

Kerala High Court

Jijo Kurian vs Returning Officer on 19 August, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 23248 of 2009(A)

1. JIJO KURIAN, S/O.KURIAN,
... Petitioner

Vs

1. RETURNING OFFICER, SALE OFFICER NO.3,
... Respondent

2. ASSISTANT REGISTRAR (GENERAL),

3. AMBALAPAD SERVICE CO-OPERATIVE BANK LTD.

4. C.R.VAREED, CHITTILAPALLI HOUSE,

For Petitioner :SRI.C.S.AJITH PRAKASH

For Respondent :SRI.GEORGE POONTHOTTAM

The Hon'ble MR. Justice ANTONY DOMINIC

Dated :19/08/2009

O R D E R

ANTONY DOMINIC, J.

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W.P.(C) NO. 23248 OF 2009 (A)

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Dated this the 19th day of August, 2009

J U D G M E N T

Petitioner is a member of the 3rd respondent, a Co-operative Bank. The election to the Board of Directors of the Bank is scheduled to be held on 23rd of August, 2009. As per the schedule fixed in the election notification, nominations were to be submitted by 10/8/2009 and its scrutiny was on 11/8/2009. Petitioner submits that he submitted his nomination from Ward No.3. It is stated that

during the course of the scrutiny held on 11/8/2009, 4th respondent, hailing from Ward No.6, objected to the nomination of the petitioner on the ground that the petitioner was disqualified under Rule 44(1)(i) of the Kerala Co-operative Societies Rules to be a member, he being a Director of Padmatheertham Kuries and Loans Pvt. Ltd., a company incorporated under the provisions of the Companies Act, 1956, which is engaged in the same business, as is being carried on by the 3rd respondent Bank.

2. In the counter affidavit filed by the 1st respondent, it is averred that the complaint received from the 4th respondent was WPC 23248/09 disclosed to the petitioner and that he did not produce any document contradicting the averments in the complaint. As against this, according to the petitioner, he had produced before the 1st respondent Exts.P6 to P8 to show that he had already resigned from the Board of Directors of the aforesaid Company as early as on 15/7/2009 and that his resignation was already accepted by the Company. Be that as it may, from the files of the 1st respondent, produced by the learned Government Pleader, it is seen that the Returning Officer rejected the nomination, with the following order:

"Rejected under Rule 44(1)(i)".

3. It is in this background this writ petition is filed with the following prayers:

(i) issue a writ of certiorari, calling for the records leading to the rejection of the nomination paper submitted by the petitioner, evidenced by Ext.P4 receipt and pass appropriate orders.

(ii) issue a writ of mandamus or any other writ, declaring that the rejection of nomination of the petitioner, by the 1st respondent, on the ground that the petitioner is the director of a Chitty company is wrong and illegal exercise of power.

(iii) issue a writ declaring that there is no disqualification for the petitioner to contest in the election to the managing committee of the 3rd respondent bank and the rejection is bad in law.

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4. I heard Sri.C.S.Ajith Prakash, learned counsel appearing for the petitioner, learned Government Pleader for the 1st respondent, Sri.George Poonthottam appearing for the 3rd respondent and also Sri.G.Sreekumar appearing for the 4th respondent.

5. Several factual contentions have been made by both sides. While the petitioner asserts his eligibility to contest in the election in view of his resignation from the company, which according to him was accepted long prior to the submission of the nomination and that he had produced documents in proof thereof before the Returning Officer, the learned Government Pleader and also the 4th respondent denies the above assertions. It is also to be noted that the petitioner's above assertions are supported by the 3rd respondent in the counter affidavit filed.

6. Irrespective of the factual controversies raised in this writ petition, in my view, the petitioner is entitled to succeed on the short ground that in the rejection of his nomination, the Returning Officer has not complied with the requirements of Rule 35A (e) (iv), which reads as under:

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(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.

7. A reading of this Rule shows that if the decision of the Returning Officer is to accept the nomination, he shall make an endorsement to that effect on the nomination paper. On the other hand, if his decision is to reject the nomination, he shall record in writing a brief statement of his reasons for such rejection. Although in the affidavit filed, detailed reasons for rejecting the petitioner's nomination have been stated, as has been held by the Apex Court in *Mohinder Singh v. Chief Election Commissioner* (AIR 1978 SC 851), validity of an order has to be decided on the reasons stated in the order itself and reasons cannot be supplemented through the counter affidavit filed. If that be so, the validity of the rejection has to be tested in the light of the endorsement that is made by the Returning Officer on the reverse side of the nomination form itself, which has been extracted above. The question in such circumstances, is whether, the endorsement made by the Returning Officer satisfies the requirements of the Rules.

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8. In my view, the Returning Officer has not given a brief statement of his reasons for rejection of the nomination of the petitioner, which is a mandatory requirement as per the Rule extracted above. Learned Government Pleader contended that since the Rule, on the basis of which nomination has been rejected, that will satisfy the requirements of the Rule. In my view, this contention is not acceptable. The Rule may be attracted in several factual situations and what is required to be stated is the factual situation in which the rule is attracted in a particular case. Consequently, the rejection of the petitioner's nomination is illegal, and necessarily, the decision of the Returning Officer, has to be quashed and I do so.

9. It is therefore declared that the rejection of the nomination of the petitioner is illegal and therefore the petitioner is entitled to contest in the election to the Board of Directors of the 3rd respondent Society, which is now scheduled to be held on 23/8/2009. However, it is made clear that this judgment has been rendered for the aforesaid reasons and if any person including the 4th respondent has a case that the petitioner is ineligible for any WPC 23248/09 reason, it will be open to them to pursue the statutory remedies that are available and such authority shall decide the matter untrammelled by the findings herein.

Writ petition is allowed as above.

ANTONY DOMINIC, JUDGE Rp