting the nomination papers on 2.7.2010, the date for scrutiny of the nomination papers. Relying on the provisions under Rule 35 Sub-rule 3(c) Part III of the Kerala Co-operative Societies Rules (for short "the Rules"), it is submitted that going by the very affidavit filed by the 9th Petitioner, it is evident that the Petitioners 1 to 8 had not complied with the procedures prescribed under the rules for submission of nomination papers.

6. From the narration of facts as above, it is evident that the Petitioners 1 to 8 came to the office of the society wherein the second Respondent was present in his capacity as the Returning Officer to conduct the election to the society for submitting their nomination papers. It is also not in dispute that nomination papers were sought to be submitted before the second Respondent. It is true that the versions given by the 9th Petitioner and by another stranger in the affidavit exhibited along with the Writ Petition contained some incongruities. I am of the view that for the purpose of deciding this Writ Petition, I need only to look into the counter-affidavit filed by the second Respondent as he was the Returning Officer appointed for conducting the election to the Director Board of the society. As already noticed, according to him, the 9th Petitioner submitted her nomination paper at 1 p.m. on 1.7.2010 and at the same time, he had refuted the contention of the Petitioners that they had submitted 9 nomination papers together. Therefore, the contention of the additional Respondents 5 to 12 that all the nomination papers were submitted together need not be looked into. Therefore, the short question to be decided is whether the second Respondent was justified in his action in refusing to accept the nominations on the ground that the Petitioners 1 to 8 had not turned up in time for submitting the nomination papers. In paragraph 6 of the counter-affidavit, it is stated thus:

The second Respondent refused to receive the nominations presented after the time prescribed for submitting the same.

(emphasis added)

As already noticed, according to the Petitioners, they had attempted to submit

their nomination papers within the stipulated time. However, as per the second Respondent, the Petitioners came to submit nomination papers after 1 p.m. In short, it can be seen from the above averments that the Petitioners 1 to 8 came to the office of the society wherein the second Respondent in his capacity as the Returning Officer was present and attempted to submit their nomination papers. In view of the categorical statement made by the second Respondent that the Petitioners had submitted nine nomination papers together is not true to the facts, there is no need to advert to the contentions raised by the Petitioners or Respondents 5 to 12 in that regard. Therefore, the legal question to be considered is whether it was incumbent on the second Respondent in his capacity as Returning Officer to accept the nomination papers from Petitioners 1 to 8. For the purpose of deciding the said issue, it is relevant to refer to Rule 35(3)(a)(iii) of the Rules. It reads thus:

The date on which, the place at which and the hours between which nomination paper shall be filed by the contesting candidate or by his proposer or secondary such dates not being less than seven clear days before the dates fixed for the election.

As per Rule 35(3)(c)(iii) of the Rules, the nomination papers shall be presented in person or by registered post with acknowledgment due, by the candidate himself or by his proposer or the secondary to the Returning Officer and that it should reach him before the date and hour specified in item No. iv. Admittedly, in this case, the date and time are specified in election notification in terms of Rule 35(3)(a)(iii) of the Rules as 01.07.2010 between 11 a.m. and 1 p.m. According to the second Respondent, only 13 candidates submitted their nominations and out of which only nine are valid nominations. In the context of the rival contentions, it is also relevant to look into Rule 35(3)(c)(iii) of the Rules whereby it was made mandatory on the part of the Returning Officer to enter in all the nomination papers as to its serial number and certify the date and time at which the nomination paper was received by him and immediately to give a written acknowledgment for the receipt of the nomination papers. Rule 35(3)(c)(iii) of the Rules reads thus:

Every nomination paper shall be presented in person or sent by registered post acknowledgment due, by the candidate himself or by his proposer or secondary 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 acknowledgment 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.

As per the said rule, any nomination paper, which was after the date and time fixed for its receipt shall be rejected. Rule 35(3)(e) provides the procedures for scrutiny of the nomination papers. As per the said rule, such a scrutiny of

nomination papers has to be made on the date following the date fixed for receipt of nomination papers. As already noticed hereinbefore, the contention of the Petitioners is that a close reading of Rule 35(3)(c)(iii) would suggest that the Returning Officer is bound to accept the nomination paper and also comply with such other mandatory formalities required of him. There is nothing in Rule 35(3)(c)(iii) which would confer an unbridled power to the Returning Officer to outrightly reject nomination papers without complying with the formalities specifically mentioned there under much less to refuse to receive nomination papers. A scanning of the provisions would undoubtedly reveal its intentional measures imbedded there under to eliminate arbitrariness in the action on the part of the Returning Officer in the matter of acceptance and rejection of nomination papers. No doubt, the procedures are specifically provided there under to ensure even a possible attempt to thwart the democratic election to the Director Board of Co-operative Societies. Right to contest at an election is essentially a right and hence, the Endeavour of the Returning Officer should be to preserve that right and not to defeat it illegally or by acting in a manner opposed to common sense. The procedures to be adopted in the matter of acceptance and rejection are carefully engrafted there under to achieve and ensure the same. As per the provisions under Rule 35(3)(c)(iii), 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 acknowledgment for the receipt of the nomination paper. It is pertinent to note that it is after specifying such a procedure at the time of acceptance of nomination papers that the procedures for rejection and scrutiny of nomination papers have been prescribed. With respect to rejection of nomination papers, it is provided there under.

Any nomination paper which is not delivered or received on or before the date and time fixed for its receipt shall be rejected. (emphasis added)

Thus it is obvious from the provisions under Rule 35(3)(c)(iii) that rejection of nomination paper not received on or before the date and time fixed for its receipt is contemplated only after receiving the same and entering on it the serial number and certify the date and hour at which it was received and after immediately giving a written acknowledgment for the receipt of the nomination paper. True that going by the provisions under Rule 35(3)(a)(iii), the election notification must contain the date on which, the place at which and the hours which nomination papers shall be filed by the contesting candidate or by his proposer or secondary. It is to be noted that the words employed under Rule 35(3)(c)(iii) are "not delivered or received" and did not authorize the Returning Officer to refuse to receive a nomination paper. That apart, the Returning Officer is empowered only to "reject" and not to "refuse" to receive the nomination papers. The question of rejection of nomination papers would arise only after its acceptance. Scrupulous adherence of the procedures will definitely avert any possible partisan approach. In short, such provisions are incorporated to avert a situation leaving it to the hands of an officer to decide the fate of an election by

rejecting or accepting the nomination papers of one particular faction. The learned Government Pleader as also the learned Counsel appearing for Respondents 5 to 12 submitted that disputatious facts involve in this case inasmuch as the Petitioners would contend that the nomination papers were submitted within the specific time in terms of Rule 35(3)(a)(iii) of the Rules.

7. Since the very issue is precipitated into one of a factual dispute i.e., whether or not the Petitioners 1 to 8 submitted their nomination papers within or beyond the time limit specified in Ext. P1 notification in terms of Rule 35(3)(a)(iii) of the Rules, the Petitioners should be relegated to resort to the remedy available under the provisions of the Co-operative Societies Act (for short "the Act"), it is contended. In short, the remedy is to file an election petition, according to the Respondents. However, the learned Counsel for the Petitioners submitted that it cannot be an inviolable position on all circumstances. To drive home the said point, the learned Counsel relied on the decision reported in Nisar Ahmad Vs. Additional Commissioner, Jodhpur Division and Another, . The relevant portion of the said judgment reads thus:

The last point that has been urged is that the applicant has another remedy, namely, he can file an election petition and therefore, this Court should not help him. It is no doubt true that the applicant has the remedy of filing an election petition and if the applicant had come to us against the order of the officer-in-charge of the elections rejecting his nomination paper we would not have been disposed to give him any relief. But the case here is this. The applicant's nomination paper has been accepted by the officer-in-charge of the elections but that acceptance has been set aside by the Additional Commissioner which order in its turn has been upheld by the Minister and these two authorities had no business to interfere with the order of the officer-in-charge of the elections. We are of the opinion that it would not be right to leave the applicant to the remedy of an election petition against the order of what we can only consider at the best busy bodies when the order of a properly constituted authority namely, the Officer-in-charge of the elections is in his favour. We may also point out that there is another danger if we were to follow the principle that we should not interfere in a case like the present because it is possible to get redress by an election petition. That danger is that if some authority decides to interfere with the decisions of the Officer-in-charge of elections or the returning officer and rejects all nomination papers accepted by him of candidates belonging to particular parties, the result would be that candidates of one particular party might get elected unopposed. It is possible to have whole scale abuse of this kind and it is, therefore, necessary for this Court to interfere at this stage so that no authority may ever be disposed to take the course which we have mentioned above. Therefore, even though the applicant may be able to get remedy in this case through an election petition, there is good reason why we should grant him relief now.

Relying on the said decision, it would result in a situation where an officer can

decide the fate of an election by rejecting nomination papers belonging to one particular faction and accepting the nomination papers of the other faction and thereby enabling the particular faction to get elected unopposed. It is further submitted that a Division Bench of this Court has relied on the said decision in *Abraham v. Returning Officer* (1993 (1) KLT 548). Though the Apex Court in umpteen number of decisions held that the High Court should not interfere to solve the various disputes relating the election, it is held that in exceptional cases; the High Court could or should interfere with. If the rejection of nomination paper is patently bad, manifestly wrong, arbitrary or perverse, the High Court could interfere under Article 226 of the Constitution of India without asking the Petitioner to pursue the alternative remedy. The Petitioner has also relied on the decision of this Court reported in *Santhosh v. Joint Registrar* (1994 (2) KLT 141) to drive home the said point. It is to be noted that even under Rule 35(3)(a)(iii) of the Rules, it is provided that the nomination papers shall not be rejected merely on the ground of incorrect decision. It is relevant to note proviso to Rule 35(3)(e). Admittedly, in this case, the nomination papers were not accepted on account of any defect that has crept in the nomination papers whilst they were refused to be adopted on the ground that they were sought to be submitted after the appointed time. The Petitioner has relied on the decision of this Court reported in *Anto v. Jackson* (1993 (1) KLT 586). It was held there under that the Returning Officer is not expected to embark upon an elaborate trial on the objections raised to the nomination of the candidates. It is further held there under that when the Returning Officer decides to accept the nomination paper, he need not record his reasons whilst when he decides to reject the nomination papers, he is bound to record his reasons writing on the nomination papers.

8. To resist the contentions raised by the Petitioners, the learned Counsel appearing for additional Respondents 5 to 12 submitted that in the might of the decision of this Court in *Raghavan M. V. v. Returning Officer* reported in 2009 (2) KLT 11 (C. No. 15) : 2009 (2) KHC 47), in the matter of elections to Co-operative Societies wherein the issues involve disputed questions of fact, High Court shall not interfere and the concerned parties have to be relegated to the efficacious alternative remedy u/s 69 of the Act. The learned Counsel further submitted that in the light of the decision of this Court in *Andoorkonam Service Co-operative Bank v. Co-operative Election Commission* (2002 (3) KLT 68 (C. No. 93)), this Court had, in fact, followed the same principle. The learned Counsel further submitted that the said decision was affirmed by the Hon"ble Apex Court. The learned Counsel also submitted that in fact, the said view was taken in 1994 (2) KLT 141 (supra). The learned Counsel has also submitted that the decision reported in 2002 (3) KLT 68 (C. No. 93) (supra) would reveal that this Court had in fact, followed the same principle viz., to decline jurisdiction. In short, the contention is that whenever an issue related to an election to the Co-operative Societies involve disputed facts, this Court should not entertain a Writ Petition under Article 226 whilst the parties should be relegated to resort to an

alternative efficacious remedy u/s 69 of the Act.

9. I have already held that the second Respondent did not have a case that Petitioners 1 to 8 submitted their nomination papers together. At the same time, it is pertinent to note that he did not refute the contention that all the Petitioners came to the office of the society and attempted to submit their nomination papers after 1 p.m. In para.3 of the counter-affidavit filed by the second Respondent it is stated thus:

This Respondent had refused the nomination papers presented before him after 1 p.m. on 1.7.2010 in terms of Ext. P1 notification.

Conspicuously, the time at which they sought to submit their nomination papers is not stated in the counter-affidavit. But it is stated only to the effect that their nomination papers were attempted to be submitted after 1 p.m. and at the same time, he admits the fact that the 9th Petitioner had submitted the nomination paper at 1 p.m. One cannot assume that in Rule 35(3)(c)(iii) on the first part it is mandated that the Returning Officer to accept the nomination paper and enter on its serial number and then certify the date and hour at which it was received and then give a written acknowledgment for the receipt and at the same time, the provision for rejection enables him to reject the application on the ground of belated delivery or receipt without any intention at all. In the absence of procedures, it will be easy for any Returning Officer appointed to conduct any election to any Co-operative society, if he desires, to thwart an election process. If on the ground of belated delivery or receipt, without entering the said fact, i.e., certifying the date and hour on the nomination paper, if he is given the power to refuse the nomination paper, it would definitely confer un-bridled and arbitrary power on the returning officer and it may entail situation where the fate of election could be decided by an officer. I am of the view that such a contingency was well envisaged and in fact, it is to eliminate any such eventualities with a safeguard has been provided under Rule 35(3)(c)(iii). After acceptance of the nomination paper, it would be well within the power of the Returning Officer, on the appointed date to accept or reject nomination papers taking note of his certification with respect to the date and hour at which nomination paper was received. According to me, any contra-construction would render even an attempt for election petition meaningless. In case the Returning Officer refuses to accept the nomination, there would be nothing on record to show the date and time at which the said nomination paper was actually attempted to be submitted to decide the question whether the said concerned nomination paper was actually submitted after the date and time notified under the election notification in terms of Rule 35(3)(a)(iii) or submitted beyond the time notified there under. In the absence of any such certification, a contesting party can very well contend in the election petition that the concerned party did not even submit the nomination paper or attempted to submit the nomination paper. Therefore, the very purport and intent of the provisions under Rule 35(3)(c)(iii) of the Rules would be rendered meaningless. The upshot of the above

discussions is that the Returning Officer was bound to receive the nomination paper and enter on its serial number and thereupon to certify the date and time at which the same was received by him and also to give a written acknowledgment for the receipt of the nomination paper before proceeding to reject the same on the ground that the concerned nomination paper was not delivered or received on or before the date and time fixed for its receipt. I am also of the view that any other construction would deprive a person who proposes to contest the election the invaluable light to contest election. Evidently, in the absence of any certifications mandatorily to be made on receipt of the nomination papers no purpose would be served by relegating a party to resort to the remedy u/s 69 of the Act. A crucial incongruity with respect to the contentions regarding the date and time of attempt on the part of the Petitioners to submit their nomination papers in the counter-affidavit filed by the second Respondent and the affidavit accompanying the imp leading petition of Respondents 5 to 12 also assume relevance. As per the second Respondent, it was on 1.7.2010 and as per Respondents 5 to 12, it was on 2.7.2010. Therefore, I am of the view that on the basis of the very contentions of the second Respondent made in the counter-affidavit themselves would speak of the illegality committed in the matter by refusing to accept the nomination papers and the very action, in my considered view, is opposed to common sense. The second Respondent in his capacity as the Returning Officer should have accepted the nomination papers and made the entries mandatorily to be done and then based on the same, should have either accepted or rejected the nomination papers. An entry by him on the nomination papers with respect to the date and time of receipt of nomination papers and issuing an acknowledgment in writing for the receipt of the same would have definitely avoided this crucial situation. Since the right to contest an election is a valuable right, the attempt should be to preserve that right in a situation like this. I am of the view that in the circumstances obtained in this case, this Court would not (sic) be justified in relegating the Petitioners to resort to the remedy available u/s 69 of the Act, when admittedly, the Returning Officer had not followed the said procedure. I am of the considered view that no purpose would be served by relegating the Petitioners to resort to the remedy under the Act. In the light of the decision Nisar Ahmad Vs. Additional Commissioner, Jodhpur Division and Another, , I am of the view that this is an exceptional case wherein this Court should interfere and any decision to relegate the Petitioners to resort to alternative remedy of Section 69 of the Act would not be efficacious for the reason that the second Respondent has refused to accept the nomination papers. Moreover, according to me, it would amount to total miscarriage of justice. The failure on the part of the second Respondent in receiving the nomination papers attempted to be submitted by the Petitioners 1 to 8 before him on 1.7.2010 and thereafter to make the entries as mandated under Rule 35(3)(c)(iii) of the Rules calls for interference. Admittedly, no election was held on 12.7.2010 and according to the Respondents, since the number of valid nomination papers are equal to the number of the Director Board members, there is no need to conduct an election

and only a declaration of the election to the board of directors is required. I am unable to accept the said contention. In the light of the above conclusions and findings, it is relevant to refer to Rule 35(3)(p) of the Rules. It reads thus:

If at any stage of the polling the proceedings are interrupted or obstructed by any riot or affray or if at such election it is not possible to take the poll for any sufficient cause, the Returning Officer shall have power to stop the polling, recording his reasons for such an action in the minute book of the society.

It is to be noted that when this Writ Petition came up for admission, this Court passed an order on 9.7.2010 which runs as follows:

The Respondents to file counter-affidavit with regard to the specific averments and allegations raised in the Writ Petition. It is stated by the learned Government Pleader that since only nine valid nominations are there, no actual election is intended to be conducted on 12.7.2010 as scheduled. Declaration of result shall not be made without getting further orders from this Court.

Virtually as per the said order, this Court prevented the second Respondent from declaring the result taking note of the submission that the number of valid nomination paper is equivalent to the number of members of the Director Board. I am of the view that once an election process has been interrupted, it has to start from the stage at which it was interrupted. In this case, in view of my above findings that the nomination papers submitted by the Petitioners 1 to 8 were illegally refused by the second Respondent, steps for fresh election has to be taken. Admittedly, there is no committee and the administration of the society is under the Part-time Administrator. Therefore, the Part-time Administrator shall take steps under Rule 35(1) of the Rules and fix the date, time and place for conduct of election of the new committee and take necessary steps within a period of three weeks from the date of receipt of a copy of this judgment, in accordance with the provisions of the Act and the Rules. For that purpose, the Part-time Administrator, Changanacherry Co-operative Women's Welfare Service Society Ltd. K. No. 1062, Thengana Perumpanachy P.O., appointed is suo mou imp leaded as additional Respondent No. 13. The additional Respondent No. 13 shall take all steps required for conducting fresh election expeditiously, in accordance with the Act and the Rules, within the minimum time required for the purpose, going by the relevant provisions under the Act and the Rules.

This Writ Petition is disposed of, accordingly.