



IN THE HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT  
AT JABALPUR.

Writ Petition No.2506/09 (P.I.L.)

PETITIONER :: Shailendra Pradhan & another.  
Vs.  
RESPONDENTS :: Election Commission of India  
and others.

RETURN ON BEHALF OF RESPONDENTS NO.1 & 2:

The respondents above-named while vehemently opposing the petition submit their return as under:-

1 : That the present writ petition has been filed as pro bono publico calling in question the use of Electronic Voting Machine (hereinafter referred to as EVMs for brevity) in the Lok Sabha elections and assembly elections of the States, by the Election Commission of India, on the grounds that there is no security check up prescribed, some foreign countries have not accepted the use of voting machines/electronic voting, there is no fool proof system to secure correctness of the exercise of voting right and, as such, the use of EVMs for the election is unwarranted, unjustified and is in fact violative of voting rights of the Electors. It is contended that no security analysis of hackability/tamper proofness of the EVMs has ever been carried out by any experts at any time during the past one and a half decades and, therefore, it is

alleged that since there is no particular system developed for registration of a voter's vote correctly and accurately, such use of EVMs is unjustified. It is alleged that the use of EVMs is causing loss of faith in holding of free and fair elections in the country. On the basis of these allegations, the prayers are made to the effect that suitable writ, order, direction or command be issued to the respondents to get the EVMs tested, verified and audited by competent independent agency having expertise in such evaluation. It is also claimed that an appropriate, writ, order or direction be issued directing the respondents to get thorough examination of hackability and tamper proof of EVMs by competent independent agency having expertise in such field. A direction is further sought for thorough examination of system and procedure of training and all matters related to the use of EVMs in polling booths in particular on possibilities of malicious damages and the said examination be conducted by independent agency having expertise in the field. A further direction is sought to provide for voter variable audit trail in all elections when EVMs are used. A direction is sought to the effect that the respondents No. 1 & 2 be commanded to act according to the reports submitted by such independent agencies.

2 : That on similar pleas as in the present petition, a petition was filed before the Hon'ble Supreme Court of India by Shri V.V. Rao and others being Writ Petition (Civil) No. 292 of 2009. The Apex Court after hearing directed the petitioners in the said case to represent the matter before Election Commission of India and disposed of the petition vide order dated 27-07-2009. Copy of the order is Document R1. Based on this order of the Apex Court, the Hon'ble Bombay High Court and the Hon'ble Madras High Court have also disposed of in the same time, the writ petitions filed before them raising the issue of alleged tamperability of the EVMs. The Hon'ble Bombay High Court disposed of writ petition (PIL Ldg No. 68 of 2009- Dr. Tushar Jagtap and others Vs. Election commission of India and others), vide order dated 6<sup>th</sup> August, 2009 and the Hon'ble Madras High Court disposed of writ petition No. 14146 of 2009- (Pattali Makkal Katchi Vs. Union of India and others) vide order dated 12<sup>th</sup> August, 2009. Copy of the order of the Hon'ble Madras High Court is annexed as Document R2.

Some other persons had also made similar allegations, Respondent No. 1 has already invited such persons to demonstrate as to how any tampering was possible in EVM. The petitioners in the present petition were also called upon to demonstrate the means of

tampering in EVM, by letter dated 22-07-2009, copy of which is Document R3. The present petitioners, in their letter dated 28<sup>th</sup> July, 2009 (Document R4) contended that the offer made to them for demonstration of their claim before the Election Commission when the petition was pending before this Hon'ble High Court was improper and amounted to contempt of this Honble Court. The answering respondent, in its letter dated 31<sup>st</sup> July, 2009 (Document R5) explained to the petitioners that the offer was in accordance with the order passed by the Hon'ble Supreme Court in writ petition (Civil) No. 292 of 2009. The petitioners then wrote to the Election Commission stating that they would appear for the demonstration if the Election Commission bears their expenses for their travel. The Election Commission informed the petitioners by its letter dated 25<sup>th</sup> August, 2009 (Document R6) that the Election Commission would not bear the expenses. No further communication has been received from the petitioners so far expressing willingness to demonstrate their claim of tamperability of the EVMs.

3. : In view of the above, it is prayed that this Hon'ble Court may be pleased to dispose of the present petition with similar direction to the petitioners herein as given by the Hon'ble Supreme Court, as mentioned above.

:: 5 ::

4 : That without prejudice to the above prayer, it is submitted that the entire allegations made by the petitioners are misconceived being based on misleading statements. A fool-proof system of use of EVMs has been developed by the Election Commission of India with the assistance of respondents No. 3 & 4 which are Government of India undertakings with proven track record and expertise in the field of electronics. For the reasons detailed hereinafter, the entire petition is liable to be dismissed :-

4(A) : That for proper appreciation of the issues it is relevant to state the legal provisions relating to the use of EVMs for elections and the history of use of EVMs in the elections in India.

Section 61A of the Representation of the People Act, 1951, as inserted by the Representation of the People (Amendment) Act, 1988,

provides for use of EVMs for recording and counting of votes at elections. Section 61A is reproduced below:

" 61A. Voting machines at elections.- Notwithstanding anything contained in this Act or the rules made thereunder, the giving and recording of votes by voting machines in such manner as may be prescribed, may be adopted in such constituency or constituencies as the Election Commission may, having regard to the circumstances of each case, specify.

Explanation- For the purpose of this section, "voting machine" means any machine or apparatus whether operated electronically or otherwise used for giving or recording of votes and any reference to a ballot box or ballot paper in this Act or the rules made thereunder shall, save as otherwise provided, be construed as including a reference to such voting machine wherever such voting machine is used at any election."

The rules framed in terms of the provisions of the above quoted Section 61A, are contained in Rules 49A to 49X and of the Conduct of Election Rules, 1961, as inserted vide the amendment made to the said Rules in 1992.

4(B) : The EVMs were developed in the late seventies. On the recommendation of the Electoral Reform Committee (ERC) set up by the Ministry of Law and Justice of Government of India in 1990, an Expert Committee comprising of Dr. C. Rao Kasarbada, then Director ER & DC, Trivandrum, Professor P.V. Indiresan then with I.I.T Delhi and Professor S. Sampath, then Chairman, R.A.C., Defence Research and Development Organization, Ministry of Defence, Sena Bhawan, New Delhi, was set up to evaluate the EVMs. Shri S.Sampath was the chairman of this committee. After studying and evaluating the EVMs, this Experts Committee certified

that the EVMs were tamper proof and fit for use in elections. A copy of Expert Committee Report is produced as Document R7 for perusal of this Hon'ble Court. After elaborate testing and use in the phased manner, in different parts of country in selected constituencies in 1998 and 1999, all elections to Legislative Assembly and all bye-elections of both Legislative Assembly and Parliament held from the year 2000 onwards have been conducted by using the EVMs. The use of EVMs was universalized in a countrywide general election in the year 2004 and again in 2009, when the country-wide general elections to the Lok Sabha were conducted by the Election Commission of India using the EVMs in all polling stations in the country. The use of EVMs in the election has been accepted as foolproof, user friendly and reliable.

#### Technological Safeguards

4(C) : The microchip, which is the brain of the whole system can never be replaced without damaging it which will make the machine inoperable. The programme is written independently in the assembly language of the microprocessor by the two public sector Corporations, i.e. Electronic Corporation of India Limited and Bharat Electronics Limited and fused on the microprocessor unit at the facility of the chip manufacturer, Hitachi Corporation, Japan in the case of

ECIL and Microchip Corporation USA in case of BEL. Manufacturing of such customized chip as is required for Election Commission EVM is not available in India. Once fused, the instructions cannot be altered or overwritten by anyone including the persons writing the programme. This process is commonly known as firmware. In the case of EVMs, the microprocessor chip is soldered directly on the printed circuit motherboard. Since the distance between the contacts are too small to be handled even by highly skilled workers, the actual placement is done using machines with in-built robotic arms and contact leads are wave soldered on to the motherboard. It is infeasible for the chip to be replaced through any process without damaging it, which will make it dysfunctional. The record of votes cast is retained in the memory of the EVM until it is erased for use at some subsequent election.

There is an inbuilt provision for taking a print of the votes polled in an EVM using a device called decoder. But this can be done under the law only on a direction by a competent court. In this process, the print out of the votes recorded (indicating the serial number of the candidate for whom the votes have been cast) in the serial order of casting of votes can be taken. By comparing this with the entries in the register of voters (Form 17A), which contains the serial number in which

each voter cast his/her vote, it would be possible to find out the votes cast by each individual voter should this be required by any court in the event of any dispute regarding any bogus voting and so on. However, as stated above, this provision of decoding is resorted to only on the orders of the Court, and not otherwise as the issue of protecting the secrecy of voting is involved in this.

Elaborate testing and checking protocols are followed in both the PSUs to ensure the reliability and functionality of the EVMs before dispatch to District Election Officers for use.

4(D) : **Administrative measures**

Apart from the technological soundness of the EVMs, the Election Commission has in place elaborate administrative procedures to ensure total transparency and prevention of any misuse, or mishandling of the EVMs.

The EVMs are stored in safe custody of the District Election Officers (DEOs). Before an election, the EVMs to be used in the election are first put to rigorous pre-election inspection and testing by the technicians of the manufacturing company and not by any other third party. This is the first level check of the EVMs. Every control unit and ballot unit of the EVM has a unique identification number. The unique ID numbers are fed

into computer and a set of random numbers are generated by the computer through a randomization software. The control units and ballot units bearing the serial numbers as per the random list generated through the randomisation process are taken out of the storage room for use in the constituency concerned. This randomization is done in the presence of the representatives of the recognized political parties after giving advance notice to them. The EVMs so selected on random basis for use in a constituency are kept back in the strong/storage room under safe custody. Such storage strong rooms are sealed in the presence of the representatives of the political parties who can also affix their seals thereon. A copy of the Election Commission's circular letter No 51/8/7/2008-EMS(Inst.-I) dated 11<sup>th</sup> August, 2008, containing instructions for transparency measures in the use of EVMs is annexed as Document R8. Later, approximately seven days before poll a second level randomization and check is carried out. For deciding which control unit and ballot unit goes to which particular polling station within the allocated constituency another randomization is done in the presence of the Election Observer and the candidates at the election. At this stage, the ballot papers are also inserted in the ballot unit and the candidate's buttons of only those candidates whose names and symbols are

printed on the ballot papers are kept open (i.e. in the case of the number of contesting candidates), and the remaining buttons are masked whereby they become 'inoperable'. The ballot unit is then sealed using a thread seal. The preparation on the control units involves installing fresh battery in the battery section of the control unit, and setting the control unit for the number of candidates in the constituency. Thereafter, the section of the control unit called the battery section which is used for installing the battery and setting the unit for the number of candidates is sealed using thread seal. These seals on the ballot unit and the 'battery section' of the control unit provide proper safeguard against any subsequent interference. The candidates/their election agents present are allowed to affix their seals, both on the balloting units and control units in addition to the seals of the Returning Officer. The whole process is done in the presence of the candidates/their agents and is also videographed for record purpose. The candidates /their agents present at the venue are allowed to pick up any control unit for proper functioning through a 'mock poll cum result verification' exercise. Such checking on random basis is done atleast on 10% of the EVMs (control units and ballot units). After completion of the whole process, the EVMs prepared for the poll are kept in strong room and

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the room is sealed, in the presence of the candidates/their agents. The candidates/agents are also permitted to put their seals on the lock of the strong room.

When the EVMs are taken out from the strong room for dispatch to the polling stations, the candidates are given advance notice so that they can be present at the time of opening of the strong room, and satisfy themselves that the strong room was not opened in the meanwhile.

On the day of poll, before the poll starts a third level check is done through a mock poll, of each machine in each polling station in which the agents of candidates are asked to cast vote for their candidates and the result are checked to ensure and satisfy the polling agents of the candidates that the vote cast is correctly recorded and shown in the result. This mock poll would also prove that there is no vote already cast in the EVM. Thereafter, the control unit is cleared of all votes cast at the mock poll and the control unit is sealed in the presence of the candidate's agents who are also permitted to affix their seals thereon. After this, the control unit cannot be opened without breaking the seals. The Presiding Officer is required to record a certificate stating that mock poll was done in the presence of the agents of the candidates and that after

the mock poll, the EVM has been cleared of all votes polled in the mock poll. It is only thereafter that the poll is taken. The process of mock poll, clearing the data, sealing the control unit and mock poll certification is completed before the time fixed for commencement of the poll. Thus, before the poll starts, the agents of each of the candidates have ample opportunity to satisfy themselves that the EVM used in the polling station is in perfect working order and that there is no vote already recorded in the EVM.

In the polling station, voters are allowed to cast vote in the same order in which their names are entered in the register of voters. As each voter enters the voting compartment where the balloting unit is kept, the Presiding/Polling Officer is required to press the "Ballot" button on the control unit, which will make the balloting unit ready for recording a vote. When the "Ballot" button is pressed, the bulb marked "Busy" and the control unit will glow red and a lamp on the balloting unit will glow green to indicate that the unit is ready for recording vote. When the elector records his vote, the lamp against the name of the candidate for whom the vote has been recorded glows and simultaneously, a long beep is heard indicating that vote has been recorded. Thus, it is not possible for any individual voter to press the candidate's button on the balloting unit

more than once as further vote will be recorded only when the "Ballot" button on the control unit is released. The indication of glowing green bulb when it is ready and the beep sound after casting the vote indicates the electors and agents of the candidates that the vote has been cast.

After conclusion of poll, the control unit is closed for poll by pressing the 'close' button after which no further vote can be recorded in the machine. Thereafter, the control unit and balloting unit are placed in their respective carrying cases and the cases are also sealed. Here again, the agents of the candidates are allowed to put their seals also. The sealed EVMs are stored in strong rooms till the counting under proper security. When the polled EVMs are taken to the storage strong room, the agents of the candidates are permitted to follow the polling party upto the strong room. After place in the EVMs of all polling stations, the strong rooms are also sealed and candidates/agents are permitted to put their own seals as well. Further, the candidates are allowed to depute their agents to keep watch on the storage center. Before counting starts, the agents of the candidates are allowed to inspect the seal on the strong room to satisfy themselves that the strong room was never opened in the meanwhile. It is only thereafter that the EVMs are

13  
taken out for counting. At the counting hall, each candidate is allowed to appoint a counting agent for each counting table. When a control unit is taken up for counting of votes recorded therein, the counting agents are permitted to inspect the various seals on the control unit to ensure that the unit has not been interfered with after the close of poll. The agents are also permitted to note the unique ID number of the control unit to cross check and verify that this is the same as the one used in the polling station. All these transparency measures ensure that everything is intact and it is only after they are satisfied, that the counting is started.

Thus, it is submitted that there are elaborate security measures to prevent any attempt to tamper with the machines and there is a completely transparent mechanism right from the stage the EVMs are taken out for use in a constituency, to satisfy the candidates and their agents that the EVMs are being used are not tampered with and are reliable for error free functioning.

As per the provisions of Section 38 of the Representation of the People Act, 1951, read with rule 49B(2) of the Conduct of Elections Rules, 1961, the arrangement of candidates in the list of contesting candidates and in the ballot paper on the ballot unit is

made as per the alphabetical order of the names of the candidates. This arrangement will be known only after the list of contesting candidates for an election is finalized which would be on a date approximately two weeks before the date of poll. Therefore, the question of any programming of the microchip of the EVM to make the EVM function in a particular manner is out of question. As already explained in detail above, every stage of handling of the EVM from the moment they are taken out for use in an election and till the conclusion of counting and storing of the EVMs thereafter, is totally transparent and involves the political parties and candidates.

4(E) : Apart from the security measures referred to above, further precautions are taken, as mentioned in para 4(B) above. It is also provided that in the event of improper reception of votes or reception of any vote which is void, on account of impersonation or double voting etc., it is possible to detect such void vote by using a decoder. As already explained hereinabove, voters are allowed to vote strictly in the order in which their names are entered in the register of electors maintained in the polling stations. Thus, the serial number of the void vote can be found out from the register of electors and the vote recorded at that particular serial number can be found out by using the

decoder. However, this is resorted to only on the orders of the High Court or the Supreme Court in any Election Petition or Election Appeal. In one of the cases as directed by the Hon'ble High Court of Kerala in Election Petition No.4/2001, the process of detecting votes cast by impersonators was carried out in the case of General Election from 125-Evavipuram Assembly Constituency in Kerala in 2001. The High Court in its order dated 6.2.2002 had recorded its appreciation on the efficiency of the mechanism. The judgment of the Kerala High Court in the said Election Petition was upheld by the Hon'ble Supreme Court in Civil Appeal (AIR 2003 SC 2271). Therefore, the apprehension as expressed by the petitioners in the present writ petition with respect to the use of EVMs, their tamperability etc. is imaginary and founded on no scientific reasons. The EVM is both mechanically and electronically protected to prevent any tampering/manipulation/ alteration of polled data.

4(F) : In an election held in Bangalore North Parliamentary Constituency on 6.10.1999, the EVMs were used and by calling in question the election of the returned candidate, Election petition No.29/99 was filed in the High Court of Karnataka at Bangalore. The challenge was made to the efficacy and integrity of the EVM.

In the trial of the abovementioned Election Petition, the Hon'ble High Court of Karnataka, examined the technical experts of the manufacturing firm. While deciding the aforesaid issues and dismissing the election petition, the Hon'ble High Court of Karnataka observed that "the witness is cross-examined at length by the counsel for the petitioner and nothing is elicited in the cross-examination from the witness about the vulnerability of the machine. The evidence on the other hand fully inspires the confidence of the court that EVMs are fully tamper proof. There is no possibility of manipulation or mischief at the instance of anyone."

The Hon'ble Karnataka High Court also held that "this invention is undoubtedly a great achievement in the electronic and computer technology and a national pride."

Prior thereto, the of question elections using EVMs and the reliability of EVMs was also raised before the Hon'ble Madras High Court in Writ Petition No. 3346 of 2001 ((AIADMK and ors. Vs. The CEC and ors.) and in some connected petitions. There were nine petitions filed before the Hon'ble Madras High Court regarding the EVMs functioning. Some of the petitions sought direction to declare section 67-A of the Representation of the People Act, 1951 as invalid and ultra vires, and the writ petitions sought direction from the Hon'ble

Court to Election Commission not to use the EVMs in the then ensuing elections (in Tamil Nadu, Pondicherry, Kerala and West Bengal)

The following grounds were urged in these petitions:

1. The manner of voting is enshrined in Section 59 of the Representation of the People Act, 1951 and Section 61-A is not a method to supplement and supplant the method of voting as adequately indicated in the rest of the provisions of the Act but it is only an alternative method as Section 61-A is somewhat restricted to use EVMs in 'such constituency or constituencies' only as the Election commission may deem fit.
2. The petitioners sought to stop the use of EVMs in the then ensuing general elections on the grounds of lack of secrecy, possibility of tempering, fragility and difficult preservation of the machine and its contents.
3. The manner of voting is enshrined in Section 59 of the 1951 Act and is shall be by ballot in the manner as may be prescribed. Section 61-A has been inserted permitting the introduction of the use of EVMs in respect of certain constituencies. Section 94 refers to the maintenance of secrecy

of voting and it should not be infringed upon under any circumstances.

4. In the event of filing election petition, only when ballot papers are made available for Court's scrutiny, the Court could exercise its power. But no corresponding provision for safeguard is made in the event of EVMs being used, and nothing is said about the preservation of the contents in the EVMs.
5. The overall control of the machine is only with the Presiding Officers of the polling booth. Section 49-L deals with the procedure for voting through EVMs. Rule 49-O allows an elector to exercise no vote option to avoid his vote being impersonated or rigged. In the conventional system, a voter can get a ballot paper but need not mark and the secrecy is maintained. There is no such provision in EVMs for exercising 'no vote'. The secrecy is thus lost.
6. The ballot box is made out in thick iron sheets, while EVMs is a fragile instrument and the buttons to be used are meant for feather touch operations. Any bad element could damage the same. During the pendency of the election petitions either before the High Court or the Supreme Court, the preservation of EVMs

requires several supporting apparatus to be kept continuously running which will be very difficult.

7. Section 61-A is somewhat restricted to use EVMs in 'such constituency or constituencies' only as the ECI may deem fit. The word "such" in the context cannot mean all constituencies. EVMs cannot be used for the whole lot of General Elections to the State Legislative Assembly. The machines, if at all necessary, could be initially tested in Panchayat and Local Body elections on a large scale and only if found successful, they could be used in General Elections.
8. Section 61-A of the Act is not a method to supplement or supplant the method of voting as adequately indicated in the rest of the provisions of the Act but it is only an alternate method. It cannot displace or dislodge the procedure laid down for voting by means of paper ballots. The delegated legislation has no check over it and there is no way of obtaining redress. No rules had been framed on the issue of how the study was made to use EVMs in certain constituencies. With similar allegations that vague, unfettered and arbitrary powers have been given to the Election Commission in respect of use of EVMs.

Dismissing all the writ petitions, the Hon'ble Madras High Court held as follows:

".....this Court is not inclined to go into technical aspects, but as argued vehemently, on an overall consideration, we find that **no two votes can be cast by a single voter**, as every vote is recorded only after releasing the lock by the Polling Officer. Registration of vote is ensured by glowing of the bulb in 'green; the secrecy is thus maintained. There is a provision for demonstration before voting, and sealing at every stage including at as the counting stage. The result button can be touched only by piercing the paper seal and not otherwise.

Further, at every stage, the agents of the respective parties are there. We are quite convinced that sufficient safe guards are maintained by framing of Rules to have the election conducted in a just, fair and proper manner. The data are stored in the EVMs permanently and they can be retrieved and used in the event of any Election Petition/s being filed before the Court of Law. The apprehension of the petitioners that the use of EVMs will not serve any purpose because of lack of procedures on maintaining the secrecy, counting, registration of votes to the person to whom it was intended by pressing button is unfounded. The minor defects which occurred in

earlier elections amounting to 0.001% are negligible. The election Commission also informed us that by use of some more modern technology, such defects also would be eliminated.

The Hon'ble High Court further held that 'there is also no question of introducing any virus or bugs for the reason that the EVMs cannot be compared to personal computers. The programming in computers, as suggested, has no bearing with the EVMs. The computer would have inherent limitations having connections through internet and by their very design, they may allow the alteration of the programmes but the EVMs are independent units and the programmes in EVM is entirely a different system.'

The petitioners before the Hon'ble Madras High Court had moved the Hon'ble Supreme Court challenging the High Courts Order (SLP (civil) No. 2824-2825/2001-All India Anna Dravida Munnetra Kazhagam Vs. Chief Election Commissioner & others). The Hon'ble Supreme Court dismissed the SLP at the admission stage itself.

5 : The issue of efficacy of the EVMs was also raised before the Hon'ble Bombay High Court (Nagpur Bench) in Election Petition No 1 of 2004 Banwarilal vs Shri Vilas Muttemwar & ors) Inter alia, the issue of tamperability of EVMs was raised in the Petition before the Bombay High Court. Petitioner in the said election

petition alleged that the EVMs could be rigged and tampered with on the basis of articles and opinion given by the following three experts.

1. Dr. Satinath Chaudhury- if the voter punches the candidate of his choice, the votes would keep on adding in favour of the programmed winner and rigging could be done by a remote control.
2. Shri Ravi Visvesvaraya Prasad- EVMs could contain faulty logic, incorrect algorithms, erroneous data flows, errors in circuit designs, mistakes in the software code, mistakes or malicious back doors in data bases and etc and it is possible to temper with EVMs.
3. Dr. S.S. Limaye and Shri Chandak - EVMs are not temper proof and there is no method of checking/verifying that internally the components of the machines are properly working or not.

In this matter, the Hon'ble High Court examined the experts produced as witnesses by the petitioner. The Hon'ble High Court held that the petitioner failed to produce evidence or prove the challenges made by him and dismissed the petition by its judgment dated 21<sup>st</sup> October, 2005. The Hon'ble High Court held :

“Admittedly, in the present case, even the experts are admitting that the software data or equipments

used in the EVMs are proprietary, and are designed by Electronics Corporation of India for the Election Commission, and the manufacturers are under an obligation not to reveal those to outsiders, nor on facts have those been so opened.

As can be seen from evidence of the witnesses brought by the petitioner, i.e., Ravi Visvesvaraya Prasad and Arun Mehta are concerned with fair elections. Both these witnesses have not stated anything inside the EVMs.

These witnesses are common on the ground that these are machines of proprietary nature. Designed and manufactured at the requisition of the Election Commission. These witnesses also submit that hardware and software used in these machines are the matters not known to the public at large, or even experts, including these witnesses. These witnesses even admit that the information or data used in these machines is not made open authorizedly or even unauthorizedly, or in the pirated form".

A petition was also filed before the Hon'ble Delhi High Court (writ petition No. 8790/2004-Pran Nath Lekhi Vs. Election Commission of India & others, alleging that EVMs could be manipulated or doctored so as to favour a Party or candidate. The said writ petition was dismissed as withdrawn by the Hon'ble High Court.

6 : From the findings recorded by the High Courts, it is clear that the EVMs have already passed judicial scrutiny and held to be not only tamper proof, but also free from any manipulation. Before every election, the EVMs to be are used, are tested to ensure that they are in perfect working order.

7 : As already explained hereinabove, the technology has already been put to thorough test. Further, there is totally transparent process involving the candidates at election at every stage of handling the EVM from the time the EVMs are taken up for use in the elections till the declaration of result and sealing it thereafter.

8 : Though some of the persons who raised the issue of alleged tamperability of the EVMs have attended the office of the Respondent No. 1 at New Delhi but none of them could demonstrate that the EVM used by the Election Commission could be a tampered with or result of election could be altered by making change in EVM or manipulating the same. Thus the entire claim in this petition is nothing but a hypothesis of petitioners without any cogent proof, which is not acceptable in eye of law. The petition is thus liable to be dismissed with cost.

9 : That in view of the facts stated hereinabove, no parawise reply of the petition is necessary at this stage. However, all the adverse allegations and contrary averments made in the petition are hereby emphatically denied. The answering respondents reserve their right of filing parawise reply of the petition if and when necessary or so directed by this Hon'ble Court, or the circumstances so warrant.

10 : That the contrary averments made in the affidavit of the petitioner are denied. This return is supported by an affidavit of the Officer Incharge of the answering respondents.

11 : The petition being based on wholly misconceived, misleading, false and vexatious allegations is liable to be dismissed with compensatory costs.

The petition may be dismissed accordingly.

JABALPUR

Dt:5.10.2009



K.K. TRIVEDI, ADV.

COUNSEL FOR THE RESPONDENTS