



2023/KER/70714

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

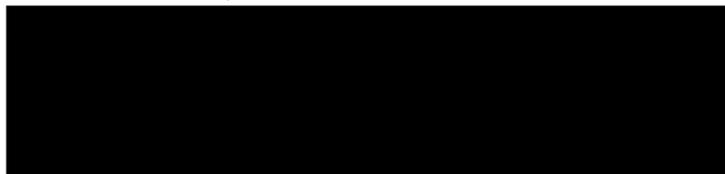
WEDNESDAY, THE 15<sup>TH</sup> DAY OF NOVEMBER 2023 / 24<sup>TH</sup> KARTHIKA,

1945

WP (C) NO. 18229 OF 2023

PETITIONER :

BASTIN BABU,



BY ADVS.

C.S.AJITH PRAKASH

T.K.DEVARAJAN

BABU M.

ANCY THANKACHAN

NIDHIN RAJ VETTIKKADAN

D.ANIL KUMAR

VILASINI NAYAK

GOURI KAILASH

KRISHNENDU.D

RESPONDENTS :

- 1 DISTRICT COLLECTOR, ERNAKULAM  
OFFICE OF THE DISTRICT COLLECTOR,  
CIVIL STATION, KAKKANAD, ERNAKULAM,  
PIN - 682 030
- 2 RETURNING OFFICER,  
APPOINTED FOR STANDING COMMITTEE ELECTION,  
ADDITIONAL DISTRICT MAGISTRATE,  
ERNAKULAM AND THE DEPUTY COLLECTOR GENERAL,  
PIN - 682 030
- 3 CORPORATION OF KOCHI,  
OFFICE OF THE CORPORATION OF KOCHI,  
REPRESENTED BY THE SECRETARY,  
PARK AVENUE ROAD, MARINE DRIVE, KOCHI,  
KERALA - 682 011



- 4 THE SECRETARY,  
CORPORATION OF KOCHI, PARK AVENUE ROAD,  
MARINE DRIVE, KOCHI, KERALA, PIN - 682 011
- 5 CHIEF ELECTION COMMISSIONER,  
OFFICE OF THE CHIEF ELECTION COMMISSIONER,  
VIKAS BHAVAN, JANAHITHAM, NEAR LEGISLATIVE  
ASSEMBLY, THIRUVANANTHAPURAM, KERALA,  
PIN - 695 033
- 6 V.A. SREEJITH,  
[REDACTED]  
PIN - 682 006

R1 & R2 BY SMT.K.AMMINIKUTTY, SENIOR GOVERNMENT  
PLEADER

R3 & R4 BY SRI.K. JANARDHANA SHENOY, SC

R5 BY SRI.DEEPULAL MOHAN, SC

R6 BY ADV.P.K.VARGHESE

BY ADVS.

K.S.ARUN KUMAR(K/1588/2003)  
M.T.SAMEER(K/3346/1999)  
JERRY MATHEW(K/658/2015)  
REGHU SREEDHARAN(K/653/2020)  
RAMEEZ M. AZEEZ(K/001008/2022)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 10.11.2023, THE COURT ON 15.11.2023 DELIVERED  
THE FOLLOWING:

**"C.R."****BECHU KURIAN THOMAS, J.**

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**W.P.(C) No.18229 of 2023**

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**Dated this the 15<sup>th</sup> day of November, 2023****JUDGMENT**

The question for resolution in this writ petition is whether a candidate has cast his vote for himself in the elections to the Chairman of a Standing Committee to a local authority. Seldom do we come across instances when uncertainty looms over the candidate's own vote. This is such an occasion when the opposite candidate alleges that his opponent had not voted for himself.

2. Petitioner and the 6<sup>th</sup> respondent are Councillors of Cochin Corporation. Both of them are Standing Committee Members for Education and Sports (for short 'the Standing Committee'). Election to the post of Chairman of the Standing Committee was scheduled to be held on 09.05.2023. Petitioner and 6<sup>th</sup> respondent were the nominated candidates of the UDF and the LDF, respectively, for the aforesaid election. As per Rule 11 of the the Kerala Municipality Standing Committee Rules, 2000 (for short 'the Rules'), a member has to cast



his vote by putting the alphabet 'X' on the ballot paper against the name of the candidate whom he intends to vote and thereafter must put a signature and write his name on the reverse side of the ballot paper.

3. At the election, one member abstained, and the balance was eight out of the nine members who were eligible to vote. During the counting of votes, the Returning Officer rejected the vote cast by one voter. Thus, the total number of votes counted was 7. The 6<sup>th</sup> respondent was declared as the elected candidate as he secured 4 votes. Petitioner contends that the 6<sup>th</sup> respondent had not cast his vote in the manner prescribed by law, and therefore, his vote ought to have been declared invalid. Though, according to the petitioner, objections were raised at the venue of the counting itself, the 2<sup>nd</sup> respondent refused to accede to the objection and declared the 6<sup>th</sup> respondent as duly elected. Subsequently, this writ petition has been preferred after obtaining copies of the ballot papers under the RTI Act.

4. A counter affidavit has been filed by the 6<sup>th</sup> respondent pointing out that the alphabet 'X' had been put against his own name in the ballot paper and that since there are no other marks, the vote should be treated as valid. It was pleaded that there was only one 'X' mark on the ballot paper in dispute and that was in the column relating to the 6<sup>th</sup> respondent himself.



5. I have heard Sri.D.Anil Kumar, the learned counsel for the petitioner, Sri. Deepulal Mohan, the learned Standing Counsel for the Returning Officer and Sri. P.K.Varghese, the learned counsel appearing for the 6<sup>th</sup> respondent.

6. The issue revolves around whether the 6<sup>th</sup> respondent had cast a valid vote as prescribed by the Rules. In order to appreciate the contentions advanced, it is necessary to extract Rule 11 sub clauses (5) and (7) of the Rules, which read as follows:

**"11. Manner of Election of Chairman :-**

xxx      xxx      xxx

xxx      xxx      xxx

*(5) Each member shall, immediately on receipt of the ballot paper, proceed to the place set apart for voting and vote putting the mark 'X' on the ballot paper against the name of the candidate for whom he intends to vote and after putting his signature and writing his name on the reverse of the ballot paper, put it into the ballot box kept in a place visible to the returning officer*

xxx      xxx      xxx

xxx      xxx      xxx

*(7) The ballot paper that does not contain the mark 'X' against the name of any of the candidates or that contains the mark 'X' against more than one name or that does not bear on the reverse, the name and signature of the member who marked the vote shall be rejected and the rejected ballot papers shall be kept in separate cover."*



7. The ballot paper has been produced as Exhibit P4. Pursuant to directions, the original ballot paper was produced by the learned Standing Counsel in a sealed cover. The ballot papers were perused by all the counsel as well as the Court and was returned to the Standing Counsel itself.

8. There were two candidates at the election for the Chairman of the Standing Committee, of which one was the petitioner and the other was the 6<sup>th</sup> respondent. The ballot paper of the 6<sup>th</sup> respondent indicates that there are markings on the area for casting the vote against the petitioner's column as well as that of the 6<sup>th</sup> respondent. It is evident from the naked eye itself that an 'X' was put against the petitioner's name, which is seen scored off. Another mark is put against the name of the 6<sup>th</sup> respondent. The symbol of a stroke (/) and two lines connected to each other are drawn over and in the opposite direction of the stroke. A glance at the ballot paper reveals that it is possible to read the mark against the 6<sup>th</sup> respondent as scoring off of the stroke that was put initially, or it could be a drawing of two lines parallel to each other in the opposite direction of the stroke, both of which do not depict the alphabet 'X'. The symbol as against the 6<sup>th</sup> respondent's name is thus ambiguous. On verification of the ballot paper, it is evident that the mark 'X' was not put either against the petitioner or against the 6<sup>th</sup> respondent, though there are markings



against both.

9. Even otherwise, Rule 11(7) of the Rules explicitly states that a vote can be cast only by writing the mark 'X'. The symbol 'X' cannot be written by two lines scored against one. It should be one single line over another single line. Though the nature of the mark or alphabet is not deducible from the ballot paper, as long as the alphabet is not 'X', it cannot be held that the vote is validly cast.

10. In this context, it is relevant to note Rule 11(5) extracted earlier, which specifically mentions that on receipt of the ballot paper, the voter must proceed to the place set apart for voting and must cast his vote by putting the mark 'X' on the ballot paper against the name of the candidate for whom he intends to vote. Again, Rule 11(7) stipulates that if the ballot paper does not contain the mark 'X' against the name of any candidate, the vote shall be rejected. The form prescribed for the ballot paper also stipulates that the mark 'X' must be put against the candidate's name. Thus it leaves no room for doubt that in the absence of the mark 'X' on the ballot paper, the vote has to be rejected.

11. A Division Bench of this Court in **Walter D. Paul v. Ummer** (1990 KHC 118) had observed that if the voting paper contains a tick mark instead of an 'X' mark, it has to be rejected. Reference was made to the provisions then in force, which expressly



spoke of the manner in which a voter has to cast his vote and provided that if the voting paper does not contain the mark 'X', it shall be treated as invalid. Referring to the provision, it was held that since there is an express stipulation which requires the mark 'X' on the ballot paper and since the said rule is mandatory, any mark other than 'X', if used in the ballot paper, is liable to be rejected.

12. However, a learned Single Judge of this Court in **Gopalakrishnan v. Dominic** (1992 KHC 357) had distinguished the Division Bench judgment on the basis of the Rules in question in that case and stated that since the consequences of putting a different mark do not find a place in the said Rules, the intention of the voter having been manifested by the mark against the name of the petitioner therein, the vote cannot be invalidated.

13. In another decision in **Mathai Yohannan v. Mathew Joseph and Others** (1997 KHC 305), a learned Single Judge had observed that any mark or writing in the ballot paper would not invalidate the vote and when the intention of the voter is very clear that he exercises his preferences in favour of petitioner therein, the ballot paper shall not be rejected as invalid.

14. It is relevant to observe at this juncture that the decision in **Gopalakrishnan's** case (supra) and that in **Mathai Yohanna's** case (supra) can be distinguished having regard to the facts involved



therein and the statutory provisions in the present case. In the rules under consideration, the consequences of not putting the mark 'X' have been provided. In **Gopalakrishnan's** case (supra), unlike the present case, there was no rule that mandated treating the ballot paper which does not contain the mark 'X' as invalid.

15. A voter's intention is not what is expressed subsequent to the casting of the ballot. The intention has to be manifested through the ballot, in the manner provided, that too, at the time when he exercised his right of franchise. Subsequent assertions or expressions of the voter have no bearing on the intention. Further, when the nature of the mark appearing on the ballot paper can be interpreted or perceived differently by different persons, there arises a lack of clarity on the symbol. The ambiguity or uncertainty created by the ballot paper cannot be substituted by any subsequent affirmations. Even if the voter is the candidate himself, that is not a reason to assume that he had cast his vote in his favour, if the ballot paper does not expressly reflect or manifest such an intention. As mentioned earlier, the intention of the voter is to be deduced from the ballot paper and not by any antecedent or subsequent expressions.

16. The electorate for election to the Standing Committee is admittedly from amongst nine counsellors. Both the petitioner and the 6<sup>th</sup> respondent are informed voters, unlike those in a general



election where there could be many illiterate voters. The limited number of the electorate coupled with the informed nature of those voters, impel this Court to hold that any mark other than 'X' with clarity and without any doubt or ambiguity alone can result in the casting of a valid vote as per Rule 11(7) of the Rules.

17. As held in the Division Bench judgment in **Walter D Paul's** case (supra), since there is an express provision which requires the vote to be cast only by a mark 'X', no other symbol or alphabet can be accepted as a valid vote.

18. The contention of the 6th respondent that in the objection filed before the Returning Officer immediately after the election, petitioner had no allegation that the mark is not 'X' and therefore he cannot now raise such an objection though impressive, is only to be negated. It is true that in the objection filed immediately after the election, petitioner had not raised an objection that there is no mark as 'X' on the vote. Only in the writ petition had he raised such a contention. However, it is significant to note that there is no provision for raising any objection immediately after the election. The only mode of challenge available is through recourse to Article 226 of the Constitution of India or through a civil suit. The initial objection was filed immediately after the election, with little time to deliberate or verify. Therefore, notwithstanding the absence of any objection raised



immediately after the election, since petitioner has raised sufficient pleadings in this writ petition there is no merit in the said contention.

19. In view of the above discussion, the vote cast by the 6<sup>th</sup> respondent, as evidenced by Ext.P4 ballot paper, is invalid and liable to be rejected. Therefore it is declared that the vote cast by the 6<sup>th</sup> respondent for the election of the Chairman of the Standing Committee for Education and Sports of the Cochin Corporation in the elections held on 09.05.2023 is invalid and cannot be counted. The election of the 6<sup>th</sup> respondent as Chairman of the Standing Committee for Education and Sports of the Cochin Corporation is hereby set aside. The consequences as contemplated by law shall follow.

The writ petition is allowed.

Sd/-

**BECHU KURIAN THOMAS, JUDGE**

RKM

APPENDIX OF WP(C) 18229/2023PETITIONER'S EXHIBITS :

- Exhibit P1 A TRUE COPY OF THE NOTICE NO. EL-558743/2022 DATED 05.04.2023 ISSUED BY THE DISTRICT COLLECTOR, ERNAKULAM TO ONE OF THE MEMBER OF THE STANDING COMMITTEE
- Exhibit P2 A TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER AND TWO OTHER COUNCILORS BEFORE THE RETURNING OFFICER DATED 9.5.2023
- Exhibit P3 A TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE STATE ELECTION COMMISSION DATED NIL
- Exhibit P4 A TRUE COPY OF THE BALLOT PAPER IN WHICH THE 6TH RESPONDENT EXERCISED HIS VOTE OBTAINED UNDER THE RTI ACT
- Exhibit P4(a) A TRUE COPY OF THE BALLOT PAPERS OF THE 7 VOTERS TO THE STANDING COMMITTEE ELECTION
- Exhibit P4(b) A TRUE COPY OF THE BALLOT PAPERS OF THE 7 VOTERS TO THE STANDING COMMITTEE ELECTION
- ExhibitP4(c) A TRUE COPY OF THE BALLOT PAPERS OF THE 7 VOTERS TO THE STANDING COMMITTEE ELECTION
- Exhibit P4(d) A TRUE COPY OF THE BALLOT PAPERS OF THE 7 VOTERS TO THE STANDING COMMITTEE ELECTION
- Exhibit P4(e) A TRUE COPY OF THE BALLOT PAPERS OF THE 7 VOTERS TO THE STANDING COMMITTEE ELECTION
- Exhibit P4(f) A TRUE COPY OF THE BALLOT PAPERS OF THE 7 VOTERS TO THE STANDING COMMITTEE ELECTION



**Exhibit P4 (g)**

**A TRUE COPY OF THE BALLOT PAPERS OF THE  
7 VOTERS TO THE STANDING COMMITTEE  
ELECTION**

**Exhibit P5**

**A TRUE COPY OF THE QUERY SUBMITTED BY  
THE PETITIONER UNDER RTI ACT DATED  
10.05.2023 BEFORE THE INFORMATION  
OFFICER, ERNAKULAM DISTRICT  
COLLECTORATE, KAKKANAD**

**Exhibit P6**

**A TRUE COPY OF THE REPLY FURNISHED BY  
THE STATE PUBLIC INFORMATION OFFICER OF  
THE COLLECTORATE TO THE PETITIONER DATED  
12.05.2023**