

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

929 WRIT PETITION NO.4446 OF 2023

SATISH BHASKARRAO PATIL

VERSUS

THE RETURNING OFFICER

AGRICULTURE PRODUCE MARKET COMMITTEE AND OTHERS

...

Advocate for Petitioner:

Mr. Salunke Vasant Digambarrao

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

...

AND

...

930 WRIT PETITION NO.4447 OF 2023

SATISH BHASKARRAO PATIL

VERSUS

THE RETURNING OFFICER AGRICULTURE PRODUCE MARKET
COMMITTEE PAROLA AND OTHERS

...

Advocate for Petitioner:

Mr. Salunke Vasant Digambarrao

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

...

CORAM: ARUN R. PEDNEKER, J.

Reserved On:	20.04.2023
Pronounced on:	21.04.2023

JUDGMENT:

1. Rule. Rule returnable forthwith. With the consent of parties, the petitions are heard finally.

2. Both these petitions involve common questions and are taken up for hearing together.

3. The facts are taken from writ petition no.4446 of 2023. The election of respondent no.3 APMC, Parola were due and election programme was published on 25.03.2023. The last date for filing nomination was 03.04.2023, scrutiny was on 05.04.2023 and withdrawal is up-till 20.04.2023 and date for symbol allocation is 21.04.2023 and the voting is on 28.04.2023. The petitioner submitted his nomination from the OBC category in Writ Petition No.4446 of 2023 and in the Open category in Writ Petition No.4447 of 2023 in the constituency of agriculturist from agricultural credit societies and multipurpose cooperative societies in the APMC, Parola.

4. The objections were raised against the nominations of the petitioner contending therein that in terms of Rule 10(2) of the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017 the person who holds a traders license is not eligible to contest the election from the agriculturist constituency. Respondent no.1 was pleased to hear the objection and hold that as per Rule 10 (2) (ii) a person who is connected with the traders license is not eligible to contest the election from agricultural constituency. In an appeal filed by the petitioner the appeal was dismissed maintaining the earlier order passed by respondent no.1.

5. The petitioner has challenged the order passed by respondent no.1, so also, by the appellate authority – respondent no.2, in the present writ petition. He contends that in terms of Rule 10(2)(ii) of the Election Rules 2017 the petitioner is not disqualified as he is merely a representative of the Parola Taluka Cooperative Fruit Sale Society and represents the said society

and is not an individual license holder. The learned counsel submits that being a representative of a society having a traders license, the petitioner cannot be held to be disqualified under Rule 10(2)(ii) of the Election Rules 2017.

6. Undisputed facts in the case are that the petitioner is a representative of Parola Taluka Cooperative Fruit Sale Society and that such society holds the traders license and the society is in the list of voters of the traders constituency.

7. 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."

8. A bare reading of the above provision would indicate that a person representing agricultural constituency cannot be chosen as the member of the committee if his main income is not from agricultural or possesses a traders / commission agents or brokers license or has interest in the joint family or a firm which has traders or commission agents or brokers license.

9. In the instant case, the petitioner has filed his nomination from an agriculturists constituency. He is also the representative of a cooperative society for the purpose of voting in the election of the APMC in the traders constituency. The society has to appoint a representative to cast its vote and, as such, the petitioner is nominated as the societies representative to cast the vote on behalf of the society.

10. The prohibition contained in Rule 10(2) (ii) would indicate that there should not be a conflict in terms that the nominated candidate from the agriculturist constituency should not himself have license of traders or commission agents or should not have interest in a joint family or a firm which has a traders license.

11. The word "firm" is not defined in the APMC Act and Rules. The word "firm" would ordinarily indicate a partnership firm or a association of persons in contra distinction to body corporate under the Companies Act or the Cooperative Societies Act.

Section 2(14) of the Maharashtra Co-operative Societies Act, 1960 defined a "firm" as under:-

" "firm" means a firm registered under the Indian Partnership Act, 1932;"

Section 4 of the Indian Partnership Act, 1932 defined a "firm" as under:-

"4. Definition of "partnership", "partner", "firm" and "firm name".-

"Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively a "firm", and the name under which their business is carried on is called the "firm name".

Section 36 of the Maharashtra Co-operative Societies Act, 1960 provides that the registration of a society shall render it a body corporate. Section 36 makes every registered society a corporate body which acts through its committee for its management and being the representative of such a society cannot be said to have an interest in the firm holding a traders license.

12. In Black's Law Dictionary the word "firm" is defined as under:-

"firm, n. 1. The title under which one or more persons conduct business jointly. **2.** The association by which persons are united for business purposes. .Traditionally, this term has referred to a partnership, as opposed to a company. But today it frequently refers to a company. See LAW FIRM."

13. Even if a very expansive definition is given to the word 'firm' to include a cooperative society, the representative of a firm for casting the vote of the firm cannot be held to be holding an "interest in the firm" and the bar under Rule 10(2)(ii) would come into play only when the candidate from agriculturist constituency holds an "interest in the firm" having a traders license. A representative of a firm for casting its vote in the APMC election does not hold an interest in the business of the "firm" on account of he being a representative of the firm.

14. In view of the same, the orders passed by the authorities are patently illegal. Interference at this stage by inclusion of the name of the petitioners in list of nominated candidates would not affect the election process. The petitioners are not disqualified under Rule 10(2)(ii) of the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017 and, as such, the election authority is directed to include the

names of the petitioners in the final nominated list of candidates.

15. However, any other objection against the petitioner for being disqualified can be raised by filing an election petition.

16. The Writ Petitions are allowed with above directions and disposed of. Rule is made absolute in above terms.

[ARUN R. PEDNEKER, J.]