

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

WP(C).No. 34631 of 2015 (S)

PETITIONER(S):

**T.G.MOHAN DAS, AGED 59 YEARS,
S/O.GOVINDA NAYIK, SANTHI NAGAR COLONY, HOUSE NO.9/996,
KOOVAPPADAM, KOCHI - 682 002.**

**BY ADVS.SRI.SAJITH KUMAR V.
SRI.M.JAYAKRISHNAN
SMT.DEEPA RAJESH**

RESPONDENT(S):

- 1. THE CHIEF ELECTION COMMISSIONER OF INDIA,
REPRESENTED BY ITS SECRETARY,
NIRVACHAN SADAN NEW DELHI - 110 001.**
- 2. THE CHIEF ELECTORAL OFFICER,
KERALA AT TRIVANDRUM - 695 033.**
- 3. THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT,
GOVERNMENT OF KERALA, TRIVANDRUM - 695 001.**
- 4. THE UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
MINISTRY OF LAW AND JUSTICE, GOVERNMENT OF INDIA,
NEW DELHI - 110 001.**

**R1 & R2 BY SRI.MURALI PURUSHOTHAMAN, SC
R3 BY SENIOR GOVERNMENT PLEADER SRI.P.I.DAVIS
R4 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
17-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 34631 of 2015 (S)

APPENDIX

PETITIONER(S)' EXHIBITS

**P1:A TRUE COPY OF THE JUDGMENT DATED 08.10.2013 IN SLP (CIVIL) NO.13735/2012
OF THE SUPREME COURT OF INDIA.**

**P2:A TRUE COPY OF THE REPRESENTATION DATED 09.11.2015 SUBMITTED BY THE
PETITIONER TO THE 1ST RESPONDENT.**

P3::A TRUE COPY OF THE NEWSPAPER REPORT IN HINDU DAILY DATED 06.11.2015.

P4::A TRUE COPY OF THE NEWSPAPER REPORT IN HINDU DAILY DATED 06.11.2015.

P5::A TRUE COPY OF THE NEWSPAPER REPORT IN HINDU DAILY DATED 06.11.2015.

P6::A TRUE COPY OF THE NEWSPAPER REPORT IN HINDU DAILY DATED 13.11.2015.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Ms v/

**ASHOK BHUSHAN, C.J. &
A.M.SHAFFIQUE, J.**

W.P.(C)No.34631 of 2015

Dated this the 17th day of November, 2015.

J U D G M E N T

ASHOK BHUSHAN, C.J.

We heard the learned counsel for the petitioner and Sri.Murali Purushothaman, the learned Standing Counsel appearing for the Election Commission.

2. This writ petition has been filed, as a Public Interest Litigation for introducing a Voter Verifiable Paper Audit Trail voting machines in the General Assembly elections in the State of Kerala, with the following prayers :

"I. To issue a writ of mandamus or other appropriate writ, order or direction commanding the Respondents to introduce VVPAT (Voter Verifiable Paper Audit Trail) in the next assembly elections in Kerala scheduled to be held in April/May 2016 in compliance with Exhibit P1 judgment.

II. Grant such other reliefs as may be prayed for and as the Hon'ble Court may deem fit to grant and

III. Grant the cost of this writ petition."

3. The learned counsel for the petitioner submits that the Apex Court, by its judgment dated 8.10.2013 in

Dr.Subramanian Swamy Vs. Election Commission of India, has already accepted the introduction of Paper Trail Voting machine to ensure free and fair election, and has issued direction to the Election Commission of India to introduce the same in gradual stages or geographical-wise in the ensuing General Elections. It is submitted that although more than two years have elapsed after the judgment, the Election Commission of India has not yet taken any steps in view of the aforesaid judgment. It is useful to quote the directions issued by the Supreme Court in the aforesaid case in paragraphs 30 and 31, which are as under :

"30) In the light of the above discussion and taking notice of the pragmatic and reasonable approach of the ECI and considering the fact that in general elections all over India, the ECI has to handle one million (ten lakhs) polling booths, we permit the ECI to introduce the same in gradual stages or geographical-wise in the ensuing general elections. The area, State or actual booth(s) are to be decided by the ECI and the ECI is free to implement the same in a phased manner. We appreciate the efforts and good gesture made by the ECI in introducing the same.

31) For implementation of such a system (VVPAT) in a phased manner, the Government of India is directed to provide required financial assistance for procurement of units of VVPAT."

4. The Apex Court has, after noticing the fact that the Election Commission of India has to handle one million polling booths, permitted the ECI to introduce the same in the gradual stages or geographical-wise in the ensuing general elections. The area, State or actual booth(s) are to be decided by the Election Commission of India. The petitioner in this writ petition has come up with a direction to introduce the Voter Verifiable Paper Audit Trail in the next assembly election in Kerala scheduled to be held during April/May 2016 in compliance of Ext.P1 judgment. When the Supreme Court has already issued a direction on the same issues which are raised in the writ petition and given discretion to the Election Commission of India to choose the area and the place in gradual stages, we are of the view that, it is for the Election Commission of India to consider the directions and take appropriate action. It is not necessary for us to entertain this public interest litigation for the prayers which have been sought in the writ petition for implementing the Voter Verifiable Paper Audit Trail in the

next assembly election in Kerala. The learned counsel has emphasised that two years have passed since the passing of Ext.P1 judgment, but no action has been taken. The Election Commission of India has to consider for introduction of the same in the gradual stages at general elections which ordinarily is being held after every 5 years. The fact that two years have been elapsed is not a factor, on the basis of which, we can issue any direction as prayed for. Since, the Apex Court has already issued directions in this regard to the Election Commission of India as noted above, we close this writ petition.

Sd/-
ASHOK BHUSHAN,
CHIEF JUSTICE.

Sd/-
A.M.SHAFFIQUE,
JUDGE.

ami/

//True copy//

P.A. to Judge