

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

M.C. (ELECTION PETITION) No. 3 of 2020

Ref: Election Petition No. 01 of 2019

The Election Commission of India, represented by the
Secretary, Election Commission of India, Nirvachan
Sadan, Ashoka Road, P.O. & P.S. New Delhi-110001.

....INTERVENOR/APPLICANT

-Versus-

1. Houlim Shokhopao Mate @ Benjamin, aged about 36 years, S/o (L) H. Jamkhokhai Mate, resident of Tengnoupal Village, P.O. & P.S. Tengnoupal, District Tengnoupal, Manipur – 795131.
2. Shri Lorho S. Pfoze, aged about 59 years, S/o Late A. Sibbo Pfoze, resident of Kayinu Village, P.O. & P.S. Mao, District Senapati, Manipur – 795150.
3. Angam Karung Kom, aged about 63 years, S/o Late Ashong Kom, resident of K.R. Lane, P.O. & P.S. Porompat, District Imphal East, Manipur -795005.
4. Shri Hangkhanpau Taithul, aged about 55 years, S/o (L) T. Doupu, resident of Singngat Hausa Veng, P.O. & P.S. Singngat, Churachandpur District, Manipur – 795139.
5. Mr. Ashang Kasar @ Wungnaoshang Kasar @ Wungnao Shang Kasar, aged about 43 years, S/o Ngashathing Kasar, resident of Chadong Village, P.O. & P.S. Litan, Kamjong District, Manipur – 795145.
6. Leikhan Kaipu, aged about 54 years, S/o Late Leikhan Kokan, resident of Heikakpokpi Village, P.O. Pallel, P.S. Machi, Machi Sub-Division, Tengnoupal District, Manipur – 795135.

7. Thangminlien Kipgen, aged about 64 years, S/o Late Thangpu Kipgen, resident of Haipi Village, P.O. Kalapahar, Kangpokpi District, Manipur – 795122.
8. Shri K. James, aged about 56 years, S/o Late K. Ngatangmi, resident of Tangkhul Hundung Khullen, P.O. Lamlong, P.S. Litan, Kamjong District, Manipur-795010, presently residing at JIM Blessing Home, Sangaiprou Mamang Leikai, Airport Road, P.O. & P.S. Singjamei, Imphal West District, Manipur – 795008.

.....**RESPONDENTS.**

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Intervenor/Applicant	::	Mr. Kh. Samarjit, Advocate.
For the Respondents	::	Mr. N. Zequeson, Advocate.
Date of Hearing & Judgment & Order	::	27.02.2020

JUDGMENT AND ORDER
(ORAL)

The Election Commission of India has come forward with the present application seeking intervention of this Court for allowing the office of the Chief Electoral Officer, Manipur/District Electoral Officers of various Districts of Manipur to take out the Electronic Voting Machines (EVMs) and Voter Verifiable Paper Audit Trails (VVPATs) locked in various strong rooms of concerned District Electoral Officers of the State of Manipur for future use and/or for physical verification and/or for sending the EVMs and

VVPATs to the Bharat Electronics Limited (BEL), Bangaluru etc. wherever applicable.

2. Heard the learned counsel for the Election Commission of India as well as the respondents.

3. Election Petition No.1 of 2019 has been filed by the first respondent herein challenging the election of the second respondent as Member of Parliament of the 17th Lok Sabha in respect of Outer Manipur (ST) Parliamentary Constituency. Pending Election Petition, the Election Commission of India has filed the present petition contending that the Election Commission of India had conducted General Elections of the 17th Lok Sabha, 2019 in the State of Manipur and the entire election process in respect of Manipur in the 17th Lok Sabha Elections were concluded on 27.05.2019. Therefore, keeping the EVMs and VVPATs in the strong rooms are not required and hence, the same may be permitted to be taken from the strong rooms by the District Electoral Officers of various Districts of Manipur.

4. The present petition has been filed by the Election Commission of India based on the guidelines being No.51/8/6/2019-EMPS (Vol.III), dated 12.9.2019 issued by it. For

better appreciation, the guidelines dated 12.9.2019 are extracted herein below for ready reference:

*ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN, ASHOKA ROAD NEW DELHI-110 001*

No.51/8/6/2019-EMPS (Vol-III) Dated: 12th September, 2019

To

*The Chief Electoral Officers of
All States and Union Territories*

*Subject : Use of Electronic Voting Machines in elections- period
of retention thereof-regarding.*

Madam/Sir,

*I am directed to refer to paras 3 & 4 of the Commission's letter
No.51/8/7/2016-EMS, dated 15th July, 2016, whereby the Commission
directed that*

*“3.In case of any election where election petition has been filed, the
following action shall be taken:-*

- (i) **If the EVMs are the subject of the election petition, the EVMs
used at all Polling Stations in the constituency concerned shall
continue to be kept in the safe custody of the District Election
Officer, till such time the Election Petition is finally disposed
by the Courts.***
- (ii) **If the EVMs are not the subject of the election petition, an
application may be moved to the concerned Court for
allowing the EVMs concerned to be taken out of the strong
room from any future election or any other purpose like
movement, physical verification of EVMs etc.***
- (iii) **In case EVMs not involved in any Election Petition/Court Case are
stored with the EVMs involved in Election Petition/Court Cases,
the following procedure shall be followed for segregating the***

EVMs not involved in any election petition/court case from the EVMs involved in EP/Court Case:-

(a) A Notice informing the opening of Strong Room having EVMs involved in EP/Court Case shall be given to the petitioners/respondents of the EP/Court Case and the representatives of all political parties in writing atleast 72 hours in advance, requesting them to remain present at the time of opening of strong room.

(b) The strong room shall be opened in the presence of the District Election Office, Petitioners/respondents of the EP/Court Case and representative of Political Parties.

(c) The EVMs not involved in any EP/Court Case shall be segregated from the EVMs involved in EP/Court Case for taking out of the warehouse. A list of EVMs being taken out from the strong room shall be prepared.

(d) The EVMs, which are not involved in any EP/Court Case should be taken out of the warehouse.

(e) The entire process shall be videographed.

(f) A copy of the list of EVMs being taken out from the strong room and copy of videography shall be given to the petitioner/respondent of the EP/Court Case and acknowledgment taken.

4. If any other Court Case is pending like both capturing etc. in which any EVM is involved, the EVM concerned or the EVM(s) used at such Polling Station(s) concerned may also be kept till the final disposal of the said case.”

The mandatory period of filing Election Petition(s), which is 45 days from the date of declaration of result has already been completed in respect of recently concluded General Elections to Lok Sabha-2019

and simultaneous elections in the States of Andhra Pradesh, Arunachal Pradesh, Odisha and Sikkim.

Accordingly, the Chief Electoral Officers of all the States/UTs are requested to submit a Certificate to the extent that where EVM/VVPAT is not the subject matter of Election Petition/Court Case, an application has been filed to the concerned Court for allowing the EVMs/VVPATs concerned to be taken out of the strong room for future use, in pursuance of the Commission's aforesaid letter, dated 15th July, 2016, to the Commission by 16th September, 2019. The date of filing of the application to the Court as well as the status of the request be also submitted.

Yours faithfully,

*Sd/- xxxxx
(Suman Kumar Das)
Secretary*

5. Thus, it is clear that the Election Commission of India has directed all the Chief Electoral Officers around the nation to submit a certificate to the extent where EVMs/VVPATs are not subject matter of Court cases and also to submit a report to the effect that it has moved the concerned Courts for allowing the same to be taken out of the strong rooms for future use.

6. Pursuant to the guidelines dated 12.9.2019, the Chief Electoral Officer, Manipur sent communication dated 12.9.2019 to various District Electoral Officers of the State to furnish information in that regard. Thereafter the Chief Electoral Officer, Manipur

addressed a letter to the Registrar of this Court requesting that in case EVMs are not subject matter of Election Petition No.1 of 2019 and W.P.(C) No.360 of 2019, the Court may allow to take the EVMs/VVPATs out of the strong rooms for any future election or any other purposes like movement, physical verification of EVMs etc. as indicated in Point No.3(ii) of the guidelines dated 12.9.2019.

7. As per Point No.3(ii), if the EVMs are not the subject of the Election Petition, an application may be moved to the concerned Court for allowing the EVMs concerned to be taken out of the strong room for any future election or any other purpose.

8. At this juncture, it is to be pointed out that Election Petition No.1 of 2019 has been filed by the first respondent herein with a prayer to declare that the election of the second respondent to be the returned candidate of 2-Outer Manipur (ST) Parliamentary Constituency to the 17th Lok Sabha, 2019 as null and void under Section 100(1)(d)(1)&(v) of the Representation of People Act, 1951 and to declare that the first petitioner is the duly elected member of the 17th Lok Sabha, 2019 from 2-Outer Manipur (ST) Parliamentary Constituency under Section 101(1)(b) of the Representation of People Act, 1951.

9. In this regard, by a letter dated 16.9.2019, the Registrar (Judicial) of this Court intimated to the various District Election Officers of Manipur that no challenge has been made regarding EVMs in Election Petition No.1 of 2019. Further, the certificates which were issued by the District Election Officers of various Districts of Manipur would show that the same are not the subject matter of Court cases/Election Petitions.

10. From the aforesaid, it is clear that in Election Petition No.1 of 2019, no challenge has been laid qua EVMs and therefore, as rightly argued by the learned counsel for the Election Commission of India, the EVMs stored in the strong room in respect of Election Petition No.1 of 2019 are no more required for deciding the issue involved in the said petition.

11. Under Rule 94(aa) of the Conduct of Elections Rules 1961, the guidelines of the Commission on retention period of the EVMs after using in election and for using the same in the subsequent elections, are as under:

“A. Every Voting Machine (EVM) and VVPATs used in an election and kept in the custody of the District Election Officer shall be kept untouched, under the standard protocol of security, till confirmation of Election petition position from the High Court concerned after the

completion of the period for filing Election Petition i.e. 45 days from the date of declaration of the result.

B. In the case of elections, where no election petition has been filed or no other court cases are pending, after the aforesaid period, the EVMs may be allowed to be used by the Election Commission for any future election or any other purpose like movement, physical verification of EVMs and VVPATs, etc.

C. In case of any election where election petition has been filed, the following action shall be taken:-

i) If the EVMs are the subject of the election petition, the EVMs used at all Polling Stations in the constituency concerned shall continue to be kept in the safe custody of the District Election Officer, till such time the Election Petition is finally disposed of by the Courts.

ii) If the EVMs are not the subject of the election petition, an application may be moved to the concerned Court for allowing the EVMs concerned to be taken out of the strong room for any future election or any other purpose like movement, physical verification of EVMs etc.

iii) In case EVMs not involved in any Election Petition/Court Case are stored with the EVMs involved in Election Petition/Court Case, the following procedure shall be followed for segregating the EVMs not involved in any election petition/court case from the EVMs involved in EP/Court case:-

a) A Notice informing the opening of Strong Room having EVMs involved in EP/Court Case shall be given to the petitioners/respondents of the EP/Court Case and the

representatives of all political parties in writing at least 72 hours in advance, requesting them to remain present at the time of opening of strong room.

b) The strong room shall be opened in the presence of the District Election Officer, Petitioners/respondents of the EP/Court case and representatives of Political Parties.

c) The EVMs not involved in any EP/Court Case shall be segregated from the EVMs involved in EP/Court Case for taking out of the strong room. A list of EVMs being so taken out from the strong room shall be prepared.

d) The EVMs, which are not involved in any EP/Court Case, should alone be taken out of the Strong room.

e) The entire process shall be videographed.

f) A copy of the list of EVMs being taken out from the strong room and copy of videography shall be given to the petitioner/respondent of the EP/court case and acknowledgement taken.

D. If any other Court Case is pending, like, booth capturing, etc., in which any EVM is involved, the EVM concerned or the EVM(s) used at such Polling Station(s) concerned may also be kept till the final disposal of the said case. After the final disposal of the election petitions or other court cases, as the case may be, referred to above, the EVMs can be used for subsequent elections.”

12. The circular cited above appears to be in terms of Rule cited above.

13. At this juncture, it is to be mentioned that as per the relevant provision of law, an Election Petition challenging any election ought to have been presented within 45 days from the date of election of the returned candidate. Except Election Petition No.1 of 2019, no other Election Petition challenging the elections of 17th Lok Sabha in respect of Manipur State is pending and there is also no possibility of any further Election Petition being filed in future. As stated supra, the Election Petition viz., Election Petition No.1 of 2019 which was pending is not raising any question relating to the usage of EVMs. Therefore, the circular issued by the Election Commission of India has to be followed in letter and spirit by the Electoral authorities.

14. Moreover, a perusal of the Election Petition No.1 of 2019 shows that the Election Petitioner therein has not raised any specific allegation pertaining to the use or misuse of EVMs and VVPATs. Since the EVMs and VVPATs are not the subject matter of the Election Petition No.1 of 2019, the EVMs and VVPATs stored in the strong room in respect of Election Petition No.1 of 2019 have to be taken back by the District Election Officer as per the guidelines dated 12.9.2019 issued by the Election Commission of India.

15. It appears that the instant petition has been filed by the Election Commission of India in compliance with the guidelines dated 12.9.2019 with regard to use of EVMs and VVPATs which are not subject matter of Election Petition and not involved in any Court cases.

16. The learned counsel for the Election Commission of India submitted that the Election Commission of India communicated all the Chief Electoral Officers of the States/Union Territories around the nation intimating the decision of the Election Commission of India to the effect that M-2 Model of EVMs and VVPATs would no longer be used for conduct of State Assembly Elections/Parliamentary Elections/By-Election. It is true that only M-2 Model EVMs and VVPATs were used in the State of Manipur for conduct of State Assembly and Parliamentary elections. He would further submit that there is every likelihood that M-3 EVMs and VVPATs would be sent to the State in case of any exigency and unless and until the EVMs and VVPATs stored in the strong rooms are not taken back, it will not be possible for the authorities to store any incoming M-3 EVMs in the strong rooms. Hence, the EVMs and VVPATs presently stored in the strong rooms should be taken out at the earliest.

17. This Court finds some force in the submissions made by the learned counsel for the Election Commission of India. It is also to be pointed out at this juncture that the learned counsel appearing for the respondents particularly first respondent, who is the Election Petitioner in Election Petition No.1 of 2019 has made no objection to withdrawing of the EVMs and VVPATs stored in the strong rooms.

18. Since the EVMs and VVPATs are locked in various strong rooms of the concerned office of the District Electoral Officers of the State of Manipur, for future use the same are directed to be taken outside the strong rooms in terms of the guidelines dated 12.9.2019 and sent to the Bharat Electronics Limited, Bangaluru or used otherwise, in terms of the Circular.

19. Since the guidelines dated 12.9.2019 issued by the Election Commission of India relate to the entire nation, it would be appropriate to state that the concerned Chief Electoral Officers/District Electoral Officers have to strictly follow the guidelines in letter and spirit. As stated supra, since the instant application has been filed by the Election Commission of India pursuant to the said guidelines dated 12.9.2019, the prayer sought

for is liable to be allowed, more so, when there is no objection to granting of such relief.

20. In the result,

(i) The petition is allowed.

(ii) The EVMs and VVPATs pertaining to Election Petition No.1 of 2019 now kept in the strong rooms are directed to be taken out and handed over to the Election Commission of India.

(iii) Before taking out the EVMs and VVPATs from the strong rooms, the authorities are directed to take inventory in the presence of responsible representatives of political parties in order to avoid any further litigation and the same should be videographed.

JUDGE

FR/NFR

Sushil

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