

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

903 WRIT PETITION NO.4498 OF 2023

LAXMIBAI BALASAHEB DESAI

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for the petitioner : Mr.Mahesh S. Deshmukh h/f.
Mr.S.B.Ghatol Patil

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

Advocate for Respondent nos.5, 6 and 7 : Mr.V.H.Dighe

Advocate for Respondent nos.11, 14, 15, 17, 22, 24, 36 and
40 : Mr.N.R.Pawade & Mr.D.A.Mane

...

AND

904 WRIT PETITION NO.4499 OF 2023

LAXMIBAI BALASAHEB DESAI

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for the petitioner : Mr.Mahesh S. Deshmukh h/f.
Mr.S.B.Ghatol Patil

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

Advocate for Respondent nos.5, 6 and 7 : Mr.V.H.Dighe

Advocate for Respondent nos.11, 14, 15, 17, 22, 24, 36 and
40 : Mr.N.R.Pawade & Mr.D.A.Mane

...

AND

905 WRIT PETITION NO.4507 OF 2023

BALASAHEB RAMRAO DESAI

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for the petitioner : Mr.Mahesh S. Deshmukh h/f.
Mr.S.B.Ghatol Patil

AGP for Respondent-State : Mr.P.G.Borade

Advocate for Respondent nos.5, 6 and 7 : Mr.V.H.Dighe

Advocate for Respondent nos.11, 14, 15, 17, 22, 24, 36 and
40 : Mr.N.R.Pawade & Mr.D.A.Mane

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CORAM : ARUN R. PEDNEKER, J.

DATE : 21.04.2023

P.C. :

1] The petitioners are challenging the impugned order dated 17.04.2023 passed by the respondent no. 6 – the District Election Officer [APMC] and District Deputy Registrar, Co-operative Societies, Parbhani in Appeal No.15/2023 thereby invalidating the nomination forms of the petitioners in the elections of A.P.M.C. Purna.

2] All the petitions involve common issues and are taken up together for hearing. The facts are taken from Writ Petition No.4499 of 2023.

3] The respondent no. 5 State Co-operative Election Authority published the election programme for holding the elections of respondent no. 8 – APMC, Purna. The last date for filing nomination was 03.04.2023. The scrutiny was on 05.04.2023 and the list of nominated

candidates was published on 05.04.2023. The date for withdrawal of nomination was from 06.04.2023 to 20.04.2023. The list of valid nominations along with symbol are to be published on 21.04.2023.

4] The petitioners had filed nominations from the general category of Co-operative Societies Constituency. The respondent no. 34 raised objections to the nomination of the petitioners, alleging that, sons of the petitioners are possessing traders license and their names are included in the voters list of traders constituency and as such prayed for rejection of the nomination under Rule 10 (2) (ii) of the Maharashtra Agricultural Produce Market Committee [Election to Committee] Rules, 2017 [for short 'Election Rules, 2017'].

5] The respondent no. 7 accepted nomination on 17.04.2023 of the petitioners and rejected objections of the respondent no. 34.

6] The respondent no. 34 preferred an appeal

before the respondent no. 6 – the District Election Officer [APMC] and District Deputy Registrar, Co-operative Societies, Parbhani. On 17.04.2023, the respondent no. 6 – the District Election Officer allowed the appeal and set aside the order of the Returning Officer, invalidating the nomination of the petitioners. The petitioners have filed the present Writ Petitions, challenging the order dated 17.04.2023 passed by the respondent no. 6 – District Election Officer [APMC] and District Deputy Registrar, Co-operative Societies, Parbhani in Appeal No.15/2023.

7] It is the contention of the petitioners that the petitioners are staying separate from their children and that they do not have a joint family with the sons having traders license and that the partition deed was produced before the Authority, which was accepted by the Returning Officer. However, the Appellate Authority rejected the nomination of the petitioners although there is partition deed in the family and that the prohibition under Rule 10 (2) (ii) of the Elections Rules, 2017 come into play only if the candidate

has interest in the joint family, which has a trader's license. Rule 10 (2) (ii) of the Maharashtra Agricultural Produce Market Committee [Election to Committee] Rules, 2017, is as under:

10. Disqualifications of Committee member.

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

(i)

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

8] On examination of the partition deed produced on record, the learned counsel for the petitioners submitted that the partition had taken place and there is a duly notarized partition on record that the objector is of signatory to that partition deed. The learned counsel for the petitioners also filed mutation entry indicating the partition had in fact taken effect.

9] However, on examination of the partition deed, so also, mutation entries placed on record, it appears that mutation entries are not taken in terms of the partition deed. There is variance in the partition deed and the mutation entries and that there is contra evidence on record, indicating that, the partition has not taken place and that *prima facie* the partition deed is only a sham.

10] Other two Writ Petition Nos.4498 of 2023 and 4507 of 2023 are filed by the wife of the petitioner and the petitioner and same issues are involved in all Writ Petitions i.e. Writ Petition Nos.4498/2023, 4507/2023 and 4499/2023, the same issues arise, therefore, all Writ Petitions are heard together.

11] In view of the same, the order passed by the Election Authority cannot be said to be patently illegal and that this Court in its writ jurisdiction would not entertain the present Writ Petitions and render a finding of fact, whether there is a *de facto* partition in the family of the

petitioners. Hence, this Court would not exercise writ jurisdiction in the present Writ Petition. Hence, Writ Petition is disposed of with liberty to the petitioners to seek alternate remedy as available in law.

12] Accordingly, the Writ Petitions are disposed of with above liberty.

[ARUN R. PEDNEKER]
JUDGE

DDC