

**HIGH COURT OF MADHYA PRADESH : JABALPUR**  
**(Division Bench)**

**W.P. No.28295/2018**

*Amitabh Gupta*

***-Versus-***

*Election Commission of India and another*

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The petitioner in person.

Shri Siddharth Seth, Advocate for the respondents.

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**CORAM :**

**Hon'ble Shri Justice S.K. Seth, Chief Justice.**

**Hon'ble Shri Justice Vijay Kumar Shukla, Judge.**

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**ORDER**

**(Jabalpur, dtd.7.12.2018)**

**Per : Vijay Kumar Shukla, J.-**

The petitioner who is a practicing lawyer, has filed the present petition, *pro bono publico* seeking a direction to the respondents to count all VVPAT (Voter Verifiable Paper Audit Trail) slips along with the counting of votes through EVMs (Electronic Voting Machine) in the ongoing State Assembly elections.

2. The petitioner has stated that the respondent No.1, Election Commission of India has conducted polling in the State Assembly Election 2018 by use of EVMs fitted with a VVPAT which is an independent system attached with EVMs that allows the voters to verify that their votes are cast as intended. Though the

petitioner has highlighted certain incidents viz. failure of CCTV camera and delay in discharge of VVPATs and lack of sufficient security in respect of polled/unused EVMs and VVPATs, but he confined his prayer in the present writ petition for direction to the respondents to count all votes polled in the State Assembly Election 2018 with the VVPATs through EVMs, because the issue regarding alleged tempering of EVMs and VVPATs and lack of sufficient security to the aforesaid machines, has already been considered by this Court in the case of **Naresh Saraf vs. Election Commission of India and others [W.P. No.28106.2018]** on 6-12-2018.

3. It is strenuously urged that paper trail should also be counted along with the EVM counting, in order to ensure complete transparency and restore confidence of the voters in the electoral process.

4. Learned counsel appearing for the respondents submitted that the issue relating to counts of votes with VVPATs slips through EVMs has already been declined by various High Courts and the Supreme Court. He referred the orders passed by the Apex Court in the cases of **Kamal Nath vs. Election Commission of India and others [Writ Petition (Civil) No.935 of 2018]** passed

on 12-10-2018; **Prakash Joshi vs. Election Commission of India** [W.P.(C) No.983 of 2017, dated 30-10-2017]; and **Manubhai Chavada vs. Election Commission of India & others** [Writ Petition (Civil) No.1012 of 2017]. He also placed reliance on the order passed by the Gujarat High Court in the case of **Shailesh Kumar Nagjibhai Pansuriya vs. Election Commission of India and others** [Special Civil Application No.22074 of 2017, dated 12-12-2017].

5. In addition to above submissions, learned counsel for the respondents submitted that the instant writ petition cannot be entertained, in view of the constitutional bar engrafted under Article 329(b) of the Constitution of India, as the election process has already commenced.

6. Having heard learned counsel for the parties, we do not find any merit in the present petition for issuing directions to the respondents to count VVPATs slips along with counting of votes through EVMs in the ongoing State Assembly elections.

7. In the case of **Kamal Nath (supra)** a prayer was also made for issuance of directions to the respondents for conducting VVPAT verification at least 10% randomly selected polling stations

in each assembly constituency/assembly segment to ensure free and fair elections. In the said case the main prayer was sought to provide to the petitioner soft copies of the draft electoral rolls published on July 31, 2018 in the text format. However, while declining the said prayer, the Apex Court also examined other relief of the petitioner for conducting VVPAT verification. In para 26 of the judgment, the Apex Court has referred the order passed in **Prakash Joshi (supra)** and did not entertain the said relief. Paras 26 to 28 of the judgment being relevant are extracted hereunder:

“26. Other relief which is claimed by the petitioner is to seek directions for conducting VVPAT verification at least 10% randomly selected polling stations in each assembly constituency/assembly segment to ensure free and fair elections. In this behalf, our attention was drawn by the respondents to Rule 56(d). It was also submitted by the respondents that this issue cannot be raised by the petitioner having regard to the orders passed on earlier occasions in few writ petitions which were filed on this aspect. The respondents referred to orders passed in *Prakash Joshi v. Election Commission of India*<sup>4</sup>. In that case also, where identical prayer was made, the petition was disposed of by orders dated October 30, 2017 in the following manner:

“Mr. K.K. Venugopal, learned Attorney General submits that as far as Prayer (a) is concerned, the Election Commission of India has already implemented the same. The situation is accorded to by Mr. Amit Sharma, learned counsel for the Election Commission of India. As far as Prayer (b) is concerned, it is urged by Mr. K.K. Venugopal that guidelines have already been brought by the Election Commission of India. The same is disputed by Mr. Kapil

Sibal and Mr. Vivek Tankha, learned senior counsel appearing for the petitioner. We leave it to the discretion of the Election Commission of India, as we are not inclined to enter into the said arena. As far as Prayer (c) is concerned, it is submitted by Mr. K.K. Venugopal that the Election Commission of India has issued appropriate guidelines, and this Court may say that no officer/official against whom disciplinary proceedings have been initiated shall be posted in any key positions. Having heard Mr. K.K. Venugopal, we direct that the Election Commission of India shall not post any officer/official against whom the disciplinary proceedings has been initiated in any key position in any district. As far as prayer (d) concerning installation of CCTV cameras inside the polling booth to watch the mobility of persons inside the polling booth and display of such videograph alongwith the number of votes poll outside the polling booth on a display board is concerned, we are of the considered opinion that the same is not permissible and accordingly, the said prayer stands rejected.

The writ petition is accordingly disposed of.”

27. Another writ petition being W.P.(C) No. 1012 of 20175 was filed before this Court in October 2017 itself, with almost identical prayer. This was dismissed *in limine* on November 20, 2017. In the counter affidavit, ECI has also referred to similar writ petitions filed in the High Court of Gujarat, which met the same fate.

28. In view of the orders dated October 30, 2017 passed in W.P.(C) No. 983 of 2017 and on the basis of statement given by the ECI in the Court, we do not intend to entertain this relief.”

8. At this juncture, it is also apt to quote Rule 56D of the Conduct of Elections Rules, 1961. It reads thus :

**“56D. Security of paper trail:**

(1) Where printer for paper trail is used, after the entries made in the result sheet are announced, any candidate, or in his absence, his election agent or any of his counting agents may apply in writing to the returning officer to count the printed paper slips in the drop box of the printer in respect of any polling station or polling stations.

(2) On such application being made, the returning officer shall, subject to such general or special guidelines, as may be issued by the Election Commission, decide the matter and may allow the application in whole or in part or may reject in whole, if it appears to him to be frivolous or unreasonable.

(3) Every decision of the returning officer under sub-rule (2) shall be in writing and shall contain the reasons therefor.

(4) If the returning officer decides under sub-rule (2) to allow counting of the paper slips either wholly or in part or parts, he shall -

(a) do the counting in the manner as may be directed by the Election Commission;

(b) If there is discrepancy between the votes displayed on the result sheet in Form 20 as per the paper slips count;

(c) announce the amendments so made by him; and

(d) complete and sign the result sheet.”

9. A bare perusal of this Rule would show that in case where the printed paper trail is maintained by the Election Commission during the election the candidate or his election agent or counting agent can apply to the Returning Officer to count the printed paper slips in respect of any polling station or stations under sub-rule (2) or Rule 56D. Upon such application being made, the Returning Officer would decide the matter and may allow the

application in whole or in part or reject if it appears to him to be frivolous or unreasonable. Sub-rule (3) or Rule 56D requires that such decision of the Returning Officer would be in writing and contain reasons. Under sub-rule (4) of Rule 56D the conclusions of the Returning Officer granting the request for counting of paper slips are specified. From the materials on record thus it emerges that the guidelines for mandatory counting of paper slips in one polling station per Assembly constituency is in addition to the powers of the Returning Officer under Rule 56D to accept the request of a candidate for counting all the paper slips in as many polling stations as the case for such counting is made out.

**10.** In view of the above discussion, we are of the considered opinion that no direction as prayed for by the petitioner, can be granted. The petitioner could have submitted his suggestion, if any, before the Election Commission of India.

**11.** Apart from this once the election process has commenced, the writ petition cannot be entertained, in view of constitutional bar under Article 329(b) of the Constitution of India. Law in this regard is no longer *res integra*. Reference may be made in the judgements of the Apex Court rendered in the cases of **N.P.**

**Poonuswami vs. Returning Officer, AIR 1952 SC 64 and Election**

**Commission of India vs. Ashok Kumar, (2000) 8 SCC 216.**

**12.** In view of the aforesaid, we do not find any merit in the present writ petition and the same is accordingly **dismissed**. No order as to costs.

**(S.K. Seth)**  
**Chief Justice**

**(Vijay Kumar Shukla)**  
**Judge**

*ac.*