

**IN THE HIGH COURT AT CALCUTTA
ELECTION PETITION JURISDICTION
ORIGINAL SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**EP/4/2024
IA NO. GA/2/2026, GA/4/2026**

**ARUP KANTI DIGAR
Vs
MITALI BAG & ORS.**

For the Petitioner : Ms. Rashmi Bothra

For the ECI : Ms. Anamika Pandey

Judgment on : 07.09.2026

Ananya Bandyopadhyay, J.:-

1. G.A. No. 2 of 2026 is filed by the District Election Officer, Hooghly, seeking leave to intervene in the proceeding and directions concerning the EVMs and VVPATs pertaining to the 29-Arambagh (SC) Parliamentary Constituency.
2. The applicant seeks release of the VVPATs kept at the designated warehouse at Arambagh and the defective EVMs, including the pre-poll EVMs, kept at the ground floor of District Warehouse-II, Chinsurah, Old Collectorate Building, for repair, reconditioning and subsequent use in elections. The application also seeks permission, where necessary, to segregate the machines and shift them to another designated warehouse, including the Regional Training Centre Warehouse situated within the same compound.

3. The applicant places reliance upon the statutory functions of the District Election Officer and the instructions issued by the Election Commission of India governing the custody, maintenance, repair and deployment of EVMs and VVPATs.
4. The applicant also refers to the order passed in E.P. No. 1 of 2019 concerning the preservation and segregation of electoral material relating to the 28-Hooghly Parliamentary Constituency and submits that the EVMs and VVPATs pertaining to 29-Arambagh (SC) Parliamentary Constituency have no connection with the said election petition.
5. The distinction between the two constituencies is apparent and material. E.P. No. 1 of 2019 relates to the election from 28-Hooghly Parliamentary Constituency. The present application concerns electoral material pertaining to 29-Arambagh (SC) Parliamentary Constituency.
6. The record contains another proceeding which bears directly upon the question. E.P. No. 4 of 2024 concerns the election from 29-Arambagh (SC) Parliamentary Constituency. The EVMs and VVPATs used in that election therefore require examination with reference not only to the orders passed in E.P. No. 1 of 2019 but also to the preservation requirements arising from E.P. No. 4 of 2024.
7. An election petition brings the validity of an election before the Court. The electoral material relating to the election under challenge may constitute evidence in the adjudication of the dispute. Its preservation consequently serves a judicial purpose and cannot be displaced merely by a subsequent administrative requirement for the use of the same equipment.

8. The statutory responsibility of the District Election Officer does not operate in isolation. Section 20A of the Representation of the People Act, 1951 entrusts the District Election Officer with the coordination and supervision of election-related work in the district, subject to the superintendence, direction and control of the Chief Electoral Officer. Section 13CC of the Representation of the People Act, 1950 places officers engaged in electoral work under the control, superintendence and discipline of the Election Commission during the relevant period.
9. The statutory scheme thus recognises the administrative responsibility of the election authorities over electoral equipment. That responsibility remains subject to a judicial direction where particular electoral material is required to be preserved for adjudication of an election petition.
10. The pendency of an election petition cannot, however, justify the retention of every EVM or VVPAT within the district. Preservation must relate to identified electoral material having a connection with the election or proceeding for which preservation is required.
11. This distinction assumes significance in the present case. The preservation direction in E.P. No. 1 of 2019 concerns electoral material relating to 28-Hooghly Parliamentary Constituency. E.P. No. 4 of 2024 concerns 29-Arambagh (SC) Parliamentary Constituency. The first proceeding cannot, merely by its existence, require preservation of electoral equipment belonging to a different constituency. The second proceeding, however, requires preservation of the material relating to the election which forms its subject matter.
12. The application has to be examined within these parameters.

13. The respondents were granted repeated opportunities to file their affidavit-in-opposition. No affidavit-in-opposition has been filed. The matter was thereafter fixed for orders.
14. The absence of a counter-affidavit assumes significance while considering the factual assertions made by the applicant regarding the location, identity and proposed administrative treatment of the machines. No contrary factual case has been placed before the Court. That circumstance does not, however, permit release of electoral material which is required to remain preserved for the purposes of E.P. No. 4 of 2024.
15. The identity of the particular machines is therefore required to be determined before any question of their release can arise.
16. The description of an EVM as defective does not take it outside the scope of preservation. A defect in the machine may itself form part of the factual material relevant to an election dispute. A defective EVM pertaining to the election under challenge in E.P. No. 4 of 2024 shall consequently remain preserved.
17. The same principle applies to the VVPATs pertaining to that election. Their proposed deployment in a subsequent election cannot justify their release while they remain material which may be required for adjudication of E.P. No. 4 of 2024.
18. The position is different where a particular EVM or VVPAT is established, upon identification, not to have formed part of the election under challenge in E.P. No. 4 of 2024 and not to be subject to preservation under E.P. No. 1 of 2019 or any other judicial proceeding.

19. Such electoral equipment cannot be retained indefinitely merely because it happens to be stored together with machines which require preservation.
20. The District Election Officer shall, therefore, undertake an exercise of identification and segregation of the EVMs and VVPATs referred to in the application. A complete inventory shall be prepared recording the identification particulars of each machine, the constituency and polling station to which it relates, the election in which it was used and its present place of storage.
21. The machines forming part of the electoral material of the election which is the subject matter of E.P. No. 4 of 2024 shall continue to remain preserved. They shall not be opened, repaired, altered, substituted, dismantled or deployed in any subsequent election without further order permitting such course.
22. The electoral material relating to 28-Hooghly Parliamentary Constituency which remains subject to the orders passed in E.P. No. 1 of 2019 shall likewise continue to be preserved in accordance with those orders.
23. A transfer from one designated storage facility to another, where required for proper custody, shall not be treated as a release of the preserved material. The District Election Officer may undertake such transfer, including to District Warehouse-II or the Regional Training Centre Warehouse, provided that the identification, seals, custody and evidentiary integrity of the machines remain intact and the prescribed procedure of the Election Commission of India is followed.

24. Upon completion of identification and segregation, an EVM or VVPAT which is found to have no connection with E.P. No. 4 of 2024, E.P. No. 1 of 2019 or any other proceeding requiring its preservation may be dealt with by the election authorities in accordance with the applicable instructions of the Election Commission of India.
25. The exercise shall be properly documented. The identification particulars and movement of every machine shall be recorded. Where the applicable instructions require notice to, or participation of, the authorised representatives of political parties or candidates, such requirement shall be observed. Videography, sealing and other prescribed safeguards shall be adopted wherever applicable.
26. The prayer for **blanket release** of the EVMs and VVPATs pertaining to 29-Arambagh (SC) Parliamentary Constituency cannot be granted. The machines forming part of the electoral material of the election under challenge in E.P. No. 4 of 2024 shall remain preserved.
27. The applicant shall, however, be entitled to undertake the exercise of identification and segregation so that electoral equipment having no connection with the pending election proceedings is not retained merely by reason of its physical proximity to the preserved material.
28. Leave is granted to the District Election Officer, Hooghly, to intervene in the proceeding for the limited purpose of seeking and implementing directions concerning the EVMs and VVPATs referred to in G.A. No. 2 of 2026.
29. G.A. No. 2 of 2026 is **disposed of with the directions contained herein.**

30. Nothing contained in this order shall affect any direction concerning preservation of electoral material passed in E.P. No. 1 of 2019 or E.P. No. 4 of 2024.

31. There shall be no order as to costs.

32. Next date be fixed on 16th November, 2026 for hearing of EP/4/2024.

(Ananya Bandyopadhyay, J.)

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