

Law College Elections | Returning Officer Can Only Verify Validity Of Nomination Paper, Not Competence Of A Candidate: Kerala HC

2022 LiveLaw (Ker) 591

IN THE HIGH COURT OF KERALA AT ERNAKULAM

DEVAN RAMACHANDRAN; J.

WP(C) NO. 35431 OF 2022; 9 November 2022

BENNAT TOM V. *versus* CALICUT UNIVERSITY

Petitioner by Advs. Thasnimol T.S., Saurav B., Shiji P.S.

Respondents by Advs. P.C. Sasidharan (S.C), Parvathy K.(G.P.)

J U D G M E N T

The petitioner is pursuing his studies at the Post Graduate level in the 'Government Law College', Kozhikode and he made his nomination as a candidate to the post of 'Class Representative', pursuant to Ext.P1 notification of elections.

2. The petitioner says that, however, even though his nomination was valid in all respects, the 2nd respondent - Returning Officer rejected it through Ext.P5, not because of any errors therein, but incredulously saying that, if he is elected, he would not be in a position to discharge his duties as Class Representative, because his classes are to be completed very soon.

3. The petitioner asserts that the power of a Returning Officer is only to verify the validity of a nomination paper and not the eligibility or competence of a candidate; and hence that she has exceeded her jurisdiction in having issued Ext.P5, thus justifying him in having approached this Court directly, without invoking his alternative remedy.

4. Smt.Thasnimol Nishad - learned counsel for the petitioner, further argued that, as is evident from Ext.P5, objections appear to had been raised that if her client is elected, he would not have enough time to function as the Class Representative, because the academic year is to end soon. She, however, added that, since the University of Calicut (University) has not even published the Examination Schedule, it is likely that her client will continue as a student for several months after the elections; and hence that Ext.P5 is without any forensic justification. She thus prayed that same be set aside.

5. Before I proceed to analyze the contentions of the petitioner as afore, I must record that, when this matter was heard by this Court on 08.11.2022, I issued an interim order to the following effect:

“Even though the learned Standing Counsel for the University says that no student can be allowed to participate in the elections if they have completed their classes; and that, since, the petitioner is to complete his course by the end of December 2022 - thus being disentitled to stand for elections - I am not persuaded to accept it immediately because, it is argued by Smt.Thasnimol Nishad - learned counsel for the petitioner that, there are examinations pending and that her client, therefore, should be construed as a student until it is over.

Resultantly, I direct the 2nd respondent - Returning Officer not to publish the results of the elections until the next posting date.

List on 10.11.2022.”

6. Subsequently, Smt.Parvathy Kottol – learned Government Pleader, made a request that this matter be listed today itself, because publication of the results of the election cannot otherwise be done.

7. Today, the learned Government Pleader insisted that this matter be heard immediately; and I proceed to do so, with the consent of all sides.

8. Smt.Parvathy Kottol vehemently argued that Ext.P5 is irreproachable because the Returning Officer has found correctly that, if the petitioner is allowed to contest and should he win the elections, the seat would soon become vacant, because his academic period would end shortly. She pointed

out that it is within the power of the Returning Officer to have done so; and that the reasons stated in Ext.P5 are “germane”. She thus prayed that this writ petition be dismissed.

9. Sri.P.C.Sasidharan – learned Standing Counsel for the University, submitted that rejection of the nomination of the petitioner was made by the Returning Officer of the College and therefore, that his client has no comment to make on it, at this point of time. He, however, added that, contrary to the assertions of the petitioner, the notification for the examinations of the course - which he is pursuing - has been published, to commence in the first week of January, 2023; and that it will be over soon thereafter, thus leading to declaration of its results within a few months therefrom.

10. The afore contentions of the respondents being so recorded, one must understand that the issues in this case can only be tested from the standpoint of the powers of the Returning Officer; and, in fact, there is no dispute on this.

11. The Returning Officer is expected to verify and scrutinize every nomination paper, after adverting to the objections, if any, by rival candidates or others. This process is one in which he is expected to verify the validity of the nomination paper; and if that alone had been done in Ext.P5, then this Court would have granted approval to it.

12. However, when one reads Ext.P5 closely, it is luculent that the Returning Officer did not find the nomination paper of the petitioner to be invalid – this being expressly admitted by the learned Government Pleader also; but she went on to then conclude that even if the petitioner is allowed to participate in the elections and should he win, it would be futile, because his academic year is ending and that the seat would become vacant.

13. Even taking for the sake of argument, that the afore opinion of the Returning Officer has any worth, I am afraid that it is, at best, an opinion and nothing more.

14. As far as the powers of the Returning Officer is concerned, it is circumscribed by the applicable Rules and Regulations, which concededly accede to him/her the power to reject a nomination only if it is not valid. This is to mean, if there are discrepancies in the nomination paper, which would disentitle the same to be approved, either on the basis of the objections made; or for valid reasons found on his/her own motion.

15. In the case at hand, it is indubitable – it being without any contest – that the nomination paper of the petitioner was found to be valid in all respects, but an opinion was entered into by the Returning Officer in Ext.P5 that, even if he is allowed to participate and should he win, it would be futile.

16. To paraphrase, what the Returning Officer has actually done is not to decide the validity of the nomination, but the eligibility of the petitioner to contest the election – which the said Authority surely obtained no competence or jurisdiction to have done.

17. I certainly fail to understand how the Returning Officer could have taken such a view and record it in the impugned order, particularly when there is no dispute projected by any of the parties that petitioner is a full time student as of now, fully entitled to vote and to offer himself as a candidate in the ensuing election.

In the afore circumstances, I allow this writ petition and set aside Ext.P5 proceedings of the 2nd respondent - Returning Officer.

Consequently, the interim order of this Court dated 08.11.2022, allowing the petitioner to participate in the elections is confirmed; and the 2nd respondent – Returning Officer is directed to publish the results of the same as per law.

All corollary consequences of the afore declarations shall also flow.