

THE HIGH COURT OF JUDICATURE FOR MADHYA PRADESH,  
AT JABALPUR  
(DIVISION BENCH)

WP No. 26671 of 2021

MADHYA PRADESH JAN VIKAS PARTY .....Petitioner

Versus

ELECTION COMMISSION OF INDIA .....Respondents

.....  
**Coram :**

**Hon'ble Shri Justice Ravi Malimath, Chief Justice**

**Hon'ble Shri Justice Vijay Kumar Shukla**

.....  
**Presence**

:

*Shri Sunil Kumar Singh, Advocate for the petitioner.*

**ORDER (Oral)**

**(14-12-2021)**

**Per: Ravi Malimath, Chief Justice**

The petitioner claims to be a registered political party under the Representation of People Act, 1951. It is preparing to contest the upcoming election.

According to the petitioner, there are many discrepancies in the Electronic Voting Machines. That there are many stages of manufacture, transportation, randomization, symbol loading etc. which take place. All these are performed by the manufacturer companies. Therefore, his submission is that the statutory provisions and the rules have been violated by the use of electronic voting machines. That all these acts must be done only by Election Commission of India. Hence, the instant petition. The petitioner, therefore, has sought for the following prayers:-

*"I. To command the respondents to take effective measures to rule out the discrepancies in the Electronic Voting Machines, stated in the petition to conduct the free and fair upcoming assembly and general elections with the purity of the electoral process or may be directed to conduct the election with the other alternative mode in accordance with law;*

*II. To command the respondents to take effective measures to comply the rule 49E (2), wherein it is mandatory to show the storage empty and to ascertain*

*the polling agents that there is no prior voting recorded earlier;*

*III. To command the respondents to take efficacious steps restraining EVM to count the vote at polling booth center because counting must be held in the presence of the counting officer and the returning officer;*

*IV To command the respondents to disclose the approved hardware configuration of the electronic voting machines and approved size, shape, colour and number of components, before the representatives of the candidates of the political parties;*

*V. To issue a writ in the nature of mandamus commanding respondents to allow the technical experts/engineers of the petitioner political party with necessary equipment's at the time of first level checking, commissioning, candidate setting reandomization and at the time of symbol loading to check and examine the fairness of all the stages of electoral process;*

*VI. To direct the respondent to demonstrate the source code/programming/software to examine that there is not such a programming which benefits the particular candidates or to the candidates of a particular party;*

*VII To direct the respondent to permit the petitioner on the polling day, to examine the EVMs with it's technical experts/engineers in respect of software/sourcecode/programming or micro chip as well as any bluetooth or wireless device, may not be available in the machines which benefits the special candidate or particular political party as per rule 49 (E)(2) of the election conduct rule 1961;*

*VIII. To direct the respondent to certify each and every machine that it is original and there is no tempering or manipulation;*

*IX. To direct the respondent to condut the examination from their own regular employee/technical engineer or expert at the time of FLC/commissioning/randomization/symbol loading just after the EVMs come into the possession of election commission;*

*X. To direct the respondent to examine the defected machine on its own before the representative/agents of the political parties;*

*XI. To command the respondent to position the*

*VVPAT after controlling unit, so that voter may confirm that his/her vote has been recorded successfully to whom he/she voted;*

*XII. Even otherwise without the aforesaid measured & reliefs claimed hereinabove in the EVM and VVPAT, respondent shall kindly be restrained from using electronic voting machines & VVPAT in the upcoming elections going to be conducted in future or Electronic voting machines be banned in the conduct of elections, due to the large scale discrepancies available in the machines as mentioned in the petition;*

*XIII Any other relief that the Hon'ble High Court may deem fit, may be granted"*

He has relied on various provisions of the Representation of People Act and the Rules. It is submitted that there has been violation of the Rules on various fronts and therefore, the respondent-Election Commission of India be directed to take effective measures to comply with the Rules.

On considering contentions, we do not find any ground that calls for any interference.

The prayers sought are for a direction to the respondents to comply with law. There cannot be a mandamus to enforce a statute. Even otherwise we do not find that there is any violation which warrants any interference by this Court. Various procedure as enunciated under the Act and the Rules are to be followed by the respondent-Election Commission of India. They have been doing so. In case, there is any violation then the appropriate remedy is also provided for the same. Hence we find no good ground for interference. The petition is dismissed.

**(RAVI MALIMATH)**  
**CHIEF JUSTICE**

**(VIJAY KUMAR SHUKLA)**  
**JUDGE**

SKM