

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3247 OF 2024

Ushabai Shivaji Patil

VERSUS

The State of Maharashtra through Its Principal Secretary and Others

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Advocate for the Petitioner : Mr. Bhushan Mahajan

AGP for Respondent/State : Mr. N.B. Patil

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CORAM : S.G. MEHARE, J.

DATED : MARCH 27, 2024

PER COURT:-

1. Not on board. Taken on board.
2. Heard learned counsel for the petitioner.
3. The application for recounting was filed before the District Election Officer under Rule 72A of the Maharashtra Agriculture Produce Market Committee (Election to Committee) Rules, 2017 (for short 'Rules, 2017'). The District Election Officer passed the order on 19.01.2024 and rejected the petition of the petitioner. The petitioner is crying that the impugned order was never communicated to her. However, she went to the office of the District Election Officer. That time, its copy has been served upon her. An order passed under sub-rule (1) and sub-rule (2) of Rule 72A of the Rules, 2017, is appealable to the Divisional Joint Registrar.

4. However, learned counsel for the petitioner submits that there are exceptional circumstances to entertain this writ petition though statutory remedy by way of an appeal is available. He has submitted that the Returning Officer was acting on the say of the Hon'ble Guardian Minister. He would submit that this is an exceptional circumstance to invoke the jurisdiction under Article 226 and 227 of the Constitution of India.

5. The Hon'ble Supreme Court in the case of Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai and Others, AIR 1999 SC 22 has carved out the exceptions on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same reads thus :

- (i) where the writ petition seeks enforcement of any of the fundamental rights;
- (ii) where there is violation of principles of natural justice;
- (iii) where the order or the proceedings are wholly without jurisdiction; or
- (iv) where the vires of an Act is challenged.

6. The submissions of the learned counsel for the petitioner does not disclose that there are any exceptions to entertain this writ petition as carved out above. Rule 72A sub-rule (3) provides for the appeal against the impugned order. There are no exceptional

circumstances to invoke the jurisdiction under Article 226 and 227 of the Constitution of India. Hence, the petition stands dismissed in limine.

7. If the petitioner wanted to prefer the appeal, the time spent before this Court may be considered for condonation of delay.

(S.G. MEHARE, J.)