

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

WRIT PETITION NO. 4553 OF 2023

Manoj s/o. Munjabhau Tithe,
Age: 42 years, Occu. : Agriculture,
R/o. Warud (N), Tq. Jintur,
Dist. Parbhani.

.. PETITIONER

VERSUS

- 1] State Co-operative Elections Authority,
Through DDR, Parbhani and District
Co-operative Election Officer,
Co-operative Society.
- 2] The Taluka Returning Officer and
Assistant Registrar Co-operative Society,
Jintur, Tq. Jintur,
Dist. Parbhani.
- 3] Sudam s/o. Kashinath Gaikwad,
Age: Major, Occu. : Agriculture,
R/o. Waghi Dhanora, Tq. Jintur,
Dist. Parbhani.
- 4] District Election Authority (APMC)
and District Deputy Registrar
Co-operative Societies, Parbhani. **.. RESPONDENTS**

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Mr.V.D.Salunke, Advocate for the petitioner
Mr.S.K.Kadam, Advocate for the respondent nos.1, 2 and 4.

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CORAM : ARUN R. PEDNEKER, J.

DATE : 21.04.2023

P.C. :

1] By way of present Writ Petition, the petitioner is challenging the impugned order dated 05.04.2023 passed by the Returning Officer for the election of the Agricultural Produce Market Committee, Jintur, wrongly accepted the nomination form of the respondent no.3 from the Grampanchayat constituency reserved for EWS category and the impugned order dated 17.04.2023 passed by the District Election Officer and District Deputy Registrar thereby dismissed the appeal.

2] Elections to the Agricultural Produce Market Committee, Jintur was due and as such the election programme was declared. The respondent no. 3 filed his nomination for the said election. Since the respondent no. 3 was contesting from economically weaker section category, the respondent no. 3 was required to give a certificate by the Talathi / Tahsildar indicating that the respondent no. 3 belongs to economically weaker section. The certificate issued by Talathi / Tahsildar of EWS is conclusive of the

fact that the candidate belongs to economically weaker section.

3] Economically Weaker Section would cover a person having less than Rs.8 lacs annual income, so also, having less than 5 acres of land.

4] The petitioner filed an objection to the nomination of the respondent no. 3 contending therein that the respondent no. 3 does not belong to economically weaker section and he filed 7/12 extract showing that the respondent no.3 owns more than 5 ares of land. The certificate issued by the Tahsildar certified that the respondent no. 3 belongs to the economically weaker section and based on the said certificate of the Tahsildar the election authority accepted the nomination of the respondent no.3. In the appeal also, the appellate authority accepted the nomination of the respondent no. 3.

5] It is the contention of the petitioner that certificate ought to have contained that annual income is

less than Rs.8 lacs of the respondent no.3, so also, the certificate should indicate that the respondent no. 3 owns less than 5 acres of land. However, the certificate of EWS issued by the respondent no. 3 does not indicate that the respondent no. 3 has less than 5 acres of land. He further submits that material produced on record clearly indicated that the respondent no. 3 has more than 5 acres of land.

6] The Tahsildar had issued a certificate as per the format of EWS certificate which was available with the office of the Tahsildar and circulated to it by the State authorities, and taking into consideration necessary information required to meet the compliance as per the format provided by the State to grant certificate of economically weaker section. Recent modification is brought about in the criteria of EWS that the person belonging to EWS should own less than 5 acres of land. However, the certificate is issued in the earlier formats available with the Tahsildar.

7] Be that as it may, the evidence produced on

record does not clearly indicate that the respondent no. 3 has more than 5 acres of land. There is some dispute as regards the ownership of land as individual or that the total ownership of the land has shown from 7/12 extract for over 5 acres of land. The respondent no. 3 contends that he does not own 5 acres of land in his own name. These are the disputed facts. The order passed by the Election Authority cannot be said to be patently illegal.

8] In view of the same, the petitioner is relegated to the alternate remedy of election petition if he so desires to file.

9] In view of the same, the Writ Petition is disposed of with liberty to approach the appropriate authority as may be available in law.

10] Accordingly, the Writ Petition is disposed of.

[ARUN R. PEDNEKER]
JUDGE