

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 8399 OF 2020
IN ELECTION PETITION NO. 5 OF 2019**

**WITH
CIVIL APPLICATION NO. 9027 OF 2021
IN ELECTION PETITION NO. 5 OF 2019**

**THE RETURNING OFFICER, 39-BEED PARLIAMENTARY
CONSTITUENCY, BEED AND OTHERS**

VERSUS

VISHNU TULSHIRAM JADHAV AND OTHERS

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Mr. Alok Sharma, Advocate for the applicants.

Mr. G. K. Sontakke, Advocate for the respondent no.1.

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**CORAM : V. K. JADHAV, J.
RESERVED ON : 01.10.2021
PRONOUNCED ON : 10.12.2021**

ORDER :

1. Heard both sides.
2. These two applications are filed by original respondent nos. 36 to 38 in Election Petition No. 5 of 2019 for the same relief. Thus, both the applications are disposed of by this common order.
3. The applicants-original respondent nos. 36 to 38 are seeking permission to remove the EVMs i.e. 'Electronic Voting Machines' from the strong room and to use it in the coming Assembly Election.

4. Mr. Alok Sharma, learned counsel for the applicants submits that in terms of the provisions of Sections 82 to 86 of the Representation of the People Act, 1951, the applicants herein are not necessary parties to the Election Petition. Learned counsel submits that there are no allegations about malfunction of the EVMs. The Election Commission has to keep the EVMs in working position as and when occasion arises. Even if the functioning of EVMs is being challenged, yet the Election Commission and the Returning Officer are not the necessary parties.

5. Learned counsel for the applicants, in order to substantiate his contention, placed reliance on the following cases:

1. ***N. Chandrababu Naidu and others v. Union of India and another***, reported in (2019) 15 SCC 377.
2. ***Bita w/o Ghanshyam Ramteke v. Nanaji Sitaram Shamkule***, reported in 2010 (5) Mh.L.J. 707.

6. Learned counsel for respondent-original election petitioner submits that the applicants have not disclosed the true and correct facts and suppressed the material facts from the Court. Learned counsel submits that the applications are premature and based upon distortion of the material facts. Learned counsel submits that in terms

of the provisions of Section 100 of the Representation of the People Act, 1951, the original election petitioner presented the Election Petition before this Court thereby challenging the election of returned candidate from the 39-Beed Parliamentary Constituency of the Maharashtra State. Learned counsel submits that it has been specifically pleaded in the Election Petition that there is apparent variance and contradiction with regard to the total number of votes as it appears from Form Nos. 21-C, 21-D and 21-E maintained by the Election Commission of India. It has been specifically contended in the Election Petition that difference in votes is also on account of tampering of the EVMs. Learned counsel submits that it is only after the full fledged trial and adjudication, the matter would reach to its logical end. Learned counsel submits that the EVMs are not at all required presently for any elections in the State of Maharashtra. Learned counsel submits that new EVMs have already been procured and after due verification, have been stored in the warehouses.

7. I have carefully perused the pleadings of Election Petition No. 5 of 2019. It has been specifically pleaded in the petition that there has been tampering in the counting of votes and respondent no.1 (the elected candidate) in connivance with respondent nos. 36 to 38 (the applicants herein) had indulged in tampering of the machines. It has

also been pleaded in the petition that tampering of the electronic devices has resulted into the difference in number of valid votes and thus, the elections of the 39-Beed Parliamentary Constituency have been materially affected.

8. In the identical Application No. 45 of 2019 in Election Petition No. 10 of 2019 and Application No. 48 of 2019 in Election Petition No. 9 of 2019, by order dated 26.09.2019, this Court (Coram : Smt. Vibha Kankanwadi, J.) has rejected the applications. Though learned counsel for the applicants has placed reliance on the two cases i.e. *N. Chandrababu Naidu* (supra) and *Bita w/o Ghanshyam Ramteke* (supra), however, the points involved in the same are altogether different. In the instant case, considering the pleadings of respondent no.1/original election petitioner, I proceed to pass the following order:

ORDER

The Civil Applications are hereby rejected.

(V. K. JADHAV, J.)