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O.A.Nos.728 & 729 of 2023 in E.P.No.3 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.10.2023

Pronounced on : 30.10.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

O.A.Nos.728 & 729 of 2023

in

E.P.No.3 of 2021

The Chief Electoral Officer, Tamil Nadu
Election Commission of India,
Public (Elections) Department,
Secretariat,
Fort St. George,
Chennai – 600 009.

... Applicant/in both Applications

Vs.

- 1.M.Palaniappan
- 2.Vijayabaskar. C
- 3.Alaguraja. V
- 4.Azhagumeena. P
- 5.Arumugam. P
- 6.Karthi Prabhakaran. O
- 7.Saravanan. R
- 8.Senthil Kumar. P
- 9.Vijay. A
- 10.Abdul Nazar. K
- 11.Elayaraja. R
- 12.Syed Mohamed. J
- 13.Dhanalakshmi. M
- 14.Thiruventhiran. V



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15.Palanisamy. A
16.Balasubramanian. M
17.Manikandan. K
18.Manikandan. C
19.Ramesh. M
20.Rameshkumar. P
21.Rajavarman. R
22.Jothivel. A

... Respondents in both Applications

Prayer in O.A.No.728 of 2023:- This application filed under Order XIV Rule 8 of O.S Rules and Rule 3 of the Madras High Court Election Rules, 1967 R/w. Section 151 of CPC, 1908, praying to grant leave to file an application for release of VVPAT machines

Prayer in O.A.No.729 of 2023:- This application filed under Order XIV Rule 8 of O.S Rules and Rule 3 of the Madras High Court Election Rules, 1967 R/w. Section 151 of CPC, 1908, praying to release the VVPAT machines connected with the Electronic Voting Machines used in the 179-Viralimalai Assembly constituency on 02.05.2021.

For Petitioner : Mr.Niranjan Rajagopal, in both Applns.
For R1 : Mr.P.Richardson Wilson, in both Applns.
For R2 : Mr.B.Aravind Srevatsa, in both Applns.

COMMON ORDER

Both these applications have been filed by the Chief Electoral Officer, Tamil Nadu seeking permission to grant leave to file an



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application to release the VVPAT machines and to release the VVPAT machines connected with the Electronic Voting machines which were used in the State Legislative Elections for 179-Viralimalai Assembly constituency on 02.05.2021 and to use them for further elections.

2.Even before entering into any further discussion, O.A.No.728 of 2023, which is an application seeking leave, is allowed.

3.In the affidavit filed in support of the application in O.A.No.729 of 2023 it had been stated that the petitioner was the 23rd respondent in the Election Petition, but had been struck off as not a necessary party. It had been stated that due to the pendency of the Election Petition, the Electronic Voting machines, which constitute control unit, balloting unit and VVPAT machines have been preserved. It had been stated that the control units and balloting units are alone relevant to decide the issues raised in the Election Petition. It had therefore been stated that VVPAT machines may be released for usage in further elections and it had been stated that if so released, no prejudice would be caused to any of the parties.



4.In the counter affidavit filed by the 1st respondent, it had been stated that various allegations had been raised with respect to the electronic voting machines and it had therefore been stated that the electronic voting machines should not be released, as they would be subject matter of evidence during the course of trial. A detailed counter had been filed, but let me not, at this stage reiterate every aspect stated in the counter, since that would also involve entering into a discussion on the merits of the allegations raised in the Election Petition. Since evidence will have to be adduced on those aspects, it would only be prudent to avoid such discussion.

5.At any rate, it is seen that there have been instances when such requests have been made and it had been held that those control units, balloting units and VVPAT machines which are the actual subject matter of dispute alone can be retained and the rest can be handed back to the petitioner herein.

6.In view of that particular fact, I would hold as follows:

(i) the Control units, Balloting units and VVPAT machines with reference to Control Unit Numbers BCUAF17710, BCUAF13250,



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BCUAF08207, BCUEF33162, BCUAF23405, BCUAF08616 should continue to be retained by the Returning Officer.

(ii) All other Control Units, Balloting Units and VVPAT machines are released and the Returning Officer can utilize the same for any other election purposes on condition that the paper trail of all the VVPATs in respect of the election which is the subject matter of this Election Petition are retained by the Returning Officer.

7. With the above directions,

(i). O.A.No.728 of 2023 is allowed.

(ii). O.A.No.729 of 2023 is disposed of.

(iii). No costs.

30.10.2023

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Index : Yes / No

Neutral Citation : Yes / No

Speaking order : Yes / No



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C.V.KARTHIKEYAN, J.

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Pre-delivery order made in

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