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O.A.No.897 of 2023
in
E.L.P.No.1 of 2023

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R.SURESH KUMAR, J.

The prayer sought for in this application is to release the M3 Electronic Voting Machines used for No.98, Erode (East) Assembly Constituency held on 27.02.2023, challenged in the main Election Petition No.1 of 2023 and use it for further elections.

2. Heard Mr.Niranjan Rajagopalan, learned counsel for M/s.G.R.Associates appearing for the applicants herein, who is the Election Commission of India, he has relied upon paragraph No.4 of the affidavit filed in support of this application, which reads thus:

"4. I respectfully submit that the M3 generation voting machines are required for conduct of election and due to the pendency of the above Election Petition, they are remaining unutilised.



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From the averments made in the Election Petition, it is apparent that the issue is not pertaining to counting of votes and the Electronic voting machine is not the subject matter of the Petition. In the circumstances, it is submitted that release of these electronic voting machines would not prejudice or affect the result of the above Election Petition. There is no useful purpose to continue to keep the Electronic Voting Machines, there is no prejudice that is caused to the parties in the matter, however resources meant for election remain unutilised."

3. Relying upon the said contention he would submit that, those voting machines are required for conduct of election and due to the pendency of the main election petition, they are remaining unutilized. He would also submit that there has been no specific rule to retain the electronic voting machines and no such order has been passed by this Court, however as a regular procedure or for abundant caution the Election Commission of India has given instructions that, wherever the election



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petitions are pending before the concerned Tribunal / Court, those electronic voting machines involved in that election shall be kept intact. Accordingly, the electronic voting machines involved in the said election, which is under challenge in this election petition, has already been directed to be kept intact.

4. However in view of the *lis* here, where the grounds raised by the election petitioner not related to any malfunction or any complaint against the using of the electronic voting machines and the pattern or mode adopted by the Election Commission of India in using electronic voting machines, those machines unnecessarily need not be kept ideal and those machines are required for the future utility, especially in the forthcoming general election, therefore the learned counsel seeks indulgence of this Court.

5. Mr.T.Sivagnanasambandan, learned counsel appearing for the



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first respondent / election petitioner, on instructions, would submit that, the election petitioner does not have any specific remarks to offer or has not filed any counter.

6. The other respondents also represented by the learned counsel have expressed the similar view. The said submission made by the learned counsel appearing for both sides have been considered. As has been pointed out by the learned counsel appearing for the Election Commission of India that, these electronic voting machines may be required for utility in the future elections especially in the general election which is on the cards. Moreover, since there has been no complaint with regard to the functioning of such electronic voting machines utilised in that election, this Court feels that retaining unnecessarily those electronic voting machines pending disposal of the main election petition for the further period is no more required as that would not in any way have a barring on the issue raised in the main election petition to be decided.



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7. For all these reasons, this Court feel that, this application can be allowed, accordingly, this application is ordered. Whatever the follow up action shall be taken by the Election Commission of India pursuant to this order, can be taken by them.

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