

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

M.A.NO. _____ OF 2024

IN

WRIT PETITION (CIVIL) NO. 434 OF 2023

IN THE MATTER OF:

ASSOCIATION FOR DEMOCRATIC REFORMS PETITIONER

VERSUS

ELECTION COMMISSION OF INDIA & ANR. RESPONDENTS

APPLICATION FOR DIRECTIONS

**TO,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS HON'BLE COMPANION JUDGES OF
THE HON'BLE SUPREME COURT OF INDIA**

**THE HUMBLE APPLICATION OF THE
APPLICANT ABOVE-NAMED**

MOST RESPECTFULLY SHOWETH:

1. That the instant Miscellaneous Application is being filed on behalf of the Applicant seeking a direction to the Election Commission of India (ECI) to a) conduct Checking and Verification (C&V) of burnt

memory/microcontrollers of EVM in terms of this Hon'ble Court's judgment dated 26.04.2024 in WP(C) No. 434 of 2023 titled *Association for Democratic Reform Vs Election Commission of India & Anr*; b) conduct checking and verification of the Symbol Loading Unit as part of the EVM infrastructure and c) not to clear/delete the contents of the original burnt memory of EVMs where applications for Checking and Verification are pending. The Applicant herein was also the Petitioner in W.P.C No. 434 of 2023. It is clarified by way of abundant caution that no modification or reconsideration is being sought by the Petitioner in the instant Miscellaneous Application to the judgment dated 26.04.2024. The petitioner is only seeking compliance of this Hon'ble Court's directions in judgment dated 26.04.2024 in true letter and spirit.

- 2.** The Applicant herein is Association for Democratic Reforms (ADR), a trust registered with Registration No. F/9/9339/AHMEDABAD. ADR has been at the forefront of electoral reforms in the country for the last 20 years from wide-ranging activities including advocacy for transparent functioning of political parties, conducting a detailed analysis of candidates in every election, and researching the financial records of political parties including their income-tax returns. It was on ADR's petition that this Hon'ble Court ordered all election candidates to declare their criminal

records and financial assets. The Applicant herein also challenged the electoral bond scheme (W.P. (C) No. 880 of 2017). The Organization is registered as Public Trust under Mumbai Public Trust Act, 1950. Under the practice followed by ADR, the Founder-Trustee Prof. Jagdeep S Chhokar is authorized to institute proceedings on behalf of Petitioner trust. The Registration Certificate of Petitioner trust and authority letter are being filed along with the Vakalatnama. The petitioner trust's annual income is Rs.4,77,20,226 (FY/18-19) (PAN No.AAAAAA2503P) . Petitioner trust not being an individual does not have a National UID number.

3. This Hon'ble Court in its judgment dated 26.04.2024 titled ***Association for Democratic Reforms vs Election Commission of India & Anr.*** reported as **2024 SCC OnLine SC 661** passed the following directions:

76. Nevertheless, not because we have any doubt, but to only further strengthen the integrity of the election process, we are inclined to issue the following directions:

- (a) *On completion of the symbol loading process in the VVPATs undertaken on or after 01.05.2024, the symbol loading units shall be sealed and secured in a container. The candidates or their representatives shall sign the seal. The sealed containers, containing the symbol loading units, shall be kept in the strong room along with the EVMs at least for a period of 45 days post the*

declaration of results. They shall be opened, examined and dealt with as in the case of EVMs.

- (b) The burnt memory/microcontroller in 5% of the EVMs, that is, the control unit, ballot unit and the VVPAT, per assembly constituency/assembly segment of a parliamentary constituency shall be checked and verified by the team of engineers from the manufacturers of the EVMs, post the announcement of the results, for any tampering or modification, on a written request made by candidates who are at SI.No.2 or SI.No.3, behind the highest polled candidate. Such candidates or their representatives shall identify the EVMs by the polling station or serial number. All the candidates and their representatives shall have an option to remain present at the time of verification. Such a request should be made within a period of 7 days from the date of declaration of the result. The District Election Officer, in consultation with the team of engineers, shall certify the authenticity/intactness of the burnt memory/microcontroller after the verification process is conducted. The actual cost or expenses for the said verification will be notified by the ECI, and the candidate making the said request will pay for such expenses. The expenses will be refunded, in case the EVM is found to be tampered. [Emphasis Supplied]**

A copy of judgment dated 26.04.2024 passed in *Association for Democratic Reforms vs Election Commission of India & Anr.* reported as 2024 SCC OnLine SC 661 is annexed herewith as **ANNEXURE A1** (Pg _____).

4. Pursuant to the aforesaid judgment dated 26.04.2024 passed by this Hon'ble Court, on 01.06.2024 the Election Commission of India issued Administrative Standard Operating Procedure (Administrative-SoP) for checking and verification of burnt

memory/microcontroller of EVM unit (Ballot Unit, Control Unit and VVPAT) post the announcement of results. The relevant part of the Administrative SoP dated 01.06.2024 issued by the ECI is quoted hereinbelow:

2. Application for checking & verification of burnt memory/microcontrollers of EVMS (EVM C&V Process):

a) Candidates who are at SI.No.2 or SI.No.3 (eligible candidates) behind the highest polled candidate, may request for checking and verification of burnt memory/microcontrollers for any tampering or modification in 5% of EVMs, that is, the Control Unit, Ballot Unit and VVPAT per Assembly Constituency (AC)/Assembly Segment (AS) of a Parliamentary Constituency.

b) For example, for an AC/AS that has used 400 BUs (2 BUs were used in all polling stations), 200 CUs and 200 VVPATs in a poll, the following clarifications may be noted w.r.t. the selection of EVM for C&V activity:

.....

(iii) EVMs shall be subjected to C& V as a set i.e. a combination of BU(s), CU and VVPAT, as used in elections.

...

c) For the purpose of conducting EVM C&V activity, the eligible candidates may submit a written application to the respective DEO, in prescribed EVM-C&V Form (Annexure-1) within a period of seven days from the date of declaration of the result. To remove any doubts, if the date of declaration of the result is January 1", then the applications should be made between January 1" and January 7th ", both dates inclusive.

..

A copy of Administrative-SoP dated 01.06.2024 issued by the Respondent is annexed herewith as **ANNEXURE A2 (Pg _____)**).

5. On 16.07.2024, the Election Commission of India issued the Technical Standard Operating Procedure (Technical- SoP) for Checking and Verification of Burnt Memory/Microcontroller of EVM (Ballot Unit, Control Unit and VVPAT). The aforesaid SoP provides three steps for Checking and Verification of EVM units i.e, i) Diagnostic Checking of EVM units ii) Mock Poll iii) Counting of VVPAT slips and Tallying with CU Results. The relevant part is quoted herein below:

9. The main highlights of the T-SoP, as embedded in C&V SoP, are enumerated below:

.....

(vi) Choice of number and sequence of Mock Polls: **In mock poll, the applicant candidate(s)/representative(s) can cast any number of votes subject to the maximum limit of 1400 votes, in any sequence or pattern, as desired.** For example, the applicant candidates can cast any number of votes to any particular BU key of their choice, say 25 votes to key number 1, 15 votes to key number 2, 7 votes to key number 3 and so on.

.....

If the applicant candidate/representative desires not to cast votes himself/herself, then the engineers of BEL/ECIL shall cast the required mock votes as requested by the applicant candidate/representative. Further, if the applicant candidate/representative does not inform about the number of mock votes to be cast, then the **engineers of BEL/ECIL**

shall cast 1000 mock votes for checking and verification of EVMs.

As per the Technical SOP document prepared by BEL and ECIL:

*2. Steps involved in Checking and Verification of EVM units:
The following steps will be involved in Checking and Verification of EVM units through mock poll:*

Step-1: Diagnostic Checking of EVM units

Step-2: Mock Poll

Step-3: Counting of VVPAT slips and Tallying with CU Results

A copy of Technical-SoP dated 16.07.2024 issued by the Respondent is annexed herewith as **ANNEXURE A3 (Pg _____)**.

6. That on 29.04.2024 ECI issued Instructions on Use of Symbol Loading Unit (SLU) and storage of SLUs after commissioning of EVMs and VVPATs. A copy of said Instructions dated 29.04.2024 issued by Respondent is annexed herewith as **ANNEXURE A4 (Pg_____)**.

7. This Hon'ble Court in **ADR v Election Commission of India (Supra)** observed the following in para 20:

20. The programme loaded in the EVM is key hashed and burnt into a One Time Programmable microcontroller chip at the time of manufacturing, thus dispelling any possibility of tampering. It is pertinent to note that all the three units of the EVM - ballot unit, control unit and VVPAT, have microcontrollers in which the respective firmware is burnt. The burnt programme/code is unalterable and cannot be modified after the EVM is delivered/supplied by the manufacturer to ECI. Every key press of the control unit is dynamically coded, thus making it impossible to decode the signal flowing among

*the units of the EVM inter se. **Further, each key press is recorded with date and time stamp on a real time basis.***

ECI's Administrative and Technical SoPs fail to provide any procedure or guidelines for any checking and verification of burnt memory/microcontroller of EVMs

8. It is submitted that the procedure of Checking and Verification of burnt memory/microcontroller of EVMs as provided in the Technical SoP involves a mere diagnostic check of EVM units and conduct of a mock poll, without any checking and verification of the burnt memory or chip (or data contained therein) by manufacturers of EVM. Furthermore, the role of engineers from BEL/ECIL in the so-called checking and verification exercise is to help conduct the mock poll and count the VVPAT slips generated in the mock poll. The said procedure does not provide for any C&V of the burnt memory/microcontroller of the Control Unit, Ballot Unit, VVPAT and Symbol Loading Unit in terms of this Hon'ble Courts directions.

9. The purpose of the directions passed by this Hon'ble Court was to ensure that there is no malicious software and to allow a candidate and his representative to access the burnt memory in presence of the expert engineers of the manufacturers of EVMs. The absence of any

SoP for checking of burnt memory blatantly disregards the directions passed by this Hon'ble Court. The wilful non-compliance by the ECI of the directions passed by this Hon'ble Court shows reluctance on the part of the ECI to subject the burnt memory/microcontroller from any scrutiny whatsoever.

ECI's Administrative and Technical SoPs fail to provide any procedure or guidelines for any checking and verification of the Symbol Loading Unit (SLU)

10. The SoPs further fail to provide any procedure for Checking and Verification for tampering of the Symbol Loading Unit (SLU) as directed in Para 76(a) of the judgment dated 26.04.2024 which states that after the symbol loading process, the SLU should be kept in strong room with EVMs at least for 45 days post declaration of election results and should be *“opened, examined and dealt with as in the case of EVMs”*. The SLU is the Symbol Loading Unit which uploads symbols in the form of a bitmap image into the memory of the VVPATs. Thus, any checking or verification of the EVM unit for tampering or modification should include checking and verification of SLU as well.

11. The Election Commission of India has published FAQs on Administrative Procedures & Safeguards, Technical Features &

Safeguards and Legal provisions & Judicial Scrutiny on its website. As per the FAQs:

Technical Features & Safeguards

Q9.EVM with VVPAT introduction is no more a standalone device since it has to be connected to Symbol Loading Unit for symbol loading. Sensors, printer, Light mechanism needs drivers along with micro-controller, hence how can it still be called a rudimentary device?

Symbol Loading Unit (SLU) is part of the EVM infrastructure. The CU, BU with VVPAT still remains a standalone device. In order to print the VVPAT slips, VVPAT needs to have the Symbol information and the Candidate information loaded as data in graphical format. This can only be done through an authorized EVM specific device known as Symbol Loading Unit.

Q10.Does the VVPAT have a programmable memory? If yes, then at what stages in the election process is it accessed by an external device? If no, then where are the names and symbols of the candidates stored in the VVPAT for it to print the same in the VVPAT slip later?

A VVPAT has two different memories. One, where the program instructions are kept for the microcontrollers, is One Time Programmed (OTP). The VVPAT firmware is stored in the One Time Programmed memory. After the firmware is ported in the microcontroller at the manufacturers' site, no changes in the program are possible subsequently. The other memory is for storing graphical images containing serial number, name, and symbol of the candidates as data. This is done with the help of a symbol loading unit, during the commissioning of VVPATs before each election. Live display of the symbols being loaded into the VVPAT is done during the Commissioning process in presence of candidates / their representatives to make the process more transparent.

A copy of the FAQs dated 29.11.2024 published by the Election Commission of India is annexed herewith as **ANNEXURE A5** (Pg _____).

12. That the Checking and Verification exercise as prescribed presently further involves clearing/deletion of the original data of the burnt memory/microcontroller, which would further make any true checking and verification impossible. That as per a press note dated 05.12.2024 issued by the Chief Electoral Officer (CEO), Maharashtra, “ *In case, where no election petition is filed, during the period of C&V of burnt memory/microcontroller of EVM-VVPAT machines, the actual process followed on the polling day, is repeated. Accordingly, the polling day data, in the concerned EVM-VVPAT set, is Cleared and a Mock poll is conducted.*” A copy of the Press note dated 05.12.2024 issued by the Chief Electoral Officer (CEO) Maharashtra is annexed herewith as **ANNEXURE A6** (Pg _____).

13. That in order to meet the purport and object of the directions passed by this Hon’ble Court in ***Association for Democratic Reforms vs Election Commission of India & Anr*** (Supra) it is necessary that that Checking and Verification SoPs issued by the Election Commission of India must include a procedure for checking

the contents of the memory/microcontroller of EVM (Ballot Unit, Control Unit, VVPAT and SLU). The SoPs dated 01.06.2024 and 16.07.2024 in so far as they prescribe for mock poll to be conducted with dummy candidates and clearing of original data on the burnt memory must be set aside and fresh set of procedure/guideline/policy be issued for proper C & V of burnt memory/microcontroller of EVM (Ballot Unit, Control Unit and VVPAT) must be issued.

PRAYER

In view of the facts and circumstances stated hereinabove, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a. Direct the Election Commission of India (ECI) to conduct Checking and Verification of burnt memory/microcontrollers of EVM in terms of this Hon'ble Court's judgment dated 26.04.2024 in WP(C) No. 434 of 2023 titled *Association for Democratic Reform Vs Election Commission of India & Anr*;
- b. Direct the Election Commission of India to also conduct Checking and Verification of the Symbol Loading Unit as part of the EVM infrastructure;

- c. Direct the Election Commission of India not to clear/delete the contents of the original burnt memory of EVMs where applications for Checking and Verification are pending;
- d. Pass such other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case.

AND FOR THIS ACT OF KINDNESS THE APPLICANTS AS IN DUTY BOUND SHALL EVER PRAY.

Place: New Delhi
Date: __.12.2024

PRASHANT BHUSHAN
(COUNSEL FOR APPLICANT)