

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

927 WRIT PETITION NO.4444 OF 2023

REKHATAI SATISH PATIL

VERSUS

**THE RETURNING OFFICER AGRICULTURE PRODUCE MARKET
COMMITTEE AND OTHERS**

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Advocate for Petitioner: Mr. V. D. Salunke h/f.
Mr. Salunke Mayur Vasant

AGP for Respondent/State: Mr. K. B. Jadhavar

Advocate for Respondent No.1: Mr. V. H. Dighe

Advocate for Respondent No.4:

Mr. M. S. Deshmukh h/f. Mr. U. L. Momale

Advocate for Respondent No.8: Mr. N. B. Khandare

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CORAM: ARUN R. PEDNEKER, J.

DATE: 20th APRIL, 2023

PER COURT:

1. Heard.

2. The petitioner is challenging the order dated 12.04.2023 passed by the District Deputy Registrar allowing the appeal no.4 of 2023 filed by respondent no.4, whereby he rejected the nomination of the petitioner which was accepted by the returning officer by order dated 05.04.2023. The facts in the petition can be summarized as under.

3. The election to respondent no.3 APMC was scheduled and the election programme was declared on 25.03.2023. The petitioner filed her nomination

from the cooperative society (women) seat reserved for women. The objection was raised against her nomination that her husband is a representative of Parola Cooperative Fruit Sale Society in the traders constituency and, as such, an objection was raised that the bar under Rule 10(2)(ii) of the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017 from contesting the election. The objection filed by respondent no.4 was rejected by the election authority. Thereafter, the appeal was filed. In the appeal, the objection was upheld and the nomination was rejected. The petitioner challenges the order of the appellate authority in the present writ petition.

4. The notice was issued in this matter, on 17.04.2023 and following order was passed:-

"1. Issue notice to the respondents, returnable on 19.4.2023. Mr. V. H. Dighe waives service of notice for respondent No. 1 in all the matters. Mr. K. B. Jadhavar, the learned AGP waives notice for respondent No. 2 in all the matters. Hamdast permitted.

2. In addition, the petitioner is permitted to serve the remaining respondents by all private modes including paper publication in the local area of APMC and file service affidavit to that effect before the next date of hearing."

5. In pursuance of the order passed by this court paper publication was done by the petitioner in the newspaper having wide circulation in the operation area of the APMC.

6. After notice, respondent no.4 who was the main objector appeared in the matter, so also, respondent no.8, who has filed nomination has also appeared.

7. Respondent no.8 raised preliminary objection that the service of private notice by publication is not as per the appellate side rules and that the matter be not taken up for hearing until all the parties are duly served.

8. The instant petition relates to the challenge of the rejection of the petitioner's nomination. The objection to the petitioner's nomination filed by respondent no.4 was rejected and the objector had filed an appeal. In the appeal objection of respondent no.4 was allowed. The main contesting party in this petition is

respondent no.4, however, all the candidates who have filed their nominations are also the parties in the petition. Since the last date of the final list of nominated candidates is yet to be published it cannot be said that all the candidates who have filed their nomination have a right to be heard in the instant writ petition. Nevertheless by the orders of this court publication of notice was done in the newspaper with circulation in the local area of the operation of the APMC. There is grave urgency in dealing with these matters and the primary contender, respondent no.4, the objector is before this court. I do not see any impediment in proceeding with this matter and hear the petition as the objector as also one of the candidates who has filed his nomination, is present before this court. Respondent no.4 has extensively argued the matter so also respondent no.8 has also made submission. The learned advocate for the election authority is also present. In view of the same I proceed to hear this matter on merits.

9. Rule 10(2)(ii) of the Election Rules 2017 reads thus:-

"10. Disqualification of Committee member
(1) A person shall be disqualified for being chosen as or for being, a member of a Market Committee,-

...

...

(2) A person shall not be chosen as a member,-

(i) ...

(ii) representing agriculturists constituency, if his main income is not from agriculture or possess a traders', commission agents' or broker license or has interest in a joint family or a firm which has a traders' or commission agents' or broker license."

10. The petitioner is disqualified to contest the election of the APMC as the husband of the petitioner, who is the representative of a cooperative society holds a traders license. A bare reading of Rule 10(2)(ii) would indicate that a person shall be disqualified for being chosen as or for being, a member of a market committee if his main income is not from agriculture or possess a traders', commission agents' or broker license or has interest in a joint family or a firm which has a traders' or commission agents' or broker license.

11. The bare reading would indicate that the candidate representing agriculturist constituency to be disqualified in terms of Rule 10(2)(ii)

should be either holding interest in the joint family which has a traders license or of a firm which has a traders license. Since in the instant case, the candidate is not the member nor has interest in any firm holding traders license, Rule 10(2)(ii) is wholly inapplicable to the petitioner. In view of the same, the order passed by the appellate authority is patently illegal. The order passed by the appellate authority is set aside with a direction is issued to incorporate her name in the final list of nominated candidates.

12. The Writ Petition is disposed of.

[ARUN R. PEDNEKER, J.]

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