
(2002) 09 KL CK 0062
In the High Court Of Kerala
Case No : O.P. No. 11064 of 2002 etc.

Padmakumar

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 06-09-2002

Acts Referred:

Citation : (2002) 09 KL CK 0062

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : Paul Varghese and Georgie Simon, for the Appellant; B.S. Swathikumar, Spl. Govt. Pleader, V.N. Achuta Kurup and K. Harilal, for the Respondent

Judgement

Kurian Joseph, J.—Reservation is provided in the election to the committee of a Co-operative Society, one seat for SC/ST and one for women. But merely because the constituency is not specified in the nomination paper, can the same be rejected?

All these Original Petitions relate to election to the Cochin Corporation Homoeo Medical Processional Co-operative Society Ltd., a Co-operative Society registered under the provisions of the Kerala Co-operative Societies Act (hereinafter referred to as "the Society"). The Society was being administered by a committee appointed under S. 33 of the Kerala Co-operative Societies Act since 9.11.2001. As on that date, there were only 49 members in the Society. It is unfortunate that even in such a Society where there are only 49 members and that too consisting only of the professionals in the field, an election could not be conducted without any complaint. The grievances relate to even from the stage of publication of a preliminary voters list. According to the petitioners, no preliminary voters list was published. Ext. P3 is the complaint before the Returning Officer signed by 35 members. Ext. P4 is the election notification dated 17.4.2002. Nothing is mentioned in the notification regarding the publication of preliminary voters list calling for objections and finalisation of the same as

required under Rule 35(3) of the Kerala Co-operative Societies Rules. It is also stated in Ext. P4 that the election would be conducted at a place in Fort Kochi whereas the Society has been functioning at Vyttila. Their complaints are regarding the voters list and also rejection of nomination paper.

2. A statement has been filed by the Returning Officer on 3.7.2002. In the said statement dated 25.6.2002 it is submitted that the preliminary voters list was published on the notice board of the Society on 8.4.2002 and a final list on 17.4.2002. The Returning Officer submitted at paragraph 3 in the statement that there were complaints of non receipt of voters list and also issuance of identity cards and acceptance of loan amount. However, the stand taken by the Returning Officer is that it is not for the Returning Officer to take any step in the matter. As far as the nominations are concerned, it is submitted that 25 nominations were received, but 17 of them were rejected for various reasons. One main reason is that the "contesting constituency" is not specified in the nomination and yet another reason is that either the name of the candidate or the name of the proposer/seconded is not seen in the list. Nomination paper is common for all the three categories, namely, general, reserved and women. Eight nominations were rejected for the only reason of not specifying the constituency. I am afraid, the nomination cannot be rejected for that ground alone. If a candidate has not specified his candidature in respect of a reserved constituency, it has to be taken that the candidature is for a general constituency since that alone is the inference possible. It may be seen that the nomination is valid for all other reasons, the only infirmity being the non-specification by the candidate regarding the constituency whether it was general or reserved. To be a candidate for a reserved constituency is a special privilege and if no such special privilege is claimed by a candidate, his nomination cannot be rejected on the ground that there is no specification in the nomination as to the constituency, if it is otherwise valid. The nomination has to be accepted and the candidate has to be allowed to be contested in the general category. Therefore, the rejection of the nomination papers of the candidates for the only reason of not specifying the constituency as to whether it is general or reserved is not proper. In the absence of any specification regarding a reserved constituency, a nomination which is otherwise valid in all other aspects has only to be treated as candidature for a general seat.

3. As far as the voters list is concerned, it is now admitted by the Returning Officer in the affidavit dated 31.7.2002 that the list furnished by the administrative committee contained the names of those members enrolled after 9.11.2001 by the administrative committee. Since the Administrator or the administrative committee lacks power to enrol members in a Co-operative Society so as to alter its composition, the members enrolled by the administrative committee also cannot be permitted to exercise their franchise. It is admitted in the affidavit that Ext. R3(a) voters list was published at Champakkara Homoeo Dispensary dispensing since the office functions there since February, 2002. But the seal affixed in Ext. R3(a) shows the office to be at

Vyttila. Thus admittedly the voters list was not published in the office of the Society at Vyttila. The photographs produced by the petitioners also show the office at Vyttila. Therefore, the very basis of the election being improper, a corrective step has to be taken from the stage of publication of the preliminary voters list at the office of the Society,

4. It is strange that the administrative committee proposed the place of polling at Fort Kochi in a private building. The justification is that majority come from that place. Based on files, the petitioners refute the statement. Even otherwise, after all there are only 49 members and the Corporation of Kochi has ever so many offices in and around Ernakulam, apart from the registered office of the Society itself. If there is any inconvenience for conducting the polling at the premises of the registered office of the society, another premise of the Corporation itself could and should have been identified by the Committee.

In the above circumstances, I dispose of the Original Petitions with the following directions:

(1) The administrative committee and the Returning Officer shall reschedule the election to the Society within a period of one month from today. The polling shall be held either at the premises of the Society or at any office of the Corporation in and around Ernakulam.

(2) The Returning Officer shall publish a preliminary voters list containing the names of members as on 9.11.2001 within a period of one month. This shall be published in the notice board of the office of the Society at Vyttila also. Thereafter a proper election shall be conducted as per the schedule.

Original Petitions are disposed of as above