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

WRIT PETITION NO. 4496 OF 2024

YASHWANT UTTARESHWAR GAIKE

VERSUS

**THE STATE OF MAHARASHTRA THROUGH ITS CHIEF
SECRETARY AND OTHERS**

....

Mr Y. V. Kakde, Advocate for Petitioner;

Mr A. B. Girase, G.P. for Respondent No.1 /State

Mr Alok Sharma, Advocate for Respondent Nos.2 and 3/ Election
Commission of India

CORAM : RAVINDRA V. GHUGE

AND

R. M. JOSHI, JJ.

DATE : 30th April, 2024

PER COURT:

1. After hearing this matter for quite some time, we expressed our disinclination. We granted a pass over to the learned Advocate for the Petitioner to take instructions from the Petitioner.

2. On instructions from the Petitioner, the learned Advocate submits that the Petitioner does not desire to withdraw this Writ Petition.

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3. We have extensively heard the learned Advocates for the respective sides till 6:00 p.m. on 30/04/2024. The last date for scrutiny of the Nomination Forms was 26/04/2024, upto 3:00 p.m. According to the learned Advocate representing Respondent/ Election Commission of India, sufficient opportunities to cure the curable defects were granted to the Petitioner. The last date for withdrawal of the Nomination Forms was 29/04/2024, upto 3:00 p.m. Thereafter, the distribution of the Election Symbols has also been completed. The printing of the ballot papers to the extent of their usage with reference to the Electronic Voting Machine (EVM) and the printing of the postal ballots, has already commenced.

4. In similar circumstances, the Hon'ble Supreme Court in **Jawahar Kumar Jha Vs. Election Commission of India & Others (Writ Petition (C) No.237/2024)**, has passed an order on 19/04/2024, as under :-

“1 We are not inclined to entertain a Petition under Article 32 of the Constitution against the rejection of the nomination papers of the petitioner as an independent

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candidate for the ensuing Parliamentary election from Banka Constituency in Bihar.

2 The Writ Petition is accordingly dismissed.

3 However, the petitioner would be at liberty to avail such remedies as are available in law.

4 Pending applications, if any, stand disposed of.”

5. The contention of the Petitioner is that, he has tendered two Nomination Forms for the 39-Beed Parliamentary Constituency. With reference to Form No.83, the Petitioner was contesting as a candidate nominated and fielded by the ‘OBC Bahujan Party’. With regard to the Nomination Form No.85, he is contesting as an independent.

6. The controversy with regard to whether the District Electoral Returning Officer gave opportunities to the Petitioner to correct both his Forms, is a matter of dispute and debate, which cannot be gone into by this Court in Writ jurisdiction, since it is ‘word against word’.

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7. Insofar as the documents are concerned, the deficiencies are as under :-

(a) Form No.83 was filled in by the Petitioner on being nominated by the '*OBC Bahujan Party*'. Hence, he tendered an affidavit in support of Form No.83, declaring that, he was contesting on the ticket of the '*OBC Bahujan Party*' (name of the Political Party).

(b) A photostat copy of this affidavit was appended to Form No.85, which is fatal to the proceeding if the xerox affidavit is not replaced and a proper affidavit is not tendered.

(c) The affidavit in support of Form No.85, on internal Page No.19, does not carry a declaration of the income based on the Income Tax Returns.

(d) The remark of the Returning Officer on Form No.83 is that the entire affidavit which includes several documents, was incomplete. As noted above, the details of the Income and the Income Tax Returns were missing.

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8. In the light of the above, keeping in view that, both these Forms were not corrected, prima facie, both the Form Nos.83 and 85 were rendered defective. Insofar as Form No.85 is concerned, there was no affidavit at all as a photostat affidavit is not acceptable.

9. In view of the above and keeping in view the order passed by the Hon'ble Supreme Court on 19/04/2024, reproduced above, **this Writ Petition is dismissed.**

(R. M. JOSHI, J.)

(RAVINDRA V. GHUGE, J.)

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