

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

WRIT PETITION NO. 2060 OF 2017

Smt. Seema Prabhakar Ratan & anr. ... Petitioners

V/s.

The State of Maharashtra & others ... Respondents

Mr. Subhash Jha a/w. Sanjana i/b.Law Global for the petitioner.

Mr. Vikas Mali, AGP for respondent no.1.

Mr. R.S. Patil for respondent no.3 Corporation.

Mr. S.B. Shetye for respondent no.2.

**CORAM : NARESH H. PATIL AND
M.S. KARNIK, JJ.**

14th February, 2017.

P.C.

The petitioner challenges acceptance of nomination form of respondent no. 4-Pancham Omesh Kalani.

2. One Pooja Inder Gopalani addressed a communication to the Returning Officer on 4th February, 2017 stating therein that Smt. Pancham Omesh Kalani has filed a false affidavit. She has three children and in

support of the same the objector filed some supportive material. On the said objection the Returning Officer endorsed "received after the completion of scrutiny process at 14.10". The returning officer signed on the same.

3. Admittedly, the petitioner herein did not raise any objection to the nomination paper filed by the respondent no.4.

4. Learned Counsel appearing for petitioner submits that on 2nd February, 2006 Omesh alias Omi Suresh Kalani divorced Smt. Parina Omesh alias Omi Kalani. The petitioners objected to the divorce saying that there is nothing in law as customary divorce and, therefore, such divorce deed would not be binding in law. Learned Counsel had invited our attention to a Marriage Certificate Exhibit 'D' issued by the Registrar of Marriage, Ulhasnagar by which it was certified that Omesh Suresh Kalani solemnised marriage with Beena Mohandas Tharwani on 20th August, 2005. According to learned Counsel Beena's name was got changed as Smt. Pancham. Learned Counsel further submits that on filing false affidavit and providing wrong information to the Returning Officer, the nomination form deserves to be rejected.

5. Learned Counsel appearing for Election Commission submits that objector is not the petitioner before this Court, however, even on merits the petition is not required to be entertained as petitioner will have to establish by leading evidence in support of the contentions raised by the petitioner herein. The petitioner has alternate statutory remedy.

6. Learned Counsel appears for the Corporation.

7. We have perused the record placed before us. The returning officer did not take into consideration the objection submitted by Pooja Gopalani as the same was received after the time for submitting objection was over. The objection was received at 2.10 p.m.

8. The petitioner is not the objector before the Returning Officer. As to whether the divorce declaration is acceptable in law or not cannot be gone into at this stage. Whether a false affidavit was filed by the respondent candidate is a matter of enquiry for which evidence is required to be led before appropriate forum. The election process is set in motion. The petitioner has alternate statutory remedy under Section 16 of the Maharashtra Municipal Corporation Act, 1949. We refer to provisions of Article 243ZG of the Constitution of India. Petition stands

rejected.

9. It is clarified that we have not expressed any opinion on the issues raised by the petitioner before this Court.

(M.S. KARNIK, J.)

(NARESH H. PATIL, J.)

L.S. Panjwani, P.S.