

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5417 OF 2025

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Milind Maryappa Mule ... Petitioner
V/s.
Umesh Suresh Malewade & Ors. ... Respondents

Mr. Ashok B Tajane for petitioner.

Abhijit Kulkarni a/w Mr. Chinmay Patil and Prasad
Bade for respondent No.12.

Mr. Hamid D. Mulla, AGP for State – respondent No.14.

CORAM : AMIT BORKAR, J.

DATED : APRIL 24, 2025

P.C.:

1. The present writ petition, under Article 226 of the Constitution of India, assails the order passed by the Returning Officer accepting the nomination papers of a contesting candidate in an election conducted under the relevant statutory provisions. The principal challenge raised by the petitioner pertains to the alleged ineligibility of the said candidate on the ground that there exists no recognized category under the rules or the law described as "Economically Weaker Section" (EWS) for the purposes of the election in question. A further grievance is voiced that the order of the Appellate Authority was rendered without affording the petitioner an effective opportunity of hearing and in violation of principles of natural justice. Additionally, the petitioner contends that the authority hearing the appeal ought to have been from the

same constituency or electoral division, and deviation from such requirement, if any, has vitiated the appellate proceedings.

2. Having heard learned counsel for the parties and perused the record, it becomes necessary at the threshold to consider the maintainability of the present challenge in the backdrop of the settled principles governing judicial interference during the election process. It is trite law that the writ jurisdiction of this Court ought not to be exercised to interdict an ongoing electoral process save in rare and exceptional circumstances involving jurisdictional error or breach of a fundamental statutory mandate. The Supreme Court in the case of *Manda Jaganath v. K.S. Rathnam & Ors.* [(2004) 7 SCC 492] has underscored a crucial distinction between the illegality vitiating the *rejection* of a nomination paper, and the alleged illegality in *acceptance* thereof. The former has been viewed with greater severity, as it operates to extinguish the valuable right of a candidate to contest the election. Conversely, a grievance regarding improper acceptance of a nomination does not preclude the aggrieved party from pursuing post-election remedies, as the consequences of such acceptance culminate only after the democratic verdict is rendered through ballot.

3. The core of the petitioner's allegations rests on disputed questions of fact, requiring a full-fledged adjudicatory process involving evidence, examination of records, and opportunity for rebuttal. Such inquiries lie within the exclusive domain of the Election Tribunal constituted under the Act, to be invoked post declaration of election results. To permit adjudication of such factual controversies during the pendency of the election process

would amount to inviting judicial intervention into a field consciously insulated by the constitutional scheme and statutory mandate to ensure free and fair elections without judicial interruption.

4. The apprehension of denial of natural justice by the Appellate Authority, even if assumed *arguendo*, does not amount to a non est order so as to permit intervention under Article 226 at this stage. The statute has expressly provided for an efficacious remedy by way of an election petition, where all such grounds, including lack of proper hearing, misapplication of eligibility criteria, or arbitrary exercise of discretion by the Returning Officer or Appellate Authority, can be urged and adjudicated upon with the benefit of evidentiary evaluation.

5. It is well settled that where a statute provides a complete and self-contained code of remedies for electoral grievances, the invocation of writ jurisdiction is not warranted. In *N.P. Ponnuswami v. Returning Officer* [AIR 1952 SC 64] and in *Mohinder Singh Gill v. Chief Election Commissioner* [(1978) 1 SCC 405], the Supreme Court has categorically ruled that judicial review under Article 226 cannot be permitted to truncate the electoral process midstream on grounds that can efficaciously be examined in a post-election forum.

6. In view of the above discussion and guided by the principle that the sanctity of electoral process must be preserved unless there is an imminent and irreparable illegality of jurisdictional magnitude, this Court is of the opinion that the petitioner has an

appropriate remedy under the statute by way of an election petition. All issues raised in the writ petition—including those relating to the categorization of the candidate under EWS, authority of the appellate forum, and denial of hearing—are left open to be adjudicated upon by the Election Tribunal in accordance with law.

7. Accordingly, the writ petition stands disposed of without expressing any opinion on the merits of the contentions raised. All contentions of the petitioner are expressly kept open to be urged in the appropriate forum in accordance with law.

8. There shall be no order as to costs.

(AMIT BORKAR, J.)