

## Synopsis

The Petitioners have filed the instant Public Interest Litigation under Article 32 of the Constitution of India to ensure that democratic process is not subverted by electoral irregularities and to ensure free and fair elections and rule of law and for the enforcement of fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution of India. The instant writ petition highlights dereliction of duty on part of the Election Commission of India (ECI) in declaring election results (of the Lok Sabha and State Legislative Assemblies through Electronic Voting Machine (EVMs) based on accurate and indisputable data which is put in public domain.

The petitioner seeks a direction from this Hon'ble Court directing the ECI not to announce any provisional and estimated election results prior to actual and accurate reconciliation of data. The petitioner further seeks a direction from this Hon'ble Court to the ECI to evolve an efficient, transparent, rational and robust procedure/mechanism by creating a separate department/grievance cell for investigation of discrepancies in election data and for responding to the elector's queries on the same. The prayers as sought for in the instant writ petition have been envisaged by this Hon'ble Court in landmark cases such as *Union of India v. Association for Democratic Reforms and Anr.*, (2002) 5 SCC 294 and *People's Union for Civil Liberties & Anr., Lok Satta and Ors. and Association for Democratic Reforms v. Union of India (UOI) and Anr.*, (2003) 4 SCC 399.

At the very outset, the petitioner organizations submit that through the instant writ petition, the petitioners are not challenging or questioning the final result of 2019 General Elections or the election process in the country. However, the issues and irregularities that arose in the conduct of the election/result declaration are being cited as arguments for seeking the prayers sought in the petition for effectuating free

and fair elections, survival of democracy and for the enforcement of fundamental rights.

### **Brief Facts**

The elections to the 17<sup>th</sup> Lok Sabha were conducted by the Respondent No. 1 in seven phases and covered 542 constituencies in seven phases starting from April 11, 2019. The results were announced on May 23, 2019. That Rule 49S and Rule 56C (2) of the Conduct of Election Rules, 1961, provide that presiding officer is to prepare an account of votes recorded in form 17C (Part I) and the returning officer is to record the number of votes in favour of each candidate (part II of the Form 17).

In February 2019, Respondent No.1 issued a Manual on Conduct of Elections with EVM-VVPAT along with a series of Circulars and Instructions. Chapter 3 of the said Manual lays down the legal provisions for the use of EVMs and VVPATs while Chapter 16 of the Manual lays down instructions regarding counting of votes and largely covers all situations and contingencies anticipated in the Counting of votes. However, the manual does not provide for a situation where there are discrepancies during the counting process.

That the Respondent No.1 introduced for the first time, in the Lok Sabha General Elections 2019, a real-time reporting of the voter turnout for every single constituency that went to polls. The reporting was done on the basis of actual voting at booth level at any given point of time which was consolidated and put up on a mobile app called the "My Voter turnout App". That the Respondent No.1 through this mobile app published data of actual voting on real time basis for the first Six phases of election in actual numbers of votes polled at every booth in any constituency. The said app displayed the number of voters at

every single constituency that went to polls. While for the first 6 phases of the election the app displayed the exact number of voters, in the last phase i.e. the 7th phase of voting only percentage figures were given and previous data was removed by the Respondent No. 1.

That as per the research conducted by a team of experts with the petitioner organization, there have been serious discrepancies between the number of voters in different constituencies (i.e. the voter turnout data collated and provided by the Election Commission) and the number of votes counted. That the study of the discrepancy patterns in all the constituencies based on the data made available on the main website of the Respondent No.1 and so also the 'My Voters turnout App' has given the following conclusions:

- a) That the Master summary of 542 constituencies shows discrepancies in 347 seats. 195 seats are without discrepancies whatsoever.
- b) The discrepancies range from 1 vote (lowest) to 101323 votes @ 10.49% of the total votes (highest).
- c) There are 6 seats where the discrepancy in votes is higher than the winning margin.
- d) The total volume of discrepancies is in the nature of 739104 votes put together.
- e) There is no particular co-relation with any party in respect of discrepancy is observed in the Petitioner's analysis.

The Respondent No.1 was requested for details of the data captured under statutory Form 17 C through an RTI Application under the Right to Information Act 2005. However, the same has not been received from the Respondent No.1 till date and oral queries with the Respondent No.1 revealed that the same is

sealed along with the EVMs after counting and thus cannot be shared.

That the Respondent No.1 declared results in all constituencies on 23<sup>rd</sup> May 2019 and itself admitted in its press note dated 01 June 2019, that .....”*the final data on votes counted has been made available within a few days of declaration of results.....*” thereby admitting that the declaration of results was not on the basis of authenticated and verified results.

That even though the results for all constituencies were declared by the Respondent No. 1 on 23 May 2019, the Respondent No. 1 itself admitted on June 01, 2019 that the Index Forms of all 542 PCs are expected to reach the Respondent No.1 from Returning Officers shortly thereby admitting that upto June 01, 2019 the Respondent No. 1 has not received the actual data and that the declaration of results was not on the basis of recorded data by R.O.

That the Respondent No. 1 declared results of the Election on provisional figures and without determining the exact Ballot count and without due reconciliation of the discrepancies in various constituencies.

That the Respondent No.1 has a statutory duty to collate and publish accurate data relating to the elections held by it. This data is captured in Form 17C [Rules 49S & 56 C(2)] (Account of Votes Recorded) at every polling Station and displayed in final result sheet in form 20 [Rule 56 (7)].

That the Respondent No.1 has statutory duty to explain satisfactorily the resolution process, along with the methodology adopted for resolution of the discrepancies recorded during the course of election based on actual figures recorded in the abovementioned statutory forms at each polling stations. Admittedly the Respondent No. 1 itself acknowledged in their Press Note No. ECI/PN/61/2019 dated 01 June 2019 that:

*“In earlier elections, it used to take months to collect such authenticated election data from all the ROs. Even in 2014, it took between 2 to 3 months after the declaration of results to collect and collate such data in authenticated form. Due to the innovative IT initiatives taken by the Commission this time, the final data on votes counted has been made available within a few days of declaration of results. The reconciliation of voters’ data for all PCs have been completed in all states and the Index Forms of all 542 PCs are expected to reach ECI from Returning Officers shortly, which after compilation, shall be immediately be made Public by the Election Commission.”*

It is submitted that Respondent No.1’s explanation on discrepancies vide its press release dated 01 June 2019 is general, vague and evasive without any specific details on the discrepancies observed in the entire election process. It is also submitted that till date the Respondent No.1 has failed to place the actual data in public domain.

It is submitted that in the 07<sup>th</sup> phase of the 2014 General Elections the methodology of putting out actual numbers of votes polled was changed arbitrarily and without any explanation to display the actual voting having taken place, in percentage figures rather than absolute numbers. The discontinuation of publication of actual numbers of votes polled at any booth/constituency and replacing it with a percentage figure abruptly in the seventh phase of the election was seemingly done, to cover up the large number of unexplained discrepancies being recorded in majority of the Constituencies.

The present Petition raises the following vital issues for adjudication by this Hon’ble Court:

- I. Whether not framing the guidelines and procedures for resolving objectively the discrepancies observed in the election process in the Manual on Conduct of Elections with EVM-VVPAT as notified in February 2019 by the Respondent No. 1 is arbitrary and therefore *ultravires* of the Constitution.
- II. Whether the acts of Respondent No.1 in cleaning up the discrepancy data, not resolving the same in an objective and satisfactory manner and refusing to sharing the same in public domain, is arbitrary and contrary to the mandate of the constitution and the concerned statutes and against public policy.
- III. On what basis – actual or estimated, the Respondent No.1 is required to declare the results?
- IV. Whether Respondent No. 1 is duty bound and it is necessary for it to dispel doubts among the public in relation to the discrepancies recorded in an election held by it.
- V. Whether the Respondent No.1 can decline sharing with the public the statutory data under Form 17C and Form 20 captured by it during the election process.

Therefore, the petitioner is seeking the following reliefs from this Hon'ble Court in public interest:

- a. An appropriate writ, order or direction directing the Respondent No. 1 to conduct actual and accurate reconciliation of data before the declaration of the final result of any election.
- b. An appropriate writ, order or direction directing the Respondent No. 1 to provide the following information in the

public domain for the 2019 Lok Sabha elections and for all future elections: (i) statutory forms 17C, Form 20, Form 21C, Form 21D & Form 21E.

- c. An appropriate writ, order or direction directing the Respondent No. 1 to investigate the discrepancies which had taken place in the 17<sup>th</sup> Lok Sabha election results.
- d. An appropriate writ, order or direction directing the Respondent No. 1 to formulate a robust procedure for all future elections for the investigation of all discrepancies in election data.
- e. Any other writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

#### **List of Dates**

**11.04.2019** On 8th October, 2013, in a Public Interest Litigation matter, this Hon'ble Supreme Court had directed the Election Commission to introduce the VVPAT system in a phased manner. This Hon'ble Court, in *Dr. Subramaniam Swamy Vs Election Commission of India* (2013) 10 SCC 500 had held that paper trail is an "indispensable requirement" of free and fair elections, thereby making paper trail inherent in and intrinsic to the basic structure. As a result of this judgment the 17<sup>th</sup> Lok Sabha elections were held using the Electronic Voting Machines (EVM) with Voter Verified Paper Audit Trail (VVPAT) for random sampling of

mandatory verification of VVPAT paper slips from 05 (five) polling station in each constituency

**2.02.2019** The Respondent No.1 i.e the Election Commission of India had issued a Manual on Conduct of Elections with EVM-VVPAT along with a series of Circulars and Instructions in February 2019. Chapter 3 of the said Manual lays down the legal provisions for the use of EVMs and VVPATs while Chapter 16 of the Manual lays down instructions regarding counting of votes and largely covers all situations and contingencies anticipated in the Counting of votes.

**11.04.2019** The 17<sup>th</sup> Lok Sabha elections were conducted by the Respondent No. 1- Election Commission Of India in seven phases and covered all 542 constituencies in seven phases starting from April 11, 2019.

**26.03.2019** For General Elections 2019, the Election Commission had directed all the Returning Officers on 26th March 2019 to send the INDEX CARDS within 15 days of the declaration of the Result.

**23.05.2019** The results of the 17<sup>th</sup> Lok Sabha elections were announced by Respondent No. 1 on May 23, 2019.

**24.05.2019** The Respondent No.1, the Election Commission of India deleted the data from its main website from 24<sup>th</sup> May, 2019 onwards which appeared without reconciliation with the 'My Voter Turnout App'.



**01-06-2019** The Election Commission issued a press release on 01-06-2019 stating that the Index forms of all 542 PCs are expected to reach the Commission from Returning Officers shortly thereby admitting that upto June 01, 2019 the Respondent No. 1 had not received the actual data and that the declaration of results was not on the basis of recorded data by R.O. The Respondent No.1 also vide its press release dated 01-06-2019 had admitted that due to the innovative IT initiatives taken by the Commission this time, the final data on votes counted has been made available within a few days of declaration of results unlike the previous elections where it used to take months to collect authenticated election data from all the ROs.