

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA.
APPLICATION IN ELECTION PETITION NO.1 OF 2014
IN
ELECTION PETITION NO. 2 OF 2007.**

THE JOINT CHIEF
ELECTORAL OFFICER ,
(MAJOR)

.... Applicant.

VS

SOMNATH ZUVARKAR
AND ANR

.... Respondents.

Mr. Rama G. Rivankar, Advocate for the Applicant.

**CORAM: G. S. KULKARNI, J.
DATE: 22 SEPTEMBER 2022.**

P.C.:

1. This is an application filed by the Joint Chief Electoral Officer

(Major) Election Commission praying for the following relief:-

This Hon'ble Court be please to permit the Applicant to release the 25 EVMS of 11-Taleigao Assembly Constituency, in the custody of District Election officer, for the purpose of using them in ensuing Lok Sabha Elections due in 2014.

2. Election Petition No.2 of 2007 was filed by Shri. Somnath

Zuarkar against the victorious candidate, Shri. Atanasio Monserrate, under Sec.81 read with Sec.100 of the Representation of the People's Act, 1951, calling in question the Election of Shri. A. Monserrate to the 11 – Taleigao Assembly Constituency which was held in June 2007 who prayed that the election of Shri. A. Monserrate be declared as void.

3. The trial of the election petition had commenced when the petitioner Somnath Zuarkar sought withdrawal of the Election Petition. By an Order dated 21.07.2010, this Court granted his prayer for withdrawal of the Petition subject to compliance of Sec.110 (3)(b) of the Representation of the People's Act, 1951. Later on, even the proceedings before the Supreme Court arising from the orders passed by this Court were disposed of by an order dated 13.7.2021 in Civil Appeal No.3206 of 2011 as the appeal had become infructuous.

4. As per the general directions dated 24.07.2009 issued by the Election Commission of India under Rule 94 (aa) of the Conduct of Election Rules 1961, EVMs numbering 25 of the 11–Taleigao Constituency were kept in safe custody of District Election Officer (DEO) and the same are presently are in the safe custody of the

Treasury Office at Panaji Goa. As per the Order dated 24.07.2009, issued by the Election Commission of India, the EVMs used in any election and kept in the custody of District Election Officer (DEO) would be continued to be kept in such safe custody for 6 months from the declaration of results of the said election and if any Election Petition/Appeal is filed then EVMs would continue to remain in custody of DEO till the disposal of the Election Petition or Appeal thereof.

5. Clause 5 of the Order dated 24.07.2009 issued by the Election Commission provides that “After the final disposal of the Election Petitions, including appeals, if any, or as the case may be other Court cases referred to in Clauses 3 and 4 above, the voting machines can be used for subsequent elections”. The 25 EVMs machines relevant to the present proceedings were kept in safe custody as per the general instructions issued by the Election Commission of India. Rule 94 (aa) of the Conduct of Election Rules, 1961, is reproduced below:

“Disposal of Election Papers: Subject to any direction to the contrary given by the Election Commission or by the Competent Court or Tribunal----

(a)

(aa) The voting machines kept in the custody of the District Election Officer under sub rule (1A) of Rule 92 shall be retained intact for such period as the Election Commission may direct and shall not be used at any subsequent election without the previous approval of the Election Commission.

6. Thus, the 25 EVMs are no more required in the present election proceedings as the above Election Petition itself has stood disposed of by the order of the Supreme Court in Civil Appeal No.3206 of 2011.

7. It is informed by the learned Counsel for the applicant that 25 EVMS of 11-Taleigao Assembly Constituency in the custody of District Election Officer are now intended to be used for the purpose of the Election Commission.

8. In the aforesaid circumstances, the present application would be required to be allowed. It is accordingly allowed as prayed for. Order accordingly.

9. It is clarified that this order is relevant in the context of the proceedings of Election Petition No. 2 of 2007 and the EVMs shall stand released unless required in any other proceedings.

10. Disposed of in the above terms. No costs.

G. S. KULKARNI,J.

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