
(2023) 03 KL CK 0121

In the High Court Of Kerala

Case No : Writ Petition (C) No. 3847 Of 2023

Vadikkevila Sasi

APPELLANT

Vs

Cochin University Of Science & Technology

RESPONDENT

Date of Decision : 07-03-2023

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2023) 03 KL CK 0121

Hon'ble Judges : Viju Abraham, J

Bench : Single Bench

Advocate : Leo Lukose, Enoch David Simon Joel, S.Sreedev, Rony Jose, Karol Mathews Sebastian Alencherry Derick Mathai Saji, Rahmathullah.M, S.P.Aravindakshan Pillai

Final Decision : Allowed

Judgement

Viju Abraham, J.

1. The above writ petition is filed seeking a direction to the 4th respondent to accept the nomination of the petitioner for the election to the Senate from the Constituency of Presidents of all the registered Trade Unions in the State. Petitioner also seeks for a direction to the 4th respondent to declare the petitioner as having been validly elected to the said post.

2. The facts of the case, in brief, are as follows: Ext.P1 notification was published on 27.12.2022 by the 4th respondent for election to the Senate and Academic Council of the Cochin University. The Senate of the Cochin University consists of various members out of which two members, elected by the registered Trade Unions in the State from among themselves. In the final electoral roll published by the 4th respondent for the constituency "Presidents of all the registered Trade Unions in the State" name of the petitioner is shown in Sl.No.23 as the President of Kerala State Vazhiyora and Skilled Thozhilali Congress. Pursuant to Ext.P1 notification petitioner submitted his nomination for the election to the Senate

from the constituency of "Presidents of all the registered Trade Unions in the State" before the scheduled date and time. Petitioner was the only person who submitted the nomination out of 357 persons in the final electoral roll for the said constituency. To the shock and dismay of the petitioner, after scrutiny, the petitioner's nomination was rejected by the 4th respondent on the ground that the address portion has been overwritten. Immediately the agent of the petitioner challenged the decision of the 4th respondent and informed that even though the petitioner's signature is seen overwritten, all the details given are clearly legible and requested not to reject the petitioner's nomination only on this technical ground. The agent also tried to convince the 4th respondent that sign alone was accidentally overwritten in the address portion as there was no sufficient space in the nomination paper to include all the details. However, 4th respondent rejected the nomination without considering the objections raised by the agent of the petitioner. Immediately petitioner had sent an email to the 4th respondent requesting him to reconsider the rejection of his nomination after giving him an opportunity of being heard. However no reply to the email sent by the petitioner was received. Thereafter petitioner submitted Ext.P2 representation before the 4th respondent again requesting to reconsider his nomination after giving an opportunity of being heard. It is at this juncture the petitioner has approached this Court filing the above writ petition contending that the 4th respondent purposefully rejected the nomination of the petitioner and has acted in a malafide manner on account of political considerations. Petitioner submits that his nomination has been illegally rejected as some other persons in the electorate belonging to a particular political party though wished to submit the nominations to the constituency of "Presidents of all the registered Trade Unions in the State" could not file the same within the date and time scheduled. Petitioner's nomination is purposefully rejected on technical grounds as the respondents want the seat to become vacant and thereafter conduct bye-election to the said post. Such illegal action smacks of malafides and cannot under any circumstances be permitted to be effected and the same is arbitrary and violative of Article 14 of the Constitution of India.

3. A detailed counter affidavit has been filed by the 4th respondent who is the returning officer, mainly contending that the nomination submitted by the petitioner was rejected on valid grounds and that a challenge against the rejection of nomination is not maintainable before this Court and the petitioner has filed the above writ petition on an experimental basis. The nomination paper of the petitioner was rejected on the ground that there was overwriting. Ext.R1(a) is the copy of the nomination paper submitted by the petitioner with the endorsement made therein by the 4th respondent. From a perusal of Ext.R1(a) it is evident that the nomination paper submitted by the petitioner is defective and is liable to be rejected. There is overwriting on the address of the petitioner which makes it unclear and defective. Therefore, the action of the returning officer is legal and valid. The contention of the petitioner that his agent strongly objected to the scrutiny of the nomination is also without any basis in as

much as no agent of the petitioner was present during the scrutiny of the nomination paper and no objection was raised. Ext.P2 representation submitted by the petitioner has been considered and rejected as per Ext.R1(b) order. The request of the petitioner for issuance of a copy of the nomination paper was duly adhered to and two copies of the nomination paper was forwarded to the petitioner. The allegation of malafides is absolutely without any basis and petitioner has not produced any proof to substantiate the said allegation. The election procedures in the University are conducted and performed strictly based on the provisions of CUSAT Act, 1986 and the University Election Statutes. It is in exercise of the power vested on the returning officer for the election to the Senate that the nomination paper of the petitioner was scrutinised and rejected on finding that it was defective for the reason that there was overwriting in the name and address column. On the basis of the said averments the 4th respondent sought for dismissal of the above writ petition.

4. The only question to be considered is as to whether the 4th respondent was right in rejecting the nomination of the petitioner as is done as per Ext.R1(a). The reason stated for rejecting the nomination as is seen from the endorsement made by the 4th respondent is that the address of the petitioner was overwritten. A perusal of Ext.R1(a) makes it explicitly clear that details of the name of the candidate, address of the candidate and number of the candidate in the electoral roll are all very clearly written in the nomination paper and also the name and address of the proposer and the seconder and their signatures have been duly entered in the nomination paper. The consent of the candidate is also seen clearly entered which also contains his signature with date. The only defect which is pointed out by the 4th respondent and is seen on a perusal of Ext.R1(a) is that the petitioner has put a signature in the column for writing the name, address and number of the candidate in the electoral roll.

5. It is settled law that nomination submitted by a candidate can be rejected only on substantial grounds and not on trivial ones. In the present case there is no dispute regarding the identity of the candidate or as to whether there are any mistaken entries in Ext.R1(a) nomination paper, but the only reason stated for rejection is that there is an overwriting seen on the address written in the nomination paper. The address as well as name of the candidate and number of the candidate in the electoral roll could be clearly understood on a mere perusal of Ext.R1(a) nomination paper itself. Except for a signature which has been put in the said column I find no defect or inconsistency in the nomination paper submitted by the petitioner. The details entered in Ext.R1(a) nomination paper would reveal that exactly the same details as seen in the electoral roll of "Presidents of all the registered Trade Unions in the State" have been entered. Even the number of the candidate shown in the electoral roll, which is Sl.No.23, is also seen clearly written in the nomination paper. A comparison of the details given in Ext.R1(a) and the details of the petitioner as given as Sl.No.23 of the electoral roll of the "Presidents of all the registered Trade Unions in the State" makes it explicitly clear that whatever details that is to be accompanied or given

in the nomination paper has been clearly provided by the petitioner and the said details could be clearly understood and scrutinised by the returning officer. Though there is an overwriting, the entries in Ext.R1(a) nomination paper could be clearly read and understood even on a bare perusal of the same. Moreover the name, address and the serial number in the electoral roll could be easily verified on a comparison with the electoral roll, which the 4th respondent failed to do so. Therefore I am the opinion that there are no substantial grounds for rejecting the nomination paper as was done in the present case. The overwritten signature in the column provided to write the name, address and serial number of the candidate will not in any way be treated as a substantial ground for rejecting the nomination paper. A similar question came up for consideration before this Court in *Santhosh v. Joint Registrar* reported in 1994 (2) KLT 141. This Court in paragraphs 4 and 10 of the said judgment has held as follows:

"4. I shall deal with the merits first, but before doing so, I may mention that a cue to the grounds on which a nomination may be rejected is afforded by the proviso to R.35(3)(e)(ii) of the Kerala Co-operative Societies Rules (the Rules) which bars a rejection if the identity of the candidate or proposer or seconder is established beyond reasonable doubt, though that is not exhaustive. I shall extract the proviso:-

"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".

What are the normal requirements of a valid nomination? The following should be evident from the nomination paper:

- (a) the name of the society;
- (b) the identity of the candidate, the proposer and the seconder as established by their description with reference to name, address and membership number-the last is very important as there may be more than one member with the same name as in the case of petitioners 5 and 9 in this writ petition.
- (c) the genuineness of the proposal or seconding established by the proposer and the seconder appending their signature to the nomination paper; and
- (d) declaration of the candidate, authenticated by his signature that he is willing to stand for the election (vide rule 35(3)(c)(ii). There are matters of prime importance in the nomination paper, but the nomination is not liable to be rejected for some technical or clerical non-compliance with these requirements if the identities of the society and of the candidates, the proposer and the seconder in relation to the society, with reference to their membership numbers are otherwise clear from the nomination paper itself. The appending of their

signatures by the candidate in the declaration and of the proposer and the seconder in the nomination is of vital importance, any defect in which can render the nomination invalid. The scrutiny of the nomination by the Returning Officer should be geared to see whether the aforesaid factors have been established, particularly the identity of the candidate, the proposer and the seconder, with reference to their membership in the society.

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10. Right to contest at an election is a very valuable right. The attempt of the Returning Officer should be to preserve that right and not to defeat it on hyper technicalities, or immaterial defects which do not relate to the substance of the matter. There should indeed be a very careful and close scrutiny regarding the qualifications and disqualifications of the candidate, 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. The attempt 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. It has to be remembered that the co-operative movement reaches out mostly to the unsophisticated segments of society. Bona fide mistakes are likely to creep in, in the filling up of the nomination, by the neo-literates and semi-literates (there being no illiterates in this State). To throw out such nominations and the candidates from the electoral field by pandering to technicalities will be to strike a heavy blow at the democratic nature of the process involved and punishing them for what otherwise is an innocent mistake. This will be nothing but arbitrariness."

(underline supplied)

A similar view was taken by this Court in *Suresh v. High Court Advocates' Association* reported in 2000 (1) KLT 652 wherein this Court has held that the nomination paper cannot be rejected in the absence of a substantive mistake and if there is substantial compliance, the nomination paper shall not be rejected. This Court in paragraphs 3 and 4 has held as follows:

"3. Parties to the case submitted that they want an early decision on the point before the due date of election and they will accept the decision as there is no mala fides against the petitioners. It is settled law that nomination paper cannot be rejected in the absence of a substantive mistake. After analysing all the decisions *A. Pasayat, J. (as he then was) in Shri. Somnath Rath v. Shri. Bikram Keshari Arukh & Ors.* (AIR 1999 Orissa 119) held as follows:

"It depends on the facts and circumstances of each case to find as to what

mistake in a nomination paper can be considered a mistake of substantial nature.

A Division Bench of this Court in *Anthrayose v. Senior Inspector of Co-op. Societies* (1992 (2) KLT 489) while considering rejection of nomination paper of a Co-operative Society held that if there is substantial compliance the nomination paper shall not be rejected. Similar view was expressed by this Court in the decision in *Santhosh v Joint Registrar* (1994 (2) KLT 141). The Supreme Court in (AIR 1966 SC 2099) held that Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial nature.

4. On going through the five nomination papers it is seen that the mistake pointed out by the Returning Officer is not substantial at all. There is no difficulty in identifying the person concerned. In three nomination papers, it is written as K.B. Suresh and in two nomination papers it is written as Suresh K.B. Merely because the membership number is also mentioned it cannot be stated that there is substantial mistake. Eventhough there is a small spelling mistake in the seconder's name in the the fifth nomination paper it is not a substantive mistake as his roll number was mentioned and that nomination paper was correct in all other respects, even according to the Returning Officer. Considering all these aspects together I am of the view that nomination papers on behalf of the petitioner ought to have been accepted. Therefore, I allow O.P. No.31185 of 1999 and direct the Returning Officer to include his name also in the final list."

(underline supplied)

A somewhat identical question came up for consideration before this Court in *Tony Raphy v. Cochin University of Science and Technology* reported in 2011 SCC OnLine Ker.35 wherein a nomination to the election to the Senate and academic council of the respondent university was rejected for the reason that the name of the candidate is wrongly written in the nomination. In Ext.P2 nomination while writing the name of the petitioner as Tony Raphy, letter "T" has written in such a manner that it is capable of being read as "J". This Court considered the said question and found that the rejection of the petitioner's nomination was not on any substantial ground but only on a trivial ground. In paragraph 5 of the judgment this Court held as follows:

"5. As rightly pointed out by the counsel for the petitioner relying on the judgments of this Court in *Santhosh v. Joint Registrar* (1994 (2) KLT 141) and *Suresh v. High Court Advocates' Association* (2000 (1) KLT 652), the nomination submitted in an election can be rejected only on substantial grounds and not on trivial ones. In this case, there is no dispute regarding the identity of the candidate and the only objection is that the name has been wrongly written in the nomination paper. This contention has been raised by the respondents, on the basis that, in Ext.P2 nomination, while writing the name of the petitioner as Tony Raphy, the letter 'T' is written in such a manner that it is capable of being read as 'J'. In my view, if the name as written in Ext.P2 nomination form was read along with his number in the electoral roll and if a comparison was made

with the entries in Ext.P3 electoral roll, the Returning Officer could not have concluded that the name of the petitioner has been wrongly written. In any case, on the pleadings, I am satisfied that the rejection of the petitioner's nomination for the aforesaid reason is not on any substantial ground, but only on a trivial ground."

(underline supplied)

In view of the categoric declaration by this Court in the decisions cited supra and on a perusal of Ext.R1(a) nomination paper submitted by the petitioner I find that his nomination has been rejected not on any substantial grounds and the reason stating for rejection of the nomination appears to be very trivial and therefore the rejection of the nomination submitted by the petitioner as per Ext.R1(a) is liable to be interfered with.

6. Another contention raised by the learned counsel appearing for the 4th respondent is that as regards the rejection of a nomination paper, the petitioner cannot approach this Court and the remedy of the petitioner lies elsewhere. I am not inclined to accept the said contention of the 4th respondent. The mistake that has been pointed out by the returning officer for rejecting the nomination paper of the petitioner is a trivial one. No other nomination has been submitted other than the one submitted by the petitioner and there are no other rival claimants affected by the acceptance of the nomination submitted by the petitioner. A similar question came up for consideration before this Court in Joy v. Calicut University reported in 1986 SCC OnLine Ker.196 wherein this Court on finding that no valid reasons were stated for rejection of the nomination, the action of the Registrar in rejecting the nomination and the affirmation of the illegal action by the Vice Chancellor were interfered with and the said decisions were quashed. As regard the question of existence of any alternate remedy, this Court in the said judgment held in paragraph 16 of the judgment as follows:

"16. Counsel for the respondents raised a question of existence of alternate remedies. That is no bar for this Court to decide the matter. The question is one on which it is better to have an authoritative decision of this Court. The slow process of statutory remedy being exhausted will only impede the progress of the election procedure. That is not conducive to the larger interest of the University itself. The University Authorities have already expressed their stand and decision on the question. It will be unnecessary formality in such circumstance to defer decision on the crucial point arising for consideration in the writ petition. In areas where clarity and authority are called for in the understanding of general statutory provisions, it is better that the consideration of such an issue is not dragged on in the slow proceedings before other authorities, as, the final decision has to be ultimately rendered by this Court itself. This circumstance also has persuaded me in repelling the jejune ground of alternate remedy raised as a defence to the maintainability of the writ petition. In the light of the above discussion, the writ petition is allowed. The action of the respondents in rejecting the nomination paper of the petitioner is declared as

illegal and unenforceable. The election will proceed treating the petitioner as having submitted a valid nomination. I direct the parties to bear their respective costs."

In view of the abovesaid discussion the above writ petition is allowed. There will be a direction to the 4th respondent to accept the nomination of the petitioner for the election to the Senate from the constituency of "Presidents of all the registered Trade Unions in the State" and initiate further proceedings in the matter forthwith, considering that Ext.R1(a) nomination submitted by the petitioner is valid.

With the abovesaid direction the writ petition is allowed.