

2023 LiveLaw (SC) 824

IN THE SUPREME COURT OF INDIA

DR. D.Y. CHANDRACHUD; CJI., J.B. PARDIWALA; J., MANOJ MISRA; J.

Writ Petition(s)(Civil) No(s). 826/2023; 22-09-2023

SUNIL AHYA *versus* ELECTION COMMISSION OF INDIA

Constitution of India, 1950; Article 32 and 324 - PIL for an independent audit of Electronic Voting Machines (EVMs') source codes - No evidence presented by petitioner to show Election Commission's breach of its constitutional duties. The Court refrains from issuing directives on policy matters like EVM source code audits that concern election integrity, under the Election Commission's purview. No indication that the Commission isn't fulfilling its role. Petition dismissed. (Para 5)

ORDER

1 The petitioner, who appears in person, invokes the jurisdiction of this Court under Article 32 of the Constitution for a direction to the Election Commission of India to conduct an independent audit of the source code governing the Electronic Voting Machines, applying a particular standard, namely, IEEE 1028.

2 The petitioner, during the course of the submissions, submits that the source code must be independently audited and the report of the audit should be placed in the public domain. The petitioner further submits that if the source code is audited, the hash function signature would be available and it should be placed in the public domain.

3 The petitioner had earlier moved a petition under Article 32 of the Constitution before this Court before the General Election of 2019. This Court, by its order dated 8 April 2019, held that in view of the commencement of the General Elections, it was not possible for it to go into the issue raised in the PIL, but the liberty was given to the petitioner to initiate fresh action. Thereafter, the petitioner instituted another PIL in which by an order dated 24 February 2020, this Court permitted the petitioner to move a representation to the Election Commission of India.

4 The grievance of the petitioner is that he has followed up a representation which is submitted on 12 March 2020 and with reminders on 17 December 2020 and 9 March 2021, but he is still in the dark on what steps have been taken.

5 The Election Commission is a constitutional entity entrusted under Article 324 of the Constitution with superintendence and control over the conduct of the elections. The petitioner has placed no actionable material on the record of the Court to indicate that the Election Commission has acted in breach of its constitutional mandate. Ultimately, the manner in which the source code should be audited and the way the audit should be dealt with bears on sensitive issues pertaining to the integrity of the elections which are conducted under the superintendence of the Election Commission. On such a policy issue, we are not inclined to issue a direction as sought by the petitioner. There is no material before this Court, at this stage, to indicate that the Election Commission is not taking suitable steps to fulfill its mandate.

6 For the above reasons, we are not inclined to entertain the petition which shall accordingly stand dismissed.

7 Pending application, if any, stands disposed of.