IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1019 ELECTION PETITION NO. 11 OF 2019

JAGDISHCHANDRA RAMESH VALVI

VERSUS

1. LATABAI CHANDRAKANT SONAWANE (LATABAI MAHARU KOLI)
2. YAKUB SAHEBU TADVI
3. ISHWARLAL SURESH KOLI @ NILESH SURESH KOLI
4. DAGADU FATTU TADVI
5. PRABHAKAR GOTU SONAWANE
6. BARELA CHANDRAKANT JAMSING
7.MADHURI KISHOR PATIL

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Advocate for the Petitioner :
Mr. G. K. Sontakke & Mrs. Priyandra G. Sontakke ***(Absent)***
Advocate for Respondent No.1 : Mr. Mahesh S. Deshmukh

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WITH
APPLICATION IN EP NO. 10 OF 2025
IN EP/11/2019
WITH
REVIEW APPLICATION (CIVIL) NO. 230 OF 2024
IN EPAP/9/2023

...

CORAM : ARUN R. PEDNEKER, J.
DATE : 10th JUNE, 2025

PER COURT:

1. Heard.

2. None present for the election petitioner for last 3 dates.

3. Mr. Mahesh S. Deshmukh, learned counsel for Respondent No.1 [elected candidate] submits that the five years term of the Maharashtra State Assembly for which the elections were held in the year 2019 and the Returned Candidate / Respondent No.1 – Latabai

Chandrakant Sonawane (Latabai Maharu Koli) was declared elected; has expired in the year 2024. He further submits that in the instant case, there are no allegations of corrupt practice as against the Returned Candidate / Respondent No.1 under Section 100(1)(b) or 100(1)(d)(ii) read with Section 123 of the Representation of the People Act, 1951. The Petitioner has specifically contended that he is not raising any ground of corrupt practice under Section 100(1)(b) or 100(1)(d)(ii) read with Section 123 of the Representation of the People Act. It is further contended that an infructuous Election Petition needs to be dismissed as has been observed by the Hon'ble Supreme Court in the case of **Dhartipakar Madan lal Agarwal Vs. Rajiv Gandhi, 1987 (Supp) SCC 93**, at paragraphs no.4, 5 and 30, as under:

> *"**4.** The election under challenge relates to 1981, its terms expired in 1984 on the dissolution of the Lok Sabha; thereafter another general election was held in December 1984 and the respondent was again elected from 25th Amethi Constituency to the Lok Sabha. The validity of the election held in 1984 was questioned by means of two separate election petitions and both the petitions have been dismissed. The validity of respondent's election has been upheld in* Azhar Hussain v. Rajiv Gandhi, AIR 1986 SC 1253 *and* Bhagwati Prasad v. Rajeev Gandhi, (1986) 4 SCC 78*. Since the impugned election relates to the Lok Sabha which was dissolved in 1984 the respondent's election cannot be set aside in the present proceedings even if the election petition is ultimately allowed on trial as the respondent is a continuing member of the Lok Sabha not on the basis of the impugned election held in 1981 but on the basis of his subsequent election 1984. Even if we allow the appeal and remit the case to the High Court the respondent's election cannot be set aside after trial of the election petition as the relief for setting aside the election has been rendered infructuous by lapse of time. In this view grounds raised in the petition for setting aside the election of the respondent have been rendered academic. Court should not undertake to decide an issue unless it is a living issue between the parties. If an issue is purely academic in that its decision one way or the other would have no impact on the position of the parties, it would be waste of public time to engage itself in deciding it.* Lord Viscount Simon *in his speech in the* House of Lords *in* Sun Life Assurance Co. of Canada v. Jervis, 1944 AC 111 *observed:*
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> > *I do not think that it would be a proper exercise of the authority which this House possesses to hear appeals if it occupies time*

> *in this case in deciding an academic question, the answer to which cannot affect the respondent in any way. It is an essential quality of an appeal fit to be disposed of by his House that there should exist between the parties to a matter in actual controversy which the House undertakes to decide as a living issue.*
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> *These observations are relevant in exercising the appellate jurisdiction of this Court.*
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> ***5.*** *The main controversy raised in the present appeal regarding setting aside of the respondent's election has become stale and academic, but precious time of the Apex Court was consumed in hearing the appeal at length on account of the present state of law. Section 98 read with Section 99 indicates that once the machinery of the Act is moved by means of an election petition, charges of corrupt practice, if any, raised against the returned candidate must be investigated. On conclusion of the trial if the Court finds that a returned candidate or any of his election agents is guilty of commission of corrupt practice he or his election agent, as the case may be, would be guilty of electoral offence incurring disqualification from contesting any subsequent election for a period of six year. In this state of legal position we had to devote considerable time to the present proceedings as the appellant insisted that even though six years period has elapsed and subsequent election has been held nonetheless if the allegations made by him make out a case of corrupt practice the proceedings should be remanded to the High Court for trial and if after the trial the Court finds him guilty of corrupt practice the respondent should be disqualified. If we were to remand the proceedings to the High Court for trial for holding inquiry into the allegations of corrupt practice, the trial itself may take couple of years, (sic but) we doubt if any genuine and bona fide evidence could be produced by the parties before the Court. In fact, during the course of hearing the appellant himself stated before us more than once, that it would now be very difficult for him to produce evidence to substantiate the allegations of corrupt practice but nonetheless he insisted for the appeal being heard on merit. Though the matter is stale and academic yet having regard to the present state of law, we had to hear the appeal at length.*
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> ***30.*** *The aforesaid allegations do not amount to any corrupt practice as contemplated by Section 123 of the Act. At best these allegations raise a grievance that the Presiding Officers did not perform their duties in accordance with law inasmuch as they failed in their duty to remove the posters and other propaganda material from the polling booth and the hand which was the lection symbol of Rajiv Gandhi and the same was displayed within 100 metres of the polling booth in violation of the rules. The allegations do not make out any charge of corrupt practice. If at all the allegations could be a ground under Section 100(1)(d)(iv) of the Act for setting aside election on the ground of it being materially affected but no such plea was raised. Paragraphs 54 to 58 do not deal with any corrupt practice."*

4. The learned counsel relies upon the Judgment of the **Dhartipakar** *(surpa),* and submits that in an Election Petition which does not involve corrupt practice, the Election Petition can be dismissed as infructuous; after the term of the assembly is over, as no meaningful

purpose would be served in continuing the Election Petition. It is only in the event of allegation of corrupt practice, the Election Petition can be continued.

5. The learned counsel submits that in the present Election Petition, nothing survives, as the prayers for setting aside election is made on the ground of Section 100(1)(d)(iii) and (iv) of the Representation of the People Act.

6. It is to be noticed that the election petitioner had canvassed arguments in an application filed by Respondent No.1 under Order 7 Rule 11 of the Code of Civil Procedure that the Election Petition has not raised the ground of corrupt practice in the Election Petition.

7. Considering that no ground of corrupt practice is raised in the Election Petition and the term of the Assembly for which Respondent No.1 was elected being over, nothing survives in the Election Petition. The Election Petitioner has also remained absent for last 3 dates and has not shown any inclination to proceed further with the Election Petition. Thus, he Election Petition stands dismissed as infructuous.

8. All pending applications also stand disposed of.

[ARUN R. PEDNEKER, J.]

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