

WRIT PETITION NO. 4147 OF 2015

Mr. D. P. Palodkar, Advocate for petitioner
Mr. D. B. Bhange, Asstt. Govt. Pleader for respondents no. 1
Mr. S. T. Shelke, Advocate for respondents no. 2 and 4

ORDER

2. Mr. Palodkar further submits that in the affidavit filed along with second nomination, petitioner had referred to the fact of existing three children and further space about the children born after 13-9-2000 had been left blank. He submits that both the nomination applications ought to have been independently

assessed and one could not have been the basis for rejection of other.

3. For aforesaid purpose, Mr. Palodkar places reliance on clause (f) of sub-rule (9) of rule (9) of Election Rules in Schedule D, Chapter 1 framed under the Maharashtra Municipal Corporation Act. (hereinafter, for convenience, above rules are referred to as "said rules") He further goes on to contend that the petitioner should have been given an opportunity to fill in the blank spaces in the nomination application which has not been afforded. For said purpose, he places reliance on sub rules (8) and (11) of Rule 9 of said rules and directions as contained in the decision of the supreme court in writ petition (civil) no. 121 of 2008 [*Resurgence India vs. Election Commission of India and anr*] decided on 13-12-2013. He, therefore, submits that rejection of nomination is unsustainable and one of the nominations was required to be considered particularly when in the affidavit space concerning children after 13-08-2000 was left blank.

4. Mr. Shelke, learned counsel appearing on behalf of respondents no. 2 and 4 submits that as far as nomination application containing averments about three children after 13-9-2000 is concerned, the same was rightly rejected and the second affidavit wherein the space for said purpose had been left

blank has to be considered to have been rejected as per the powers available to the election officer. He takes support for such rejection, from clause (iii) of paragraph no.27 of the judgment of the supreme court in *Resurgence India (supra)*. He further submits that election process is already set in motion and should not be interfered with at this stage having regard to constitutional mandate under article 243-ZG (a) and (b).

5. After hearing learned counsel on either side, it transpires that though it is being contended that opportunity should have been given to petitioner for corrective action in respect of affidavit leaving the concerned space blank, yet the factual position as appearing under the averments in writ petition does not give an indication that such a request had ever been made or, for that matter, petitioner had presented herself before the election officer for such purpose.

6. Taking into account aforesaid factual position, I do not deem it appropriate to interfere with the decision as has been rendered under the impugned order.

7. Writ petition, as such, stands rejected.

8. It is, however, open for the petitioner to avail of the avenues for redressal of her grievance as are available in law,

including election petition. The observations made hereinabove are restricted only to the order in the writ petition and nothing further and shall not, in any manner, influence the authorities to decide the cases on merits.

SUNIL P. DESHMUKH, J.

pnd