

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3399 of 2018**

1. Girish Dewangan S/o Ram Pratap Dewangan Aged About 57 Years R/o Village Kharora, Tehsil Kharora, District Raipur, Chhattisgarh

---- **Petitioner****Versus**

1. The Election Commission Of India Through Secretary, Nirvachan Sadan Ashoka Road, New Delhi - 110001.
2. Union Of India Ministry Of Home Affairs Through Secretary North Block New Delhi. - 110001
3. The State Election Commission Chhattisgarh, Near DKS Bhavan, Old Mantralaya Road, Moti Bagh, Raipur, Chhattisgarh. 492001

---- **Respondent**

For Petitioner

Shri Vivek Tankha, Sr. Adv. with Shri S.C. Verma, Advocate

For Respondent No.1

Shri Rajeev Shrivastava, Advocate

For Respondent No.2/UOI

Shri B. Gopa Kumar, Asstt. Solicitor General

For Respondent No.3

Shri R.S. Marhas, Advocate

Order on Board**By****Prashant Kumar Mishra, J.****10/12/2018**

1. Petitioner is the General Secretary of the Chhattisgarh Pradesh Congress Committee (for short 'the PCC'). In this petition under Article 226/227 of the Constitution of India he

would pray for several reliefs as contained in paras 10.1 to 10.3 of the writ petition, however, in course of argument, Shri Vivek Tankha, learned senior counsel appearing for the petitioner, would restrict the prayer to ensure counting of VVPAT (Voter Verifiable Paper Audit Trail) paper trail in 50% of the polling booths in all the constituencies of the Chhattisgarh State Legislative Assembly and further direction to maintain security of the strong rooms where the EVM (Electronic voting machine) Boxes are kept so that the same is not interfered or doctored.

2. Citing instances of unauthorised entry of employees like Patwari, Tahsildar, etc. in the strong rooms in several assembly constituencies, it is argued that there is strong apprehension in the minds of the petitioner that the EVMs may be tampered to effect the election of the Chhattisgarh State Legislative Assembly conducted on 12-11-2018 & 20-11-2018. It is also urged that the polling percentage, as informed to the public by the Election Commission in the 1st, 2nd & 3rd press conference, has jumped subsequently in final figures released by the Election Commission raising doubt over conduct of election.
3. Learned counsel would refer to the decision rendered by the Supreme Court in **Election Commission of India through**

Secretary v Ashok Kumar and Others¹ to argue that bar under Article 329 of the Constitution of India would not come in the way of the Court to issue directions to ensure free and fair election.

4. Article 329 of the Constitution provides that notwithstanding anything in this Constitution no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

5. In **N.P. Ponnuswami v The Returning Officer, Namakkal Constituency, Namakkal, Salem, Dist. and Others**² it is held by the Supreme Court that Article 329 (b) ousts the jurisdiction of the Courts with regard to matters arising between the commencement of the polling and the final selection.

6. Further in **Ashok Kumar** (supra) it is held by the Supreme Court that the term election as occurring in Article 329 has been held to mean and include the entire process from the issue of the notification under Section 14 of the

1 (2000) 8 SCC 216

2 AIR 1952 SC 64

Representation of the People Act, 1951 (for short 'the RP Act') to the declaration of the result under Section 66 of the RP Act.

7. In **Ashok Kumar** (supra) the Supreme Court would observe in para 32 (5) thus :

32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:-

xxx xxx xxx

(5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329 (b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the courts indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. **Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.**

(Emphasis added)

8. In the case at hand, petitioner has approached the Court at the eleventh hour when counting of votes is scheduled to be held tomorrow. Except for few letters written by the PCC to the Election Commission of India and Chief Electoral Officer there is no clinching material even to, *prima facie*, impress upon the Court that any foul play has been played by any individual which amounts to tampering of ballots/EVMs. Even those letters would not provide any specific detail or particulars as to the time, place or the person who was found to have even touched the EVMs kept in the strong room.

9. In one of the letter, one Kiranmayi Nayak, Member of the PCC, has referred to a newspaper publication, which by itself would not be any evidence that any special training was imparted to member of any particular party to understand counting through the VVPAT.

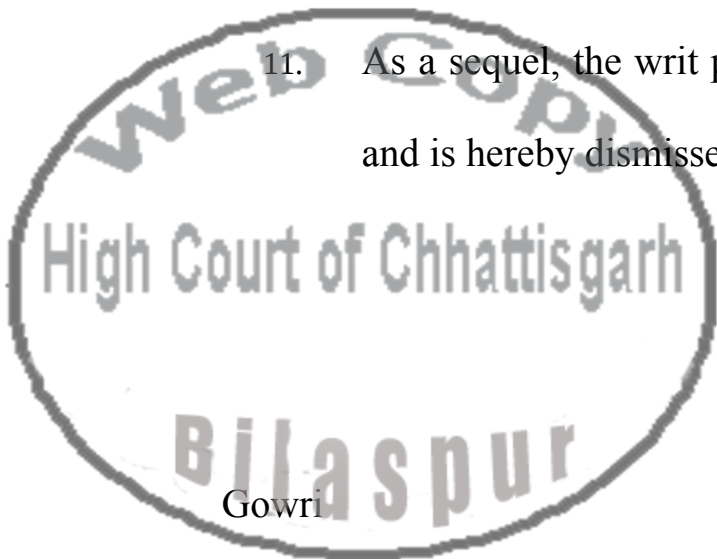
10. In so far as counting of 50% votes through the VVPAT in all constituencies is concerned, suffice it would be to mention that the guidelines issued by the Election Commission for the subject Assembly Election clearly provides for a request by any candidate for counting of VVPAT paper trail. The Election Commission has, thus, made arrangements for such counting after declaration of the result and not before that. In exercise of jurisdiction under Article 226 this Court would not

venture to prescribe any set of new counting norms which are not notified or adhered by the Election Commission because the superintendence, direction and control of elections vests in Election Commission under Article 324 of the Constitution and the writ Court is not expected to substitute its own procedure than the procedure prescribed by the Election Commission as a constitutional functionary in view of the observations made by the Supreme Court in **Ashok Kumar** (supra) in para 32 (5).

11. As a sequel, the writ petition, *sans substratum*, is liable to be and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra



In exercise of power u/Art. 226 of the Constitution, High Court is not entitled to prescribe a new method of counting of VVPAT paper trail than the one prescribed by the Election Commission in view of Art. 324 & 329 (b).

