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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/2624/2026

THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSIONER HAVING ITS OFFICE AT NIRVACHAN SADAN ASHOKA ROAD NEW DELHI

VERSUS

SRI SASHANKA SEKHAR DAS
SON OF LATE SASHADHAR DAS, RESIDENT OF VILLAGE AND PO BHAIRABNAGAR PS RAMKRISHNANAGAR DISTRICT SRIBHUMI ASSAM 788152

Advocate for the Petitioner : MR. A I ALI, MR. M ISLAM,MR N KALITA

Advocate for the Respondent : MR. T DEURI,

Linked Case : El.Pet./1/2026

THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSIONER
HAVING ITS OFFICE AT NIRVACHAN SADAN
ASHOKA ROAD
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VERSUS

SRI SASHANKA SEKHAR DAS
SON OF LATE SASHADHAR DAS
RESIDENT OF VILLAGE AND P.O. BHAIRABNAGAR
P.S. RAMKRISHNANAGAR
DITRICT- SRIBHUMI
ASSAM-788152.

2:SRI BIJOY MALAKAR
S/O SRI SANKAR MALAKAR
R/O HOUSE NO. 5
COLLEGE ROAD
WARD NO.6 OF RAMKRISHNANAGAR TOWN
P.O. AND P.S. RAMKRISHNANAGAR
DISTRICT- SRIBHUMI
ASSAM-788166

Advocate for : MR. A. ALI
Advocate for : MR. K.N. CHOUDHURY appearing for SRI SASHANKA SEKHAR DAS

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 12.11.2026

Heard Mr. A.I. Ali, learned counsel for the applicant – Election Commission of India [ECI] and Mr. K.N. Chouhdury, learned Senior Counsel assisted by Mr. A. Atreya, learned counsel for the opposite party – election petitioner.

2. The opposite party herein as the election petitioner has preferred an election petition under Section 80 r/w Section 80A, Section 81 and other related provisions of Part-VI of the Representation of People Act, 1951 ['the R.P. Act', for short].

3. In view of the direction sought in this interlocutory application, it appears necessary to take note of the ground[s] on which the election petition has been preferred.

4. The opposite party as the election petitioner has preferred the election petition seeking a declaration that the election of the sole respondent impleaded herein from No. 126 Ram Krishna Nagar [SC] Legislative Assembly Constituency [LAC] in the General Election to the

Assam Legislative Assembly, 2026 is void under Section 98[b] of the R.P. Act on the ground that the respondent lacks the qualification prescribed under Section 100[1][a] of the R.P. Act. It is asserted that the sole respondent lacks the qualification prescribed under Article 173[a] of the Constitution of India and on that ground, his election as the Member of Legislative Assembly from No. 126 Ram Krishna Nagar [SC] LAC is to be declared void.

5. Article 173 of the Constitution of India has laid down the qualification for membership of the State Legislature. As per Clause [a] of Article 173, a person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he is a citizen of India, and makes and subscribes before some person authorized in that behalf by the Election Commission, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

5.1. Section 100 of the R.P. Act has provided for the grounds for declaring election to be void. Section 100[1][a] of the R.P. Act has laid down that subject to the provision of sub-section [2] in an election petition if the High Court is of the opinion that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or under the R.P. Act or under the Government of Union Territories Act, 1963, the High Court is to declare the election of the returned candidate to be void.

6. It is further averred in the election petition that for being elected from No. 126 Ram Krishna Nagar [SC] LAC, ten nos. of candidates including the election petitioner and the sole respondent in the election petition, submitted their nomination papers. Noticeably, other than seeking relief in the form of a declaration of the election of the sole respondent as void, the opposite party – election petitioner has not sought for any further declaration that he himself or any other candidate who submitted nomination papers for election from No. 126 Ram Krishna Nagar [SC] LAC is to be declared as duly elected.

7. In this interlocutory application, the applicant has sought for a direction to allow it to open the Strong Room and remove the Electronic Voting Machines [EVMs] used in the election process for No. 126 Ram Krishna Nagar [SC] LAC, from the Strong Room for further use.

8. Mr. Ali, learned counsel appearing for the applicant – ECI has submitted that in the accompanying election petition the issue is limited : whether the sole respondent therein is qualified to be elected as a Member of Legislative Assembly under Section 173[a] of the Constitution of India or otherwise. Therefore, the EVMs involved in the election process for election from No. 126 Ram Krishna Nagar [SC] LAC is not an issue as no further declaration has been sought for by the opposite party as the election petitioner in the accompanying election petition. He has further submitted that as the period of forty-five days from the date of election is already over and with there is no allegation of corrupt practices in the election petition, retention of the EVMs in the custody of the District Election Officer is not in the interest of administrative exigency, which has bearing on the State Exchequer also. He has further submitted that if the EVMs are released, the same can be preserved properly and also, can be used in other election. Therefore, a direction to allow retention of the EVMs is called for. To buttress his submissions, the learned counsel for the applicant has taken support from the following decisions - [i] **Bashir Musa Patel vs. Satyawan Ganpat Jawkar and others, [1997] 1 SCC 751**; [ii] Judgment and Order dated 27.02.2020 [**Election Commission of India vs. Houlim Shokhopao Mate and others**] of the High Court of Manipur at Imphal; [iii] Order dated 25.09.2020 [**Shanti Ranjan Das vs. District Election Officer, 17-Barasat Parliamentary Constituency**] of the High Court of Calcutta; and [iv] Order dated 21.02.2022, passed in I.A.[C.] no. 241/2022 [**Karim Uddin Barbhuiya vs. Anamul Haque**]

9. Mr. Choudhury, learned Senior Counsel appearing for the opposite party – election petitioner has contended that the relief sought for in this interlocutory application is not traceable to any statutory provision or right, either under the Constitution of India or under the R.P. Act or any rules framed thereunder. He has submitted that seeking release of the EVMs involved in a democratic process like an election to an LAC cannot have any connection with administrative exigency. He has submitted that a situation might arise for bringing the EVMs in connection with any issue involved in the election petition.

10. I have considered the submissions of the learned counsel for the parties. Having considered the materials on record in its entirety, it becomes evident that other than seeking

a relief in the form of declaration that the election of the sole respondent in the accompanying election petition void in view of his alleged disqualification for not meeting the qualification for membership of the State Legislature as laid down in Section 173[a] of the Constitution of India, the opposite party – election petitioner has not sought any other relief including a relief in the form of a declaration under Section 84 of the R.P. Act that he himself or any other candidates among the other nine candidates who submitted nomination papers from No. 126 Ram Krishna Nagar [SC] LAC, be declared newly elected.

11. In view of the time period expired from the date of filing of the accompanying election petition on 17.06.2026, and with no allegation of corrupt practices set forth in the election petition in terms of Section 123 of the R.P. Act, this Court finds no necessity to make any order for retention of the EVMs used in the election to No. 126 Ram Krishna Nagar [SC] LAC for the purpose of the accompanying election petition.

12. One cannot be oblivious of the situation that retention of the EVMs who would not go serve any useful purpose in future, involves manpower, space and cost.

13. Considering the fact that retention of the EVMs used in the election for No. 126 Ram Krishna Nagar [SC] LAC for any further period would not be of any necessity for the purpose of adjudication of the accompanying election petition and having regard to the fact that retention of the EVMs would also entail cost to the State Exchequer, the instant application stands allowed in so far as the EVMs used in the election for No. 126 Ram Krishna Nagar [SC] LAC is concerned. Consequently, the applicant is permitted to take necessary steps for release of the EVMs from the Strong Room of the jurisdictional District Election Officer, District – Sribhumi, Assam following due procedure.

JUDGE

Comparing Assistant