

ORDER

OD - 1

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

EP/9/2026
MAMATA BANERJEE
VS
SUVENDU ADHIKARI AND ORS.

BEFORE
HON'BLE JUSTICE GAURANG KANTH
Date: June 23, 2026.

Appearance:-
Mr. Kalyan Kumar Bandopadhyay, Sr. Adv.
Mr. Suman Sengupta, Adv.
Mr. Amit Kumar Das, Adv.
Mr. Sirsanya Bandopadhyay, Adv.
Mr. Arka Kumar Nag, Adv.
Mr. Rahul Kumar Singh, Adv.
...for petitioner.

The Court:- The present election petition has been filed under Sections 80, 80A and 81 read with Sections 100, 101 and 123 of the Representation of the People Act, 1951, challenging the election of the respondent No.1 as the returned candidate from 159-Bhabanipur Assembly Constituency, where polling was held on 29th April 2026 and the result was declared on 4th May 2026, on allegations of corrupt practices, illegal deletion of voters from the electoral roll, irregularities in the counting process and material non-compliance with the provisions of the Constitution of India, the Representation of the People Act, 1951 and the rules framed thereunder.

The petitioner has, *inter alia*, alleged that a substantial number of electors were unlawfully deleted from the electoral rolls and that the Returning Officer was appointed despite an alleged conflict of interest, and that serious irregularities occurred during the counting process on 4th May 2026, resulting in the exclusion of the petitioner's counting agents from the counting hall and causing prejudice to the petitioner. It has further been contended that the result of the election process has been materially affected by the aforesaid acts and omissions.

At this stage, this Court is required to examine the maintainability of the election petition on the parameters as prescribed under Section 86(1) of the Representation of the People Act, 1951. It is well settled that the scrutiny contemplated under Section 86(1) of the said Act is confined to examining compliance with Sections 81, 82 and 117 of the said Act and does not extend to adjudication upon the merits of the allegations contained in the petition.

Upon consideration of the materials placed on record, this Court finds that the election petition has been presented within the prescribed period under Section 81 of the Representation of the People Act, 1951. The petitioner possesses the requisite *locus standi* being both a contesting candidate and an elector of the concerned constituency. All necessary parties including the returned candidate and the other contesting candidates have been impleaded in compliance with Section 82 of the Act. The statutory requirements under Section 117 of the said Act have also been duly complied with. Accordingly,

this Court is satisfied that the election petition, *prima facie*, complies with the requirements of Sections 81, 82 and 117 of the Representation of the People Act, 1951. No ground, therefore, exists for dismissal of the present petition under Section 86(1) of the said Act at this stage.

The petitioner has also prayed for various interim measures, though the petitioner confines the same to the first part of prayer (f) of the petition, seeking a direction from this Court for preserving the CCTV footage of the counting centre and the Electronic Voting Machines (EVMs) as well as the VVPAT machines used at all the polling booths of the 159-Bhabanipur Assembly Constituency. The prayer relating to preservation of CCTV footage, EVMs and VVPAT machines stands on a different footing. The CCTV footage constitutes electronic evidence susceptible to loss by routine overwriting, while EVMs and VVPAT machines constitute material evidence relevant to the issues raised in the election petition. Preservation of such materials would neither prejudice the respondents nor amount to an adjudication on the merits of the controversy. On the contrary, failure to preserve the same may result in irretrievable loss of evidence which may be relevant at the trial of the petition. This Court is, therefore satisfied that a case has been made out for immediate preservation of the aforesaid materials pending adjudication of the election petition.

Accordingly, the aforesaid CCTV footage, EVMs and VVPAT machines shall not be erased, overwritten, destroyed, tampered with, transferred, re-

deployed, opened or otherwise dealt with in any manner whatsoever without the leave of this Court.

The learned counsel for the petitioner has handed over notification No.51/8/7/2016 EMS dated 15th July, 2016 issued by the Election Commission of India. Reliance has been placed on Clause 3 of the said notification which provides 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 of by the Courts.”*

Keeping in mind the aforesaid notification as well as the prima facie view taken by this Court, pending further orders, the respondent No.12, 13 and 14 being the Chief Election Commission of India, the Chief Electoral Officer, West Bengal and the Returning Officer of 159-Bhabanipur Assembly Constituency are directed to preserve and keep in safe custody:-

- (a) The CCTV footage recorded at the counting centre situated at Sakhawat Memorial Government Girls' High School, Kolkata on 4th May, 2026 including footage from all cameras installed inside and outside the counting hall;
- (b) All EVMs and Control Units as well as Ballot Units used in all polling booths of the said 159-Bhabanipur Assembly Constituency; and

(c) All VVPAT machines used in the said 159-Bhabanipur Assembly Constituency.

Department is directed to serve upon the respondents.

Matter is made returnable after three weeks.

(GAURANG KANTH, J.)

R. D. Barua