

Matter of Palakunnathu v Ferrara

2009 NY Slip Op 32554(U)

October 13, 2009

Supreme Court, Nassau County

Docket Number: 09/020250

Judge: Karen V. Murphy

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Short Form Order

**SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 22 NASSAU COUNTY**

PRESENT:

**Honorable Karen V. Murphy
Justice of the Supreme Court**

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**In the Matter of the Application of
MATHEW G. PALAKUNNATHU
a/k/a MATHEW GEORGE, a candidate for
the office of Councilman, Third Council District,
in and for the Town of North Hempstead**

Index No.09/020250

vs.

**ANGELO P. FERRARA, a candidate for the office
of Councilman, Third Council District, in and for
the Town of North Hempstead, and JOHN A.
DEGRACE and WILLIAM BIAMONTE,
COMMISSIONERS, CONSTITUTING THE
NASSAU COUNTY BOARD OF ELECTIONS.**

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By Order to Show Cause dated October 5, 2009, returnable October 14, 2009 Mathew G. Palakunnathu, a/k/a Mathew George, an aggrieved candidate for the office of Councilman, Third District, in and for the Town of North Hempstead in the general election to be held on November 3, 2009 seeks a ballot name change pursuant to Section §16-104 of the Election Law of the State of New York. The Democratic Commissioner of the Nassau County Board of Elections supported the Petitioner's request and the Republican Commissioner of the Nassau County Board of Elections opposed the relief sought by Petitioner. By agreement of counsel, the return date was advanced and a hearing held on October 9, 2009.

Petitioner testified that he requested by letter dated July 23, 2009 that the Board of Elections put the name "Mathew George" on the ballot for the general election. Petitioner acknowledged that he is registered as Mathew G. Palakunnathu and that the designating petition listed the name of the candidate as Mathew A. Palakunnathu. He further testified that he has used the name "Mathew George" since birth and only changed his name to Mathew George Palakunnathu when he was preparing to leave Nigeria to go to Kuwait to teach. Their laws required the use of three names on a passport and he petitioned the Indian High Commission to

grant the change of name. Ultimately, he did not go to Kuwait, but instead came to the United States.

To support his testimony that he is known in the community and professionally as Mathew George, petitioner submitted yearbooks, in which his photograph appears and his name is listed in the caption as Mr. George, A.P. Science. The retired school principal, Herbert Hogan also testified that he did not know the Petitioner by the name Palakunnathu. Hogan stated that the school received a bonus, which included the name "Palakunnathu" and it took him a while to find out who that was, since he knew Petitioner only as Mathew George. A member of the community, Kalathil Varughese also testified that he knew the petitioner from church and from his political campaign, as Mathew George. Numerous campaign pieces and newspaper articles reporting his candidacy introduced into evidence refer to Petitioner as Mathew George. Petitioner, however, also introduced a life insurance policy and application, wherein he indicated his first name is George and his last name is Mathew. Similarly, a Verizon telephone bill and letter from World Education Services are addressed to "George Mathew."

On cross examination, petitioner admitted that he signed the July 23, 2009 letter stating that his full and correct name is Mathew George Palakunnathu; that his pay is directly deposited into bank accounts bearing the name Mathew George Palakunnathu; his tax returns are filed in the name of Mathew George Palakunnathu, and that his passport and driver's license are issued in the name of Mathew George Palakunnathu. Petitioner also testified that when he became a U.S. citizen he used the name Mathew George Palakunnathu, which is also reflected on his Social Security card.

In connection with the designation of candidates on official ballots, the word "name" as used in the Election Law should be afforded its plain, ordinary and usual sense. (*Matter of Lewis v. New York State Board of Elections*, 254 A.D.2d 568, 678 N.Y.S.2d 809, [3d Dept., 1998]). At common law, a person may assume any name he chooses, provided its use is free from fraud or misrepresentation and does not interfere with the rights of others. A person may run for office using an assumed name if such name has been adopted in good faith and by continuous, general and exclusive use and has achieved recognition so that it identified the candidate to the electorate. (*1940 Op. Atty. Genl. 411*).

This Court has found no case on point, however reported cases wherein the designating petition was being challenged based on a minor variation of the candidate's name, reflect that Petitions have been upheld. Absent any showing of any intention on the part of the candidate to mislead or confuse and no showing that the use of the candidates name as set forth on the designating petition (and her driver's license, vehicle registration and significantly for voter registration) would tend to mislead signatories as to her identity, the proceeding to invalidate the petitions wherein the candidate used her name, without the suffix "Sr." even though her daughter resided at the same address and had the same name, except that the daughter used her middle initial, was dismissed. (*Peterson v. Board of Elections*, 218 A.D.2d 776, 630 N.Y.S.2d 580 [2d Dept., 1995]). Designating petitions have not been invalidated where the familiar form of the candidate's first name or a nickname has been used absent proof that such name was intended to mislead potential voters. (*Gumbs v. Board of Elections of City of New York*, 142 A.D.2d 235,

532 N.Y.S.2d 44 [2d Dept., 1988]) and in fact in one uncontested case, cited by petitioner, where that candidate demonstrated by unrefuted credible testimony that he is known by two first names, Emanuele and Manny, the court ordered the name on the ballot to be changed to Manny Innamorato because there was no clear intent to defraud the electorate. (*Matter of Innamorato v. Friscia*, 2/16/2007 N.Y.L.J. 26, [col 3]).

The case of Tony Eisenberg, cited by Petitioner is also unavailing. The petitioner, Anatoly Eyzengerg presented an application to the Board of Elections, changing his name to Tony Eisenberg and thereafter began circulating petitions in the name of Tony Eisenberg. He was subsequently advised that his change of name was rejected by the Board and voided *nunc pro tunc*. The trial court found that Tony Eisenberg failed to effectuate a common law name change, however, the Appellate Division and Supreme Court found no reason to disqualify the candidate for using the name Tony Eisenberg, though his petitions were invalidated because he did not reside at the address listed as his residence on the designating petition and voter registration. (*Matter of Eisenberg v. Strasser*, 1 Misc.3d 299, 768 N.Y.S.2d 773 (Sup.Ct., Kings Co., 8/18/2003; aff'd 307 A.D.2d 1053; 100 N.Y.2d 590, 801 N.E.2d 370, 769 N.Y.S.2d 150 [2003].) Therein, the voter registration card matched the name set forth on the Petition, so there could be no voter confusion as to the identity of candidate for whom they signed petitions; they signed designating Tony Eisenberg.

Precedent however places value on the surname. Write in ballots marked only with the surname were valid ballots to be counted in that no other person on the ballot had the same surname or a surname, which could be reasonably be confused with that name. (*Price v. Mahoney*, 49 A.D.2d 1013, 374 N.Y.S.2d 467 (4th Dept., 1975); *Matter of Guilianelle v. Conway*, 265 A.D.2d 594, 696 N.Y.S.2d 253 [3d Dept., 1999]). However, a foreign war ballot could not be counted for a candidate whose first name and middle initial appeared thereon where the voter after writing in what appeared to be the candidates name, erased the surname. (*In re Cosgrove*, 46 N.Y.S.2d 196 [Sup.Ct., Richmond Co., 12/30/1943].)

The Court notes that the Election Law is generally strictly construed and does not permit deviation from the statutory procedures and remedies. (*In the Matter of Consuello*, 17 Misc.3d 1108(a), 851 N.Y.S.2d 57 [Sup.Ct., Rensselaer Co., 9/13/2007].) The Board of Elections will place the candidate's name on the ballot exactly as it appears on the petition that is filed, and the petition should state the candidate's name as it appears on the Voter Registration Card at the Board of Elections. (*Goldfeder, Jerry H.; Goldfeder's Modern Election Law, 2d Edition*, p.13; 2009 New York Legal Publishing Corp.) Registration records must contain the voter's surname, given name and initials of other names. (*Election Law* §5-500 [4] b.) In printing the names of candidates whose full names contain more than fifteen letters, only the ***surname must be printed in full***, however the candidate may indicate, in writing, the shortened form in which, **subject to this restriction**, his name shall be printed. (emphasis added, (*Election Law* §7-104 [2].) To give meaning to the words used in the statute, Petitioner's surname Palakunnathu must be printed in full.

Petitioner alleges that he is commonly known in his profession and the community as Mathew George and seeks to have that name on the ballot. The proof submitted does not support

such a request. The conflicting evidence of Petitioner's name, including documentary evidence of his use of three different surnames, fails to support a finding that he has effectively changed his name through continuous general and exclusive use and in fact the evidence is to the contrary. While some evidence supports his choice of name as Mathew George, other evidence, submitted by Petitioner supports the use of the name George Mathew, with Mathew as a surname, whereas all of his legal documents, including the voter registration and designating petition support a finding that Petitioner uses the name Mathew G. Palakunnathu and he has taken no steps to change it. The election law makes clear that only the surname must be printed in full when a name exceeds 15 letters, giving less weight to given and middle names.

In light of the self generated confusion over Petitioner's surname and the lack of clear proof of a common law change of name, the name on the ballot should reflect the name the voters designated when they signed the petitions and which name properly appears in the registration records. This is not a case where the voters would be deprived of the opportunity to vote for their candidate of choice, but rather the name on the ballot will be the same as the name of the candidate they designated on the petition. The Board may, however, correct the typographical error and change the middle initial from "A" to "G" to more accurately reflect the candidate's name. The petition is in all other respects denied.

The foregoing constitutes the Order of this Court.

Dated: October 13, 2009
Mineola, N.Y.

Karen V. Murphy

J. S. C.

ENTERED
OCT 15 2009
NASSAU COUNTY
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