



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

ELECTION PETITION NO.10/2019

(Nana Falgunrao Patole and anr. .Vs. Nitin Jairam Gadkari and ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R. S. Kurekar, Advocate for petitioners
Mr. A. S. Manohar, Advocate for respondent no. 1

CORAM : ANIL L. PANSARE J.

DATED : 05-12-2025

This Court, vide order dated 17.12.2021, partly allowed the application filed by respondent – returned candidate in following terms:

“29. In the light of the foregoing discussion, I am satisfied that the application under Order VI Rule 16 of the Code deserves to be partly allowed by directing that the pleadings in paragraph 7 (i), (iv), (iv-a), (v), (vi), (vii), (viii), (ix), (ix-a), (ix-b), (x), (xi) and (xii) are liable to be struck off as they do not indicate any material fact to seek the reliefs sought in the election petition. Further, the pleadings in paragraph 7(iv-A), (ix) and (ix-a) allege commission of corrupt practice by the returned candidate. These pleadings are based on the information received by the election petitioners as per averments in paragraph 20 and the affidavits dated 06.11.2021 at Exhibit 31. However, the source of information from whom the election petitioners got such knowledge has not been disclosed thus resulting in lack of material and complete facts therein. Consequentially, with the deletion of the aforesaid paragraphs the relief sought under Section 100(1)(b) read with Section 123(2) of the Act of 1951 is not supported by requisite material facts. The election petition would proceed on the basis of the pleadings that remain after striking off the paragraphs mentioned above.

As a sequel to the aforesaid discussion, Civil Application (O) No.754/2020 is partly allowed to the extent stated above. Consequently, Civil Application Nos.11/2021 and 549/2021 stand rejected. The election petition shall proceed further in accordance with law.”

2. As could be seen, averments made in three paragraphs relating to corrupt practices were struck off. However, other averments were retained. Mr. Manohar, learned counsel submits that the paragraphs which are struck off relate to corrupt practices and paragraphs which are retained relate to nomination papers and not to corrupt practice. Further, the averments made in paragraphs of the petition, which are retained, cannot be gone into in terms of what Hon'ble Supreme Court has said while deciding civil appeals arising out of the order passed by this Court, mentioned above. The Supreme Court, in paragraph 5 held thus :

“5. The first averment that has been struck off by the High Court as contained in para 7 of the Election Petitions pertained to Khasra No.264 at village Dhapewada. The allegation was that the returned candidate, in his affidavit, declared the property as Hindu Undivided Family (HUF) whereas he owned the same in his personal capacity. The High Court, in para 9 of the impugned order dated 26.02.2021, has explained that the Trust Deed was executed in respect of the subject property on 29.10.1958 followed by a Correction Deed executed on 01.08.1975. The property is mutated in the name of the returned candidate, but he has always been claiming it to be an HUF property. The question as to whether the subject property constitutes HUF or not, cannot be gone into in the Election Petition proceedings, as rightly held by the High Court.”

3. Thus, the Supreme Court held that the question as to whether the subject property constitutes HUF property or not, cannot be gone into in the Election Petition proceeding. There is no dispute that the averments in the paragraphs retained in the petition will require inquiry about status of property viz. whether HUF or not. That being so, it will be difficult for this Court to render a finding of disqualification on the basis of the paragraphs retained in the petition. The election petition, if continued, will not, therefore, extend any benefit to the petitioner.

4. Mr. Manohar, learned counsel for respondent No. 1 submits that in these circumstances, if at all the petitioner succeeds, the same will be only for academic purpose, without yielding any advantage to the petitioner.

5. This submission is made because the petitioner intends to take benefit of result, if it favours them, to contend that since the respondent is disqualified, he will not be entitled to continue to retain Lok Sabha Constituency where he has been subsequently elected.

6. Mr. Manohar submits that this benefit is available to the petitioner only if the election is set aside on the ground of 'corrupt practice' which, in the present petition, cannot be, considering the subsequent development viz. deletion of paragraphs in the petition pertaining to corrupt practice.

7. Thus, the election, if at all is to be set aside, will be on account of rejection of the nomination papers. As such, setting aside election, on this count, will not culminate into the petitioner's disqualification to contest subsequent election and, therefore, will have no bearing on his retaining the constituency by virtue of election held in the year 2024.

8. That being so, I am of the view that continuing with the petition is a mere formality, without achieving any fruitful result for either party.

9. The petition is accordingly disposed of as rendered infructuous.

(Anil L. Pansare, J.)