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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA 47/2025**

RAMESH CHANDER

.....Appellant

Through: Mr. Kabir Dixit, Advocate

versus

ELECTION COMMISSION OF INDIA

.....Respondent

Through: Ms. Rohini Prasad and Mr. Rajiv Jain,
Advocates

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

21.01.2025

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CM APPL. 3587/2025 & CM APPL. 3588/2025

1. Exemption allowed, subject to all just exceptions.
2. The applications stand disposed of

CM APPL. 3589/2025

3. For the reasons stated in the application, the delay is condoned.
4. The application stands disposed of.

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5. The appellant has filed the present appeal impugning an order and judgment dated 22.07.2024 passed by the learned single judge in W.P.(C) 9916/2024 captioned ***Ramesh Chander vs. Election Commission of India***. The appellant had filed the aforementioned petition, *inter alia*, praying as under:-

“(a) Issue a writ of, or an order or direction in the nature of writ of Mandamus to the Respondent Election Commission of India to make compliance of section 61A of the Representation of People Act, 1951 before going ahead with any elections through EVM in the



context of 'giving and recording of votes' in future.

(b) Hold elections held in 2019 to the Union Legislature and the State Assemblies to have been without making the mandatory compliance of the procedure laid down under section 61A of the Representation of People Act, 1951.

(c) Issue a writ of or an order or direction to the Respondent Election Commission of India to demonstrate how indispensable and mandatory requirement of 'specification of circumstances constituency wise' before making use of Electronic Voting Machines, is satisfied.

(d) Any other suitable orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(e) Award exemplary costs on the Respondents for forcing the Writ Petitioner to pursue a litigation which under the law was avoidable and unnecessary.”

6. It is the appellant's contention that the Election Commission of India (ECI) has to examine each constituency and conclude constituency-wise whether in the circumstances pertaining to the said Constituencies, the use of Electronic Voting Machines (EVMs) is to be adopted.

7. In addition, as noted above, the appellant also seeks that directions be issued to the ECI to demonstrate how the mandatory requirement of examining specific circumstances, constituency-wise, for using EVMs, is satisfied.

8. The present petition is founded on the assertion that the provisions of Section 61A of the Representation of People Act, 1951 (hereafter *the RP Act*), is not satisfied. The same is reproduced below:-

“61A. Voting machines at elections.-Notwithstanding anything contained in this Act or the rules made thereunder, the giving and recording of votes by voting machines in such manner as may be prescribed, may be adopted in such constituency or constituencies as



the Election Commission may, having regard to the circumstances of each case, specify.

Explanation. – For the purpose of this section, "voting machine" means any machine or apparatus whether operated electronically or otherwise used for giving or recording of votes and any reference to a ballot box or ballot paper in this Act or the rules made thereunder shall, save as otherwise provided, be construed as including a reference to such voting machine wherever such voting machine is used at any election."

9. A plain reading of Section 61A of the RP Act indicates that it opens with the *non-obstante* clause and it empowers the ECI to adopt the recording of votes by voting machine in such manner as may be prescribed in such constituency/constituencies as the ECI may specify.

10. The ECI has since issued directions dated 22.03.2019, which have been placed on record by the appellant. The said directions are relevant and are reproduced below:-

"DIRECTION

No. 576/3/EVM/2019/SDR-Vol.II:- Whereas, Section 61A of the Representation of the People Act, 1951, provides that the giving and recording of votes by Voting Machines in such manner as may be prescribed, may be adopted in such constituency or constituencies as the Election Commission of India may, having regard to the circumstances of each case, specify; and

2. Whereas, as per the provision to the Rule 49 A of the Conduct of Elections Rules, 1961, a printer with a drop box of such design as may be approved by the Election Commission of India, may also be attached to voting machine for printing a paper trail of the vote, in such constituency or constituencies or parts there of as the Election Commission of India may direct; and

3. Whereas, the Commission has considered the circumstances **in all the Parliamentary Constituencies of India, all the Assembly Constituencies (as per Annexure-1) of Bihar, Goa,**



Gujarat, Madhya Pradesh, Maharashtra, Meghalaya, Mizoram, Nagaland, Puducherry, Tamil Nadu, Uttar Pradesh & West Bengal, and is satisfied that sufficient number of Electronic Voting Machines and Printers for printing Paper Trail [Voter Verifiable paper Audit Trail (VVPAT)] are available for taking the poll in the abovementioned Parliamentary/ Assembly Constituencies. The polling personal are well trained in efficient handling of the Electronic Voting Machines and Printers for Paper Trail (hereafter referred to as 'VVPAT Printer') and the electors are also fully conversant with the operation of the Electronic Voting Machines and the VVPAT Printers:

4. Now, therefore the Election Commission of India, in exercise of its powers under the said Section A of the Representation of the People Act, 1951, and Rule 49A of the Conduct of Elections Rules, 1961, hereby **specifies all the Parliamentary Constituencies at the current General election to the House of the People, 2019, all the Assembly Constituencies of Andhra Pradesh, Arunachal Pradesh, Odisha & Sikkim at the current General Election to the State Legislative assemblies and the 37 Assembly Constituencies (as per Annexure-1) of Bihar, Goa, Gujarat, Madhya Pradesh, Maharashtra, Meghalaya, Mizoram, Nagaland, Puducherry, Tamil Nadu, Uttar Pradesh & West Bengal, from where bye-elections are being held, as per the schedule announced by the Commission on 10-03-2019, 13-03-2019 & 14-03-2019 as the constituencies in which the votes**, shall be given and recorded by means of Electronic Voting Machines and VVP AT printers in the manner prescribed, under the Conduct of Elections Rules, 1961, and the supplementary instructions issued by the Commission from time to time on the subject.

5. The Commission also hereby approves the design of the Electronic Voting machine and the Printer with the drop box (the VVPAT Printers) as developed by the Bharat Electronics Ltd., Bangalore and Electronics Corporation of India Ltd., Hyderabad, which shall be attached to the said machines, to be used for the giving and recording of votes in all the Constituencies.”

11. It is apparent from the above that the ECI has specified the Constituencies where use of EVMs are required to be adopted. According to



the appellant, the ECI is required to specify each constituency separately and also specify the special circumstances that would warrant the use of such EVMs in that constituency. However, the plain reading of language of Section 61A of RP Act does not support the said interpretation. We, therefore, reject the same.

12. We also consider it relevant to refer to the following passage from the the decision of the Supreme Court in *Association for Democratic Reforms v. Election Commission of India*, 2024 SCC OnLine SC 661:-

“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)

13. As is apparent from the above, the Supreme Court has, in the context of the use of EVMs, authoritatively held that unless substantial evidence is presented against EVMs, the current system would have to persist with enhancements. Thus, the challenge to the use of EVMs by the ECI is rejected.

14. We find no merit in the present appeal. The same is dismissed.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

JANUARY 21, 2025/4j