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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9916/2024 & CM APPL. 40676/2024**
RAMESH CHANDERPetitioner

Through: Mr. Kabir Dixit, Adv.

versus

ELECTION COMMISSION OF INDIARespondent

Through: Ms. Rohini Prasad and Mr. Anup
Kashyap, Advs.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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22.07.2024

1. In the instant writ petition, the petitioner has prayed for directions to the respondent to comply with the mandate of Section 61-A of the Representation of People Act, 1951 (hereinafter 'Act') before conducting any election through Electronic Voting Machines (hereinafter 'EVMs').
2. The petitioner is essentially aggrieved by the usage of EVMs in conducting elections in each constituency allegedly without assigning any reasons. According to the petitioner, Section 61-A is couched in a language which mandates narrating of circumstances by the respondent in respect of each constituency separately for which the EVMs are proposed to be used.
3. It is, however, seen that the issue raised in the present case stands covered by a catena of decisions of different High Courts and the Supreme Court.
4. In the case of *All India Anna Dravida Munnetra Kazhagam v. Chief Election Commissioner*¹, the Division Bench of the Madras High Court while considering the challenge laid to Section 61-A of the Act, had held as

¹ 2001 SCC OnLine Mad 1398



under:-

“69. The contention of the learned counsel that the objection raised by the political parties should have been taken into consideration, that the EVMs should have been used initially at urban places and thereafter only final decision should have been arrived at, is also not tenable. In fact, there is clamour for use of EVMs in more constituencies which would be evident from the letters on file, addressed to the Election Commission by political parties, which are in opposition. In our view, the voter cannot dictate that he should be allowed to cast his vote in the method he chooses. In view of the insertion of Section 61-A and the procedure prescribed and the Rules framed there under, we are satisfied that there is no bar on the Election Commission to choose the constituencies to use the EVMs and it is well within its jurisdiction in the exercise of the power conferred upon it. Therefore, as held above, no direction as prayed for in these writ petitions can be granted.”

5. The decision rendered by the Madras High Court in ***All India Anna Dravida Munnetra Kazhagam (supra)*** was carried before the Supreme Court *vide* Special Leave Petition (C) Nos. 2824-2825/2001, wherein, while upholding the validity of Section 61-A of the Act, the Supreme Court refused to interfere with the decision of the Madras High Court.

6. Further, the Division Bench of this Court in the case of ***Viplav Sharma v. Union of India***², had an occasion to deal with almost similar prayer made in the instant writ petition, wherein, it was held as under:-

“6. A perusal of the notification makes it clear that it was issued for the elections which were held in 2004, as per the election schedule announced by the Election Commission of India. It is during those elections electronic voting machines were used as indicated in the notification. Elections were held and elected Members of Parliament completed one year and it is thereafter that we have to decide this petition. It was contended that Section 61A of the Act refers to such constituency and each constituency is required to be notified. Section 61A of the Act refers to “constituency” or “constituencies” as the Election Commission may having regard to the circumstances of each case specify. Relying on the language of the Section, the petitioner

² 2005 SCC OnLine Del 621



contended that the Election Commission is required to notify the reasons for the use of electronic voting machines for each constituency.

7. In view of the fact that the notification is acted upon and the results have been declared much earlier and the notification refers to all the constituencies, we see no reason to entertain this public interest litigation, specially in view of the decision of the High Court of Madras which is affirmed by the Apex Court.

8. In view of the aforesaid order made by the Apex Court, wherein the decision of the High Court of Madras has been upheld, specifically agreeing with the decision of the High Court that the said. Section is valid, it is not open to this Court to examine that aspect again, and that too, in a public interest litigation. In view of this, we are not inclined to entertain this petition. Petitioner in person submits that all his submissions in respect of vires of Section should be considered by this Court. It is not necessary to consider all the submissions made by the petitioner.

9. In view of the discussion hereinabove, we decline to entertain the petition. Hence, the writ petition is dismissed.”

[emphasis supplied]

7. Recently, the Supreme Court in the case of ***Assn. For Democratic Reforms v. Election Commission of India***³ rejected the prayer made by the petitioner therein to revert to the paper ballot system. Though the Supreme Court acknowledged the deviance from the rule of *res judicata* in cases which have far-reaching consequences in public interest, it took a view that such cases must reflect substantial grounds which have not been previously addressed in litigation. It was further held that in the absence of any substantial ground, the Court is well within its authority to dismiss the petition at the threshold. The relevant paragraphs of the said decision are reproduced as under:-

³ 2024 SCC OnLine SC 661



“33. No doubt, res judicata bars parties from re-litigating issues that have been conclusively settled. It is true that this principle is not rigid in cases of substantial public interest and Constitutional Courts are empowered to adopt a flexible approach in such cases, acknowledging their far-reaching public interest ramifications.

*34. However, this standard is applicable only when substantial evidence is presented to validate the irreversible harm or detriment to the public good resulting from the action impugned. **The Court must come to the conclusion that the petition is not just an old wine in a new bottle, but rather raises substantial grounds not previously addressed in litigation. Only under these circumstances may it consider such a petition; otherwise, it is within its authority to dismiss it at the threshold.***

***35. This issue at hand of doubting the efficacy of the EVMs has been previously raised before this Court and it is imperative that such issue is concluded definitively now.** Going forward, unless substantial evidence is presented against the EVMs, the current system will have to persist with enhancements. Regressive measures to revert to paper ballots or any alternative to the EVMs that does not adequately safeguard the interests of Indian citizens have to be eschewed.”*

[emphasis supplied]

8. It is, thus, succinctly observed that the nature of relief sought in the instant petition tantamount to the adjudication of the controversy which already stands settled in light of the series of judicial pronouncements, as already discussed above. Also, the petitioner has failed to raise any material ground in the instant case which would warrant any extensive indulgence by the Court.

9. In view of the aforesaid, the Court is not inclined to entertain the instant petition and the same is accordingly dismissed. Pending application is also disposed of.

PURUSHAINDR KUMAR KAURAV, J

JULY 22, 2024/p