



Judgment

379 Election Petition3.24

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

ELECTION PETITION NO.3 OF 2024

Suraj Balram Mishra, age 30 years,
occupation – self employed, r/o – near
Mehandibag Power House, Dr.Ambedkar
Marg, Nagpur – 440017. **Petitioner.**

:: V E R S U S ::

~~1. Election Commission of India,
through its Chief Election
Commissioner and other Companion
Election Commissioner, Nirvachan
Sadan, Ashoka Road, New Delhi – 110001.~~

~~2. The Chief Electoral Officer,
General Administration Department,
6th Floor Annex Building, Madam Cama
Marg, Hutatma Rajguru Chowk,
Mantralaya, Mumbai – 400032.~~

~~3. Chief Executive Officer and Officer of
Code of Conduct, Z.P.Office, Nagpur -
440001.~~

~~4. Returning Officer, District Officer
(Election), Civil Line, Nagpur – 440001.~~

~~5. Nitin Jairam Gadkari,
Upper Ground Floor Blu Puma Store~~

Resp.Nos.1, 2, & 4
are deleted as per
the Hon'ble Court's
order dt.27.11.24

Enrico Heights Beside Radisson
Chatrapati Nagar, Nagpur (Maharashtra)
440015.

..... **Respondents.**

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The Petitioner-in-Person.

Shri S.V.Manohar, Senior Counsel assisted by Shri Atharva
Manohar, Advocate for Respondent No.5.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 20/02/2025

PRONOUNCED ON : 19/03/2025

JUDGMENT

1. By the present election petition, the petitioner has challenged the election of respondent No.5 - Nitin Jairam Gadkari on the ground that the Bharatiya Janta Party (BJP) and its workers have violated the Model Code of Conduct. It is alleged that Software was created and slips were distributed to voters having photographs, name of respondent No.5 - Nitin Jairam Gadkari and symbol of the BJP. It is further alleged that machines were given to the representatives of all booths of Nagpur. The main function of the machine was to

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print the voters' details having photos, name of respondent No.5 - Nitin Jairam Gadkari and symbol of the BJP. Thus, respondent No.5 - Nitin Jairam Gadkari and the BJP committed violation of Code of Conduct. The respondent No.5 - Nitin Jairam Gadkari by means of corrupt practices violated the Model Code of Conduct. Various complaints including the complaint of the petitioner were lodged as to the said violation. However, no cognizance was taken and hence the petition.

2. By this petition, the petitioner has claimed following reliefs.

I). Allow the petition and thereby direct the respondents authorities to conduct fresh and fair enquiry regarding complaint given by the

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petitioner and other candidates and take proper legal action;

II). To declare the election of respondent No.5 for Nagpur Parliamentary Constituency (No.10) in General Lok Sabha Election held in April 2024 is illegal and further be pleased to set aside the result of election in favour of respondent No.5, declared by respondent No.4.

III). Direct the respondent authorities to conduct fresh election in the Nagpur Constituency, if the irregularities are proved during the enquiry.

IV). Grant any other relief as this court deems fit and proper in the facts and circumstances of the case.

3. In response to the notice, respondent No.5 - Nitin Jairam Gadkari appeared and filed an application vide

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Civil Application No.139/2025 under Order VII Rule 11 of the CPC with Section 86 of the Representation of the People Act, 1951 (the RP Act) for rejection of election petition and Civil Application No.140/2025 under Order VI Rule 16 the CPC for striking out of pleadings.

The application under Order VII Rule 11 of the CPC is filed on the ground that;

(1) The petition does not disclose any cause of action. No cause of action discloses as petition does not disclose violation of the Model Code of Conduct. It does not disclose whether violation is by the returning candidate or his election agent or with their authorization are concerned;

(2) The material facts such as who distributed the slips, at which place (specific place and time not mentioned). In absence of specific cause of

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action, election petition deserves to be dismissed;

(3). The material fact that the election has been materially affected has not been pleaded;

(4). Vague pleading as to the violation of Model Code of Conduct by the BJP and its workers is not sufficient;

(5). The allegations are against party in general and not against returning candidate respondent No.5 - Nitin Jairam Gadkari;

(6). Thus, the materials facts that the election was materially affected itself is not pleaded; and

(7). Affidavit and verification appended to the petition are wholly defective. In the affidavit, general statement para no.1 to 6 are true to his knowledge is mentioned. In fact, the petitioner

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to clarify which portion of the petition is as per his personal knowledge and which portion as per his information.

4. Thus, it was contended that from reading of the election petition, it can be clearly seen that absolutely no cause of action is made out by the petitioner for challenging the election of respondent No.5 - Nitin Jairam Gadkari. The petitioner has indulged in making false, frivolous, baseless, and irresponsible allegations without any basis and does not constitute a single material fact giving rise to cause of action taken as a whole. The election petition does not disclose single cause of action and the same deserves to be summarily dismissed under Order VII Rule 11 of the CPC read with 86 of the RP Act.

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5. The said application is strongly opposed by the petitioner on the ground that the Model Code of Conduct is violated by respondent No.5 - Nitin Jairam Gadkari and election of respondent No.5 - Nitin Jairam Gadkari deserves to be quashed and set aside on that grounds itself. Filing of this application is only for the purpose of delaying the petition.

6. Heard learned Senior Counsel Shri S.V.Manohar for respondent No.5 - Nitin Jairam Gadkari. He invited my attention towards various provisions of the RP Act and submitted that omission to pleading even single material fact leads to an incomplete cause of action and must result dismissal of the election petition at the threshold. There must be proper pleading that the result of the petitioner is materially affected as regards the returning candidate. He submitted that an election petition which does not disclose any cause of action can

be dismissed summarily under Order VII Rule 11 of the CPC at the threshold of proceeding or at subsequent stage of the proceeding. If any election petition does not disclose cause of action, it is to be dismissed under Order VII Rule 11 of the CPC. He submitted that it is well settled that the provisions of the of CPC do not apply entirely to the trial of the election petition, but the provisions of Order VII Rule 11 of the CPC apply to an election petition and this court has jurisdiction to reject plaint which does not disclose any cause of action. It would be in the interests of the parties to the petition and to the constituency and in the public interests to dispose of the preliminary object and to reject an election petition if it does not disclose any cause of action. He further submitted that Section 123 of the RP Act deals with corrupt practices. What shall be corrupt practices, the same has been enumerated in

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Section 123 of the RP Act. In view of Section 83 of the RP Act, the election petition shall contain a concise statement of the material facts on which the petitioner relies. The petitioner shall set forth full particulars of any corrupt practices. Thus, it is the duty of the person who files the election petition to disclose the material facts on which he relies that he should set forth the full particulars of corrupt practices that the petition alleges including full statement as far as possible disclosing the names of the parties alleged to have committed such corrupt practices. Thus, he submitted that stating the material facts in the election petition and full particulars are necessary. As the petitioner has not disclosed the material particulars along with material facts, the petition deserves to be dismissed.

7. The another ground raised by learned Senior Counsel is that there is no verification of pleadings as

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per the requirements prescribed by Section 83 of the RP Act which is mandatory in nature. Such verification as prescribed is necessary to indicate the source of knowledge. Merely stating that the facts stated in paras 1. to 26 were true and correct is not sufficient. On that ground also, the petition deserves to be dismissed.

8. In support of his contentions, learned Senior Counsel placed reliance on following decisions:

1. **Samar Singh vs. Kedar Nath alias K.N.Singh and ors**, reported in 1987 (Supp) SCC 663;
2. **Jyoti Basu and ors vs. Debi Ghosal and ors**, reported in (1982)1 SCC 691;
3. **Sudarsha Avasthi vs. Shiv Pal Singh**, reported in (2008)7 SCC 604;
4. **M.J.Jacob vs. A.Narayanan and ors**, reported in (2009)14 SCC 318;
5. **Anil Vasudev Salgaonkar vs. Naresh Kushali Shigaonkar**, reported in (2009)9 SCC 310;

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6. Jitu Patnaik vs. Sanatan Mohakud and ors, reported in (2012)4 SCC 194;

7. Kanimozhi Karunanidhi vs. A.Santhana Kumar and ors, reported in 2023 SCC OnLine SC 573;

8. Dr.Rameshkumar Bapuraoji Gajbe vs. Election Commission of India, New Delhi and ors, reported in 2020(5) Mh.L.J. 328;

9. Manohar @ Sagar s/o Pundlik Dabrase vs. Election Commission of India, New Delhi and ors, reported in 2020(3) Mh.L.J.72;

10. Ram Sukh vs. Dinesh Aggarwal, reported in (2009)10 SCC 541;

11. Union of India and ors vs. A.K.Pandey, reported in (2009)10 SCC 552;

12. Bachan Singh vs. Prithvi Singh and ors, reported in (1975)1 SCC 368;

13. Shri Baburao Patel and ors vs. Dr.Zakir Husain and ors, reported in 1967 SCC OnLine SC 343;

14. Charan Lal Sahu vs. Giani Zail Singh and anr, reported in (1984)1 SCC 390.

9. The petitioner who is appearing in-person submitted that various complaints filed by the various

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persons show the violation of Model Code of Conduct by respondent No.5 - Nitin Jairam Gadkari. Immediately, on the day of the election, he filed an application to the Collector pointing out violation of the Code of Conduct. He also sent a mail to the Election Commission at Delhi. Similarly, another applicant K.V.Suryawanshi also made his grievance as to the violation of the Code of Conduct. The enquiry was conducted and report was submitted which also substantiates the allegations of the petitioner. The Code shows that that an election agent may perform such function in connection with the election as are authorized by the RP Act and the Rules made thereunder. While undertaking the election campaign, the candidate should ensure that higher standard of modality and purity is maintained. The commission of any such practices may vitiates the election. Thus, for

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above these grounds the application for rejection of
plaint deserves to be rejected.

10. It is law that a right to elect, though fundamental
it is to democracy, is neither a fundamental right nor a
common law right; it is purely a statutory right.
Similarly, right to be elected and the right to dispute an
election are also statutory rights. Since they are
statutory creations, they are subject to statutory
limitations. An Election Petition is not an action at
common law, nor in equity. It is a special jurisdiction to
be exercised in accordance with the statute creating it.
The concept familiar to common law and equity must
remain stranger to election law unless statutorily
embodied. Thus, the entire election process
commencing from the issuance of notification calling
upon a constituency to elect a member or members
right upto final resolution of the dispute, concerning

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the election is regulated by the RP Act. Therefore, the said RP Act has been held to be a complete and self contained Code within which must be found in any rights claimed in relation to an election dispute.

11. Before dealing with the issue raised by the petitioner, an application filed by respondent No.5 - Nitin Jairam Gadkari, it is necessary to deal with various provisions and refer relevant provisions.

12. Part-VI of the RP Act deals with disputes regarding election.

13. Section 79 of the RP Act deals with definition part. Section 79(b) defines the definition of “candidate” means a person who has been or claims to have been duly nominated as a candidate at in any election.

14. Section 79(f) deals with the definition of “returned candidate” which means a candidate whose

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name has been published under Section 67 as duly elected.

15. Section 80 deals with statutory ban on an election being called in question.

16. Section 80-A vests the powers with the High Court to decide the election petition.

17. Section 81 provides the presentation of an election petition.

18. Section 82 speaks about parties to the petition which reads as under:

“82. Parties to the petition.— A petitioner shall join as respondents to his petition—

(a) where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the

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contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.”

19. Section 83 deals with content of petition which is reproduced for the reference as under:

“83. Contents of petition.— (1) An election petition-

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

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(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.”

20. Thus, Section 83 prescribes the contents of the petition.

21. Section 84 provides that in addition to claiming a declaration that the election of returned candidate is void, claim further declaration that he himself or any other candidate be declared has duly elected.

22. Section 86 deals with the trial of election petitions and Section 87 is as to the procedure before the High Court.

23. **Section 97 deals with recrimination when seat claimed** which states that when in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election.

Proviso to Section 97(1) states that the returned candidate or such other party, as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of (commencement of the

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trial), given notice to (the High Court) of his intention to do so and has also given the security and the further security referred to in sections 117 and 118 respectively.

Sub section (2) of Section 97 states that every notice referred to in sub-section (1) shall be accompanied by the statement and particulars required by section 83 in the case of an election petition and shall be signed and verified in like manner.

24. Section 123 of the RP Act in Part VII in Chapter I is in relation to corrupt practices, which is reproduced for the purpose of reference:

“123. Corrupt practices.— The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1) “Bribery”, that is to say—

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(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to—

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

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(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

Explanation.—For the purposes of this clause the term “gratification” is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any

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other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

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(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidates or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.

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(3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

(3B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

Explanation.—For the purposes of this clause, “sati” and “glorification” in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987.

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(4) The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under subsection (1) of section 29 for the poll:

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Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation.—In this clause, the expression “vehicle” means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

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(6) The incurring or authorizing of expenditure in contravention of section 77.

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely:-

(a) gazetted officers;

(b) stipendiary judges and magistrates;

(c) members of the armed forces of the Union;

(d) members of the police forces;

(e) excise officers;

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(f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and

(g) such other class of persons in the service of the Government as may be prescribed:

(h) class of persons in the service of a local authority, university, government company or institution or concern or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections]

Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to,

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any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election].

[(8) Booth capturing by a candidate or his agent or other person.]

Explanation.—(1) In this section the expression “agent” includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent of that candidate.

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(3) For the purposes of clause (7), notwithstanding anything contained in any other law, the publication in the Official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union territory) or of a State Government shall be conclusive proof—

(i) of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, and

(ii) where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, is stated in such publication, also of the fact that such person was appointed with effect from the said date, or in the case of resignation, termination of service, dismissal or removal from service such person ceased to be in such service with effect from the said date].

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(4) For the purposes of clause (8), “booth capturing” shall have the same meaning as in section 135A.]”

25. The election of returning candidate respondent No.5 - Nitin Jairam Gadkari is challenged on the ground of violation of Model Code of Conduct, undue influence on voters and relief is claimed to declare his election as void and illegal. Respondent No.5 - Nitin Jairam Gadkari by filing an application under Order VII Rule 11 of the CPC by raising the ground that verification and affidavit appended to the petition are wholly defective and, therefore, claimed dismissal of the petition. It is submitted that in the affidavit and verification of the petition, general statement that para Nos.1 to 26 are true to his knowledge is mentioned. In fact, the petitioner to clarify which portion of the petition is as per his knowledge and which portion is as

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per his information. Taking into consideration the said submissions, the verification below the petition and the affidavit and the separate affidavit filed by the petitioner are perused. Perusal of the verification shows that “the contents of para Nos.1 to 26 in the submissions are drafted by my counsel as per my instructions. The said are read over to me in vernacular language in Marathi and I fully understood the same and the same is true and correct as per my person knowledge and belief, are mentioned. Similarly, in separate affidavit under Section 81 of the RP Act in Form No.25 under Rule 94-A of the Conduct of Election Rules 1961 is also perused. It also states “makes solemn affirmation and oath and say that statements made in para Nos.1 to 26 of the accompanying election petition about commission of corrupt practices of ten Nagpur Parliamentary Constituencies and a particular

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of such corrupt practices mentioned in para Nos.1 to 26 of the same petition are true to my knowledge and belief and information. The documents/annexures annexed to the petition are obtained from the official record mostly from official website of Elections of India and from the office of returning officer to the election, are mentioned.

26. Section 83(1)(c) lays down that an election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings. Proviso to Section 83(1)(c) provided that where the petitioner alleges any corrupt practices, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

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27. Order VI Rule 15 Sub Rule (2) of the CPC states that The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

28. The non disclosure of grounds or sources or information in an election petition to be filed within 45 days from the date of election of the returned candidate will have to be scrutinized from two points of view (1) the non disclosure of the grounds will indicate that the election petitioner did not come forward with the sources of information at the first opportunity. The real importance of setting of sources of information at the time of the presentation of the petition is to give the other side to test genuineness of veracity of sources of information; and (2) the election petitioner will not be

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able to make any departure from the sources or grounds.

29. This aspect is also dealt with by this Court in the case of **Manohar @ Sagar s/o Punklik Dabrase vs. Election Commission of India, New Delhi and ors *supra*** wherein by referring Section 83 of the RP Act held in para No.13 that, “It is true that requirement of proper verification as prescribed by Section 83(1)(c) of the said Act is not mandatory in nature but the same is directory. However such verification as prescribed is necessary to indicate the source of knowledge of material facts received by the election petitioner to enable the returned candidate to defend his election. The verification clause reproduced hereinabove does not indicate that the election petitioner had personal knowledge of the alleged mismatch as pleaded by him in paragraph 5 of the election petition. He merely states

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that the facts stated in paragraphs 1 to 11 were true and correct. Be that as it may, in the light of the legal position as referred to hereinabove except for stating that there was a mismatch in the number of votes polled and number of votes counted, nothing further has been stated. It is not sufficient to merely state that there has been non-compliance with the provisions of the said Act and the Rules framed therein. It is also necessary to indicate that as a result of such violation, the election of the returned candidate has been materially affected. The pleadings reproduced hereinabove do not indicate any pleadings whatsoever to at least indicate that as a result of non-compliance with the provisions of the said Act and the Rules, the election of the returned candidate has been materially affected. It is not sufficient to merely state that there has been non-compliance with the provisions of the said

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Act and the Rules framed therein. It is also necessary to indicate the source of knowledge of material facts received by the election petitioner to enable the returned candidate to defend his election.

30. In the election petition, the petitioner has stated on oath that whatever has been stated in para Nos.1 to 26 of the election petition is true and correct to the best of his knowledge. In the aforesaid verification and the affidavit, there is no statement made as to what is his source of information. It is also not stated which portion is as per his own knowledge and which portion is on the basis of information received by him. There is also no statement that the facts contained in para Nos.1 to 6 were based on his knowledge. The proper verification analyzing and authenticating the pleadings is mandatory requirement under Section 83(1)(c) of the RP Act and as there was failure to comply the same,

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the same is fatal to the petitioner's case. Moreover, there is no pleading to indicate that the result of the returned candidate has been materially affected.

31. Respondent No.5 raised another ground that the petition does not disclose any cause of action as "material facts" and "material particulars" are not disclosed which would constitute the cause of action. The pleadings in the petition are that on many polling booths the Code of Conduct was being violated by the main ruling party. The voters were given the chits having photographs of the BJP Candidates along with the symbol of BJP. There were separate machines carried by several BJP workers and the said machines were having special software through which if the voters names are seen, the total details were given to the voters in a printed form along with the photographs of the BJP Candidates and Symbol. The link was

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circulated to the mobile phones of the BJP workers. The said software was created by the BJP. The chits circulated to the voters were having photographs of respondent No.5 - Nitin Jairam Gadkari and symbol of BJP. Thus, on many polling booths, the Code of Conduct was violated.

32. Section 83(1)(a) of the RP Act, states that an election petition shall contain a concise statement of the material facts on which the petitioner relies. Order VI Rule (2) of the CPC , deals with pleading to state material facts and not evidence. It states that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

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33. A bare perusal of the above two provisions would show that the first part of Order VI Rule 2 of the CPC is similar to Sub Section (1)(a) of Section 83 of the RP Act. It is imperative for an election petition to contain a concise statement of the material facts on which the election petitioner relies. What are material facts?

34. All basic and primary facts which must be proved at the trial by a party to establish the existence of a cause of action or defence are material facts. The bare allegations are never treated as a material facts. The material facts are such facts which afford a basis for the allegations made in the election petition. The phrase “material facts” has neither been defined in the RP Act nor in the CPC and, therefore, it has been understood by the courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. The ‘material facts’ are facts upon

which the plaintiff's cause of action or defendant's defence depends. Broadly, speaking, all primary or basic facts which are necessary either to prove the cause of action by the plaintiff or defence by the defendant are "material facts".

35. According to the dictionary meaning, "material" means "fundamental", "vital", "basic", "cardinal", "central", "crucial", "decisive", "essential". What particulars could be said to be "material facts" would depend upon the facts of each case. The various pronouncements of the Hon'ble Apex Court as well as this court explain what is "material facts".

36. In the case of **Sudarsha Avasthi vs. Shiv Pal Singh** *supra*, relied by learned Senior Counsel for respondent No.5, it is observed that as per Section 83 of RP Act, it is duty of the person who files election petition and

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levels allegations of corrupt practices to disclose the “material facts” on which he relies and that he should set forth the full particulars of corrupt practices that the petitioner alleges, including the full statement as far as possible disclosing the names of the parties alleged to have committed such corrupt practice and the date and the place of commission of each such practice and the same shall be filed by the petitioner and verified in the manner as laid down in the CPC. Apart from this, he has to file an affidavit in prescribed form in support of the allegation of such corrupt practice and he should disclose the particulars thereof. If he wants to rely on any document then it should be annexed to the petition signed by the petitioner and verified in the same manner as the petition.

The Hon’ble Apex Court further observed that Section 123 of the Act deals with the corrupt practice.

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What shall be the corrupt practice have been enumerated in Section 123 of the Act, like; bribery which has been defined that any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of including a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election or an elector to vote or refrain from voting at an election, or as a reward to a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or an elector for having voted or refrained from voting. Therefore, the detailed particulars are required to be given that how a person is being bribed by various modes. All these particulars

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have to be given in the manner provided in Section 123 of the Act.

37. In the case of **Anil Vasudev Salgaonkar vs. Naresh Kushali Shigaonkar** *supra*, the Hon'ble Apex Court held that it is settled legal position that all 'material facts' must be pleaded by the party in support of the case set up by him within a period of limitation. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in absence of pleading, a party cannot be allowed to lead evidence. Whether in an election petition, a particular fact is material or not and as such is required to be pleaded is depended on the nature of charges levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of

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the mandate of Section 83(1)(a). The election petition must contain a concise statement of 'material facts' on which the petitioner relies. In the context of charge of corrupt practice, 'material facts' would mean all basic facts constituting ingredients of the particular corrupt practices alleged, which the petitioner (the respondent herein) is bound to substantiate before he can succeed on that charge. It is also well settled that if 'material facts' are missing, they cannot be supplied after expiry of period of limitation for filing the election petition and the pleadings become deficient.

By referring the catena of decisions in the above said judgment, the Hon'ble Apex Court held that position is well settled an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under CPC. Appropriate orders in exercise of powers under the Code can be

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passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with.

38. In **Jitu Patnaik vs. Sanatan Mohakud and ors** *supra*, by referring earlier judgments, the Hon'ble Apex Court distinguished between 'material facts' and 'material particulars' and observed that, "a distinction between 'material facts' and 'material particulars' however must not be overlooked. 'Material facts' primarily are basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the other hand are details in support of 'material facts' pleaded by the parties. They amplify the refine and embellish 'material facts' by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative.

‘Particulars’ thus ensures conduct of fair trial and would not take the opposite party by surprise.

39. Recently, in **Kanimozhi Karunanidhi vs. A.Santhana Kumar and ors** *supra* by mentioning the various provisions, the Hon’ble Apex Court held that, “an election petition must contain a concise statement of “material facts” on which the petitioner relies, is that such compliance of Section 83(1)(a) read with Order VII Rule 11 CPC may entail dismissal of the election petition right at the threshold.” ‘Material facts’ are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition. They must be such facts as would afford a basis for the allegations

made in the petition and would constitute the cause of action as understood in the CPC. 'Material facts' would include positive statements of facts as also positive statement of the negative fact.

40. This court also in the case of **Dr.Rameshkumar Bapuraoji Gajbe vs. Election Commission of India, New Delhi and ors** *supra* held that every fact which shall have to be proved to formulate the complete cause of action is "material fact". In essence, the 'material facts' are the entire bundle of facts which would constitute a cause of action and which facts would have to be established by the petitioner to be entitled to the relief claimed. It is trite law that an election petition which is a bereft of 'material facts' would entail dismissal at the threshold on the premise that omission of single "material fact" would lead to incomplete cause of action and that such petition is not an election petition at all.

41. In **Ram Sukh vs. Dinesh Aggarwal** *supra*, the Hon'ble Apex Court observed that the requirement in an election petition as to the statement of material facts and the consequences of lack of such disclosure with reference to Sections 81, 83, and 86 of the Act came up for consideration before a three-Judge Bench of this Court in **Samant N.Balkrishna and anr vs. George Fernandez and ors**, reported in 1969 AIR 1201. Speaking for the three-Judge Bench, M. Hidayatullah, C.J., *inter alia*, laid down that: (I) Section 83 of the Act is mandatory and requires first a concise statement of material facts and then the fullest possible particulars; (ii) omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad; (iii) the function of particulars is to present in full a picture of the cause of action and to make the opposite party understand the case he will

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have to meet; (iv) material facts and particulars are distinct matters - material facts will mention statements of fact and particulars will set out the names of persons with date, time and place and (v) in stating the material facts it will not do merely to quote the words of the Section because then the efficacy of the material facts will be lost.

42. Thus, by these catena of decisions, it is reiterated that it was necessary for the election petitioner to aver specifically in what manner the result of the election insofar as it concerned the returned candidate is affected. The pleading is vague and does not spell out as to how the election results were materially affected because of these two factors. These facts fall short of being "material facts" as contemplated in Section 83(1) (a) of the Act to constitute a complete cause of action in

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relation to allegation under Section 100(1)(d)(iv) of the Act.

43. Thus, 'material facts' as to corrupt practices by whom, at which place and how the election materially affected are basic requirements. In order to constitute corrupt practice under Section 123(5) of the RPC Act, hiring or procuring of machines which were used to generate the slips by candidate or his agent or any other person with his consent is the first essential ingredients which is absent in the present case. The entire pleadings nowhere disclose as to who has procured the said machines, who were using the said machines and whether the said machines were used with the consent of the returned candidate or not and how it is used to influence the voters which requires to be pleaded to make out a cause or corrupt practices.

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44. The petitioner has also claimed that the returned candidate by way of undue influence influenced the voters and, therefore, the election of the returned candidate deserves to be quashed.

45. It is necessary to see what constitutes the “undue influence”.

46. It is an essential ingredient of the corrupt practice under Sub section (2) of Section 123 of the RP Act which shows that there should be any direct interference or attempt to interfere on the part of the candidate or his agent or of any person with the consent of the candidate or his agent with the free exercise of any electoral right.

47. In the case of **V.T.Khanzode vs. RBI**, reported in **MANU/SC/0201 1982**; **D.K.Trivedi and Sons vs. State of Gujarat**, reported in **MANU/SC/0636/1986**, State of

J & K vs. Lakhwinder Kumar, reported in (2013)6 SCC 333, BSNL vs. Telecom Regulatory Authority of India, reported in MANU/SC/1264/2013 the following principles are culled out as to the “undue influence”:

“(i) The words "undue influence" are not to be understood or conferred a meaning in the context of English statute.

(ii) The Indian election law pays regard to the use of such influence having the tendency to bring about the result that has contemplated in the clause.

(iii) If an act which is calculated to interfere with the free exercise of electoral right, is the true and effective test whether or not a candidate is guilty of undue influence.

(iv) The words "direct or indirect" used in the provision have their significance and they are to be applied bearing in mind the factual context.

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(v) Canvassing by a Minister or an issue of a whip in the form of a request is permissible unless there is compulsion on the electorate to vote in the manner indicated.

(vi) The structure of the provisions contained in Section 171-C of IPC are to be kept in view while appreciating the expression of 'undue influence' used in Section 123(2) of the 1951 Act.

(vii) The two provisos added to Section 123(2) do not take away the effect of the principal or main provision.

(viii) Freedom in the exercise of judgment which engulfs a voter's right, a free choice, in selecting the candidate whom he believes to be best fitted to represent the constituency, has to be given due weightage.

(ix) There should never be tyranny over the mind which would put fetters and scuttle the free exercise of an electorate.

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(x) The concept of undue influence applies at both the stages, namely, pre- voting and at the time of casting of vote.

(xi) "Undue influence" is not to be equated with "proper influence" and, therefore, legitimate canvassing is permissible in a democratic set up.

(xii) Free exercise of electoral right has a nexus with direct or indirect interference or attempt to interfere."

48. The Hon'ble Apex Court in **Bachan Singh vs. Prithvi Singh and ors** *supra* dealt with this issue and observed that, doubtless the definition of "undue influence" in sub-section (2) of Section 123 is couched in very wide terms, and on first flush seems to cover every conceivable act which directly or indirectly interferes or attempts to interfere with the free exercise of electoral right. In one sense even election propaganda carried on vigorously, blaringly and

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systematically through charismatic leaders or through various media in favour of a candidate by recounting the glories and achievements of that candidate or his political party in administrative or political field, does meddle with and mould the independent volition of electors, having poor reason and little education, in the exercise of their franchise. That such a wide construction would not be in consonance with the intendment of the legislature is discernible from the proviso to this clause. The proviso illustrates that ordinarily interference with the free exercise of electoral right involves either violence or threat of injury of any kind to any candidate or an elector or inducement or attempt to induce a candidate or elector to believe that he will become an object of divine displeasure or spiritual censure. The prefix "undue" indicates that there must be some abuse of influence.

"Undue influence" is used in contra-distinction to "proper influence". Construed in the light of the proviso, clause (2) of Section 123 does not bar or penalize legitimate canvassing or appeals to reason and judgment of the voters or other lawful means of persuading voters to vote or not to vote for a candidate. Indeed, such proper and peaceful persuasion is the motive force of our democratic process."

49. In view of the above observations and the principles laid down by the Hon'ble Apex Court, from the pleadings of the petitioner nowhere it reflects that there was any direct or indirect interference or attempt to interfere on the part of the candidate.

50. Thus, seeing from any angle, it become clear that in absence of pleadings as to the "material facts" to the extent of that the election of respondent No.5 - Nitin

Jairam Gadkari a returned candidate was materially affected, it would have to be held that the election petition is based on an incomplete cause of action.

51. Thus, in view of the law as laid down in the case of **Ram Sukh vs. Dinesh Aggarwal** *supra* and in view of the failure on the part of the petitioner to aver the “material facts” and to aver the contention as to election of returned candidate was materially affected insofar as it is concerned, the election petition is liable to be summarily dismissed without trial. No useful purpose would be served by permitting the election petitioner to proceed for trial in absence of any pleadings in the election petition that the election of the returned candidate was required to be declared *void* under Section 100(1)(d)(iv) of the Act. In absence of such basic averments, it would also not be permissible for the election petitioner to lead any evidence in that

regard. Therefore, the election petition is liable to be dismissed under the provisions of Order VII Rule 11(a) of the CPC as the complete cause of action is absent for declaring the election of the returned candidate to be *void* under Section 100(1)(d)(iv) of the Act. Accordingly, under Section 98(a) of the said Act, the present election petition stands **dismissed**.

52. In terms of Section 119 of the said Act, the returned candidate is entitled to cost incurred by him in contesting the election petition. The costs be accordingly be paid to the returned candidate by adopting the course prescribed by Section 121 of the said Act.

53. Civil Application No.139/2025 is accordingly **allowed**.

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The Election Petition stands **dismissed** and **disposed of**.

Civil Applications, if any, are **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!