



Judgment

380 Election Petition1.24

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

ELECTION PETITION NO.1 OF 2024

Santosh s/o Tulshiram Chavhan,
age-49 years, occupation Advocate,
at 59, Patil Nagar, behind naka No.2,
Kamptee Road, Bhilgaon,
Nagpur-441002. **Petitioner.**

:: VERSUS ::

~~1. Election Commissioner of India,
Nirvachan Sadan, New Delhi-110001.~~

~~2. Chief Election/Returning Officer,
District Collector,
Collector Office, Civil Lines,
Nagpur-440001.~~

3. Nitin Jairam Gadkari,
age 67 years, Member of 10th
Nagpur Loksabha-2024,
r/o plot No.46, Hill Road, Gokul Peth,
Nagpur-440010. **Respondents.**

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The Petitioner-in-Person.
Shri S.V.Manohar, Senior Counsel assisted by Shri Atharva
Manohar, Advocate for Respondent No.3.

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Resp.Nos.1 and 2
are deleted as per
the Hon'ble Court's
order dt.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 14/02/2025

PRONOUNCED ON : 19/03/2025

JUDGMENT

1. By the present election petition, the petitioner has challenged the election of respondent No.3 - Nitin Jairam Gadkari on the ground that the Bharatiya Janta Party (the BJP) and its workers have violated the Model Code of Conduct. It is alleged that respondent No.3 - Nitin Jairam Gadkari by using digital type machines circulated slips to the voters having photographs, name of respondent No.3 - Nitin Jairam Gadkari, and symbol of the BJP. It is further alleged that the machines were given to the representatives of all booths of Nagpur and the said slips were circulated to mislead voters and to get their valuable votes. Thus, respondent No.3 - Nitin Jairam Gadkari and the BJP committed violation of the Code of Conduct.

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2. By this petition, the petitioner has prayed for declaration that the petitioner himself be declared as elected member under Section 83 of the Representation of the People Act, 1950 (hereinafter referred as the RP Act). The petitioner further prayed for cancellation and recall of the certificate of returned candidate respondent No.3 - Nitin Jairam Gadkari and also seeks declaration declaring the returned candidate elected as *null and void*.

3. After service of notice, respondent No.3 - Nitin Jairam Gadkari appeared and filed an application under Order VII Rule 11 of the CPC with Section 86 of the RP Act for rejection of election petition and also filed an application under Order VI Rule 16 of the CPC for striking out of pleadings. The application is filed by respondent No.3 - Nitin Jairam Gadkari for rejection of plaint on the ground that as the petitioner is seeking

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declaration that he be declared as elected, all the contesting candidates other than the petitioner are required to be joined as respondents to the election petition. It is settled position of law that the provisions of Section 82 of the RP Act are mandatory in nature. Section 86(1) of the RP Act provides that an election petition which does not comply with the provisions of Sections 81, 82 or 117 of the RP Act is required to be dismissed as election petition cannot be maintained seeking declaration of the petitioner being successful candidate in the absence of all contesting candidates being impleaded as respondents.

4. It is further contended that the petitioner has not pleaded the “material facts” as to the election has been materially affected. The “material facts” as to the violation of the Code of Conduct are not pleaded. The petition does not disclose any cause of action. No cause

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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. The material facts such as who distributed the slips, at which place (specific place and time not mentioned). In absence of specific cause of action, election petition deserves to be dismissed. The “material fact” that the election has been materially affected have not been pleaded. The allegations are against party in general and not against returning candidate respondent No.3 - Nitin Jairam Gadkari. Vague pleading as to the violation of the Model Code of Conduct by the BJP and its workers is not sufficient and prayed for rejection of the plaint.

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5. The petitioner also filed Civil Application No.163/2024 for amendment of the election petition seeking permission to add new respondents.

6. The applications filed by respondent No.3 - Nitin Jairam Gadkari under Order VII Rule 11(a) and under Order VI Rule 16 are opposed by the petitioner on the ground that the “material facts” are already pleaded which sufficiently show the violation of the Model Code of Conduct and, therefore, both the applications deserve to be rejected and the petitioner be allowed to amend the petition by adding the new respondents.

7. Heard learned Senior Counsel Shri S.V.Manohar for respondent No.3 - Nitin Jairam Gadkari. He submitted that when an election petitioner claims that he himself or any other candidates has been duly elected, all the contesting candidates other than the

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petitioner are required to be joined as parties as per Section 82(a) of the RP Act. Failure to implead necessary parties as per Section 82 must result in dismissal of the election petition at the threshold. Non-compliance of Section 82 is fatal defect and cannot be cured. The RP Act specifically provides for dismissal of the petition as a consequence for non-joinder of parties. In such circumstances, the provisions of Order VI Rule 17 of the CPC cannot be used as a curative means to save the petition. Even, the petitioner cannot be allowed to withdraw or abandon a part of his claim. Where the petitioner claims declaration that he has been duly elected, all the contesting candidates are necessary parties. The “material facts” as to the violation of Code of Conduct are also not pleaded. The petitioner cannot be permitted to amend the petition subsequently. He submitted that as regards the

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amendment of the petition by deleting the averments or adding some portion is not permissible. The concept of joining proper party to an election petition is ruled out by the provisions of the Act. The concept of joinder of proper party to a suit or proceeding underlying Order I of the CPC cannot be imported to the trial or election petition. The purpose behind impleadment of other contesting candidates to the election petition where declaration is sought by the petitioner of his own election is on account of their right to seek a declaration of their own election instead of the petitioner. Under the provisions of Section 97 of the RP Act, in a petition involving a declaration of Petitioner as being elected, the returned candidate as well as the other contesting candidates are entitled to give evidence to prove that they ought to be declared as returned candidates. In view of Section 86(1) of the RP

Act, no discretion is left with the court but to dismiss the election petition where there is non-compliance of Section 82 of the RP Act. The fundamental defect in the election petition of non impleadment of contesting candidates cannot be sought to be cured by filing an application for impleadment of such contesting candidates. He further submitted that as to the pleading of “material facts”, law is settled that even in absence of single “material fact” is sufficient to dismiss the election petition summarily. The “material particulars” are required to be pleaded when there is an allegation of corrupt practice. For all above these reasons, the petition deserves to be dismissed by rejecting the plaint.

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

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1. Jyoti Basu and ors vs. Debi Ghosal and ors, reported in (1982)1 SCC 691;
2. Mohan Raj vs. Surendra Kumar Taparia, reported in AIR 1969 SC 677;
3. K.Kamaraja Nadar vs. Kunju Thevar and ors, reported in 1958 SCC OnLine SC 96;
4. Shahaji Nanai Thorat vs. State of Maharashtra, reported in 2024 SCC OnLine Bom 3641;
5. Krishan Chander vs. Ram Lal, reported in (1973)2 SCC 759;
6. Surendra Budhaji Borkar vs. Narayan Tatu Rane, reported in 2010 SCC OnLine Bom 1129;
7. Kallappa Laxman Malabade vs. Prakash Kallappa Awade, reported in 1995(2) Mh.L.J. 376;
8. Vijay Baburao Kamble vs. Madhukar Sarpotdar and ors, reported in 1994 SCC OnLine Bom 358;
9. Sudarsha Avasthi vs. Shiv Pal Singh, reported in (2008)7 SCC 604, and
10. M.J.Jacob vs. A.Narayanan and ors, reported in (2009)14 SCC 318.

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9. *Per contra*, the petitioner referred the various provisions and submitted that the petitioner is entitled to add other candidates as respondents within 14 days from the date of commencement of the trial. The commencement of the trial is from the date of appearance of the respondents. Thus, within 14 days the petitioner has filed an application for amendment. Therefore, no grounds are there for rejection of the plaint. He further submitted that the “material facts” to constitute the cause of action are already pleaded by the petitioner and, therefore, both the applications filed by respondent No.3 - Nitin Jairam Gadkari deserve to be rejected.

10. It is settled 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

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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 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.

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11. Before dealing with the issue raised by the petitioner, an application filed by respondent No.3 - 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 name has been published under Section 67 as duly elected.

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

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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 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.”

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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

(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

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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

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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 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.

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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—

(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—

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(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—

(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

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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 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—

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(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;

(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

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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.

(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

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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.

(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,

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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:

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:

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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.

(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

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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;
- (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

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(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, 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].

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[(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.

(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—

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(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].

(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.3 - Nitin Jairam Gadkari is challenged on the ground of violation of Model Code of Conduct, undue influence on voters. Respondent No.3 - Nitin Jairam Gadkari

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filed an application under Order VII Rule 11 of the CPC on the ground that as the petitioner is seeking declaration that he be declared as elected then in view of the provisions of the RP Act especially Section 82 of the RP Act, it is obligatory and mandatory on the party, on the petitioner, to add all candidates as respondents. The non-compliance of Section 82 of the RP Act would lead to the dismissal of the petition. It is further submitted by learned Senior Counsel that it is impermissible for court to have recourse to provisions of the CPC particularly of Order VI Rule 17 for amending of the petition and consequences flowing from Section 86(1) of the RP Act and therefore, on the said ground the petition deserves to be dismissed by rejecting the plaint.

26. The moot question involved herein is regarding the scope of Order VI Rule 17 of the CPC. It is

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submitted by learned Senior Counsel hat no such recourse is available with the petitioner by filing amendment application to add the other contesting candidates as respondents. He submitted that Section 86(4) of the RP Act to be read along with Section 96 of the RP Act. Subsequent amendment is not permissible.

27. It is necessary to refer Section 82 of the RP Act, which states that 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 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.

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28. Thus, when a petitioner in addition to claiming declaration that the election of the returned candidate is void, claims a further declaration that he himself or any other candidates has been duly elected. All the contesting candidates other than the petitioner must be joined as respondents to the petition. It is only when the petitioner does not seek a declaration of his own election, only returning candidate can be impleaded to the election petition.

29. Here, in the present case, the petitioner has clearly sought declaration of his own election and, therefore, it was obligatory on his part to join all the contesting candidates as respondents to his petition. There is no serious dispute as far as the settled law in view of the provisions of Section 82 of the RP Act is concerned which is mandatory in nature.

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30. The concept of joining a proper party to an election petition is defined by the provisions of the Act. The concept of joinder of proper party to a suit or proceeding underlying Order 1 of the CPC cannot be imported to trial of the election petition in view of the provisions of Sections 82 and 87 of the RP Act. The Act itself is self contained code which does not contemplate joinder of person or authority to an election petition on the ground of proper party.

31. In **K.Venkateswara Rao and anr vs. Bekkam Narasimha Reddi and ors**, reported in 1969 AIR 872 this court, while discussing the application under Order 1 Rule 10 of the CPC to an election petition, held that there could not any addition of parties in the case of election petition except under the provisions of Section 86(4) of the RP Act.

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32. In **Jyoti Basu and ors vs. Debi Ghosal and ors** *supra*, the Hon'ble Apex Court held that the concept of 'proper parties' is and must remain alien to an election dispute under the RP Act. Only those may be joined as respondents to an election petition who are mentioned in section 82 and section 86(4) and no others.

33. The purpose behind impleadment of other contesting candidates to election petition, where declaration is sought by the Petitioner of his own election, is on account of their right to seek a declaration of their own election instead of the petitioner. Under provisions of Section 97 of the RP Act, in a petition involving a declaration of petitioner as being elected, the returned candidate as well as the other contesting candidates are entitled to give evidence to prove that they ought to be declared as returned candidates.

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34. Thus, the scheme of the Act is such that if petitioner merely challenges election of the returned candidate (without seeking his own election), it is not necessary to join other contesting candidates to the election petition, where he claims declaration of his own election, and in the event of the Court declaring election of the returned candidate being void, the other contesting candidates are required to be given an opportunity to seek their own election instead of election of the petitioner and, therefore, all contesting candidates are necessary parties for such election petition.

35. In the case of **Mohan Raj vs. Surendra Kumar Taparia** *supra* relied by learned Senior Counsel for respondent No.3, it is held by the Hon'ble Apex Court that it is argued that the Civil Procedure Code applies and Order VI Rule 17 and Order I Rule 10 enable the

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High Court respectively to order amendment of a petition and to strike out parties. It is submitted, therefore, that both these powers could be exercised in this case by ordering deletion of reference to Periwal. This argument cannot be accepted. No doubt the power of amendment is preserved to the court and Order I Rule 10 enables the court to strike out parties but the court cannot use Order VI Rule 17 or Order I Rule 10 to avoid the consequences of non-joinder for which a special provision is to be found in the Act.

36. The court can order an amendment and even strike out a party who is not necessary. But when the Act makes a person a necessary party and provides that the petition shall be dismissed if such a party is not joined, the power of amendment or to strike out parties cannot be used at all. The Civil Procedure Code applies subject to the provisions of the RP Act and any rules

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made thereunder (see s. 87). When the Act enjoins the penalty of dismissal of the petition for non-joinder of a party the provisions of the Civil Procedure Code cannot be used as curative means to save the petition. It is further observed that every election petition can be saved by amendment in this way but that is not policy of the law.

37. In **K.Kamaraja Nadar vs. Kunju Thevar and ors** *supra*, the Hon'ble Apex Court observed that as regards the amendment of a petition by deleting the averments and the prayer regarding the declaration that either the petitioner or any other candidate has been duly elected, so as to cure the defect of non-joinder of the necessary parties as respondents, we may only refer to our judgment about to be delivered in Civil Appeal No. 76 of 1958, where the question is discussed at considerable length. Suffice it to say here that the

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election tribunal has no power to grant such an amendment, be it by way of withdrawal or abandonment of a part of the claim or otherwise, once Election Petition has been presented to the Election Commission claiming such further declaration.

38. In the case of **Surendra Budhaji Borkar vs. Narayan Tatu Rane** *supra* this court has held in para No.19 by referring the Section 82 of the RP Act that the the effect of provisions of Section 82 of the Act is very clear that the election Petition has to be arrayed of all the contesting candidates specially in case the petitioner makes a claim to be declared as a winning candidate. The special provisions in the election statutes with regard to this are mandatory and cannot be waived. It should prevail.

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39. In the case of **Kallappa Laxman Malabade vs. Prakash Kallappa Awade** *supra*, this court held that the provisions of the CPC cannot be resorted to in order to save a petition which otherwise is liable to be dismissed for non-joinder of the parties, which Section 82 of the Act says must be joined.

40. In the case of **Vijay Baburao Kamble vs. Madhukar Sarpotdar and ors** *supra*, this court in paragraph No.59 observed that it is also of important to note how the Apex Court has viewed such lethal defect of non-joinder. In **Mohan Raj's** case (*supra*) it is noticed it was urged that by recourse to the provisions of amendment of pleadings contained in Code of Civil Procedure (Order 1. Rule 10 and Order 6, Rule 17) in the interest of justice, the said defect be permitted to be cured. The Apex Court rejected it, observing “when the Act enjoins the penalty of dismissal of the petition for

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non-joinder of a party the provisions of the Civil Procedure Code cannot be used as curative means to save the petition.

41. Thus, the settled law is that there should be a compliance in view of Section 82 of the RP Act. It is impermissible for this court to allow the petitioner to amend the election petition by impleading the other contesting candidates for the purpose of avoiding consequences of dismissal of the election petition under Section 86(1) of the Act. The statutory scheme under Sections 81 and 82 of the Act is such that an election petition can be filed and presented in view of Section 82 of the Act within a period of 45 days. When the petitioner seeks declaration of his own election, the affected parties are not just the returned candidates but also the contesting candidates. Every contesting candidate has right under Section 97 of the Act to file

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recrimination petition for seeking a declaration that he himself be declared as elected in stead of petitioner. In that view of the matter, the election petition adding all the contesting candidates must also be filed within a period of 45 days of the election of the returned candidates.

42. Thus, the petition filed before this court is not complying with Section 82 of the RP Act. Even, considering the application of the petitioner as an application for impleadment of contesting candidates, the same is filed beyond the period of 45 days from the date of election of returned candidate respondent No.3 - Nitin Jairam Gadkari. Moreover, the said application nowhere states the names of the other contesting candidates. It only states that he be permitted to add the other parties as necessary parties. The petitioner has not complied with Section 82 read with Section 97

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of the RP Act by adding the other contesting candidates within 45 days to the present election petition. Though the petitioner has referred sub-section (4) of Section 86 of the RP Act, which states that any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent. Explanation to sub-section (4) of Section 86 of the RP Act, states that for the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.

43. Sub-section (4) of Section 86 of the RP Act deals with situation when any candidate not already a

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respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent. The said provision can be used by the candidate who is not added as a respondent and wants to contest the petition. The petitioner cannot use this provision. The petitioner has to implead all the contesting candidates within 45 days and subsequent amendment is not permissible. Order VI Rule 17 of the CPC permits amendment of an election petition, but the same is subject to the provisions of the Act.

44. Section 81 of the RP Act prescribes a period of 45 days from the date of the election for presenting election petition calling in question the election of returned candidate. After the expiry of that period, no

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election petition is maintainable and this court has no jurisdiction to extend the period of limitation. An order of amendment for adding the contesting candidates is beyond the ambit of Section 87 of the Act which is not permissible.

45. Even, if Civil Application No.163/2024 filed by the petitioner is considered as an application for impleadment of other contesting candidates to the election petition, the application does not disclose number of the candidates and their names and only prays for adding the other contesting candidates as respondents. In fact, it is not permissible. Thus, there is non compliance of mandatory provisions of Section 82 of the RP Act and, therefore, this court is left with no option but to dismiss the election petition as per sub-section (1) of Section 86 of the RP Act.

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46. The second ground raised by respondent No.3 is that the petition does not disclose any cause of action. The grounds raised in the petition are corrupt practices and violation of “Model Code of Conduct” and “undue influence”. The pleading in the petition makes out the grievance of the petitioner that on the day of the election 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 circulated to the mobile phones of the BJP workers. The said software was created by the BJP. The

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chits circulated to the voters were having photographs of respondent No.3 - Nitin Jairam Gadkari and symbol of BJP. Thus, on many polling booths, the Code of Conduct was violated.

47. 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.

48. A bare perusal of the above two provisions would show that the first part of Order VI Rule 2 of the CPC is

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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?

49. 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”.

50. 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”.

51. In the case of **Sudarsha Avasthi vs. Shiv Pal Singh** *supra*, relied by learned Senior Counsel for respondent No.3, it is observed that as per Section 83 of RP Act, it is duty of the person who files election petition and levels allegations of corrupt practices to disclose the “material facts” on which he relies and that he should

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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. What shall be the corrupt practice have been enumerated in Section 123 of the Act, like; bribery

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

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52. In the case of **Anil Vasudev Salgaonkar vs. Naresh Kushali Shigaonkar**, reported in (2009)9 SCC 310, 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 the mandate of Section 83(1)(a). The election petition must contain a concise statement of

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‘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 the 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 passed if the mandatory requirements enjoined by

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Section 83 of the Act to incorporate the material facts in the election petition are not complied with.

53. In **Jitu Patnaik vs. Sanatan Mohakud and ors**, reported in (2012)4 SCC 194, 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.

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

54. Recently, in **Kanimozhi Karunanidhi vs. A.Santhana Kumar and ors**, reported in 2023 SCC OnLine SC 573 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

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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.

55. This court also in the case of **Dr.Rameshkumar Bapuraoji Gajbe vs. Election Commission of India, New Delhi and ors, reported in 2020(5) Mh.L.J. 328** 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"

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would lead to incomplete cause of action and that such petition is not an election petition at all.

56. In **Ram Sukh vs. Dinesh Aggarwal**, reported in **(2009)10 SCC 541**, 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

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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 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.

57. 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)

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(a) of the Act to constitute a complete cause of action in relation to allegation under Section 100(1)(d)(iv) of the Act.

58. 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 RP 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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59. 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.

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

61. 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.

62. 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."

63. The Hon'ble Apex Court in **Bachan Singh vs. Prithvi Singh and ors**, reported in (1975)1 SCC 368 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,

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blaringly and systematically through charismal 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

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influence. "Undue influence" is used in contradistinction 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."

64. 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.

65. 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.3 - Nitin

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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.

66. 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**.

67. 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 accordingly be paid to the returned candidate by adopting the course prescribed by Section 121 of the said Act.

68. Civil Application No.141/2025 filed by respondent No.3 - Nitin Jairam Gadkari under Order VII Rule 11 of the CPC with Section 86 of the RP Act for rejection of the election petition is **allowed**.

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

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

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!