

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

IA NO. 115592 OF 2024

IN

WRIT PETITION (CIVIL) NO. 1382 OF 2019

IN THE MATTER OF:

ASSOCIATION FOR DEMOCRATIC

REFORMS & ANR.

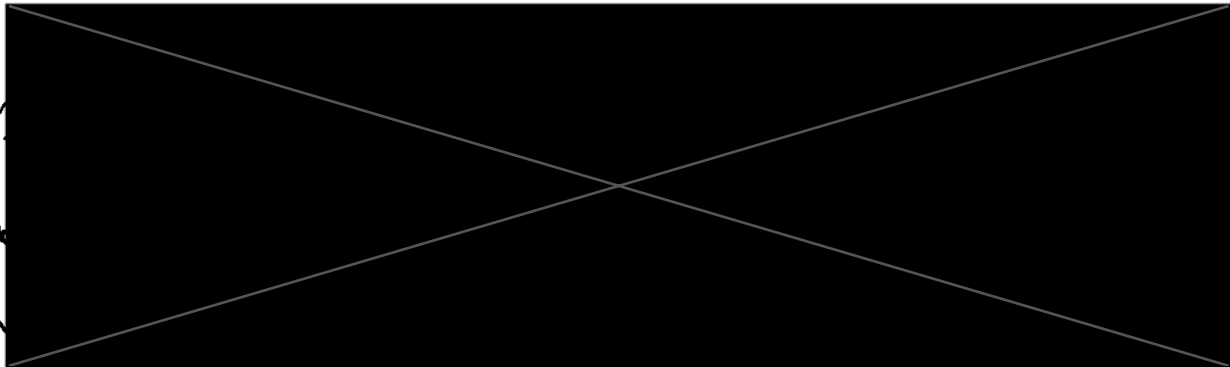
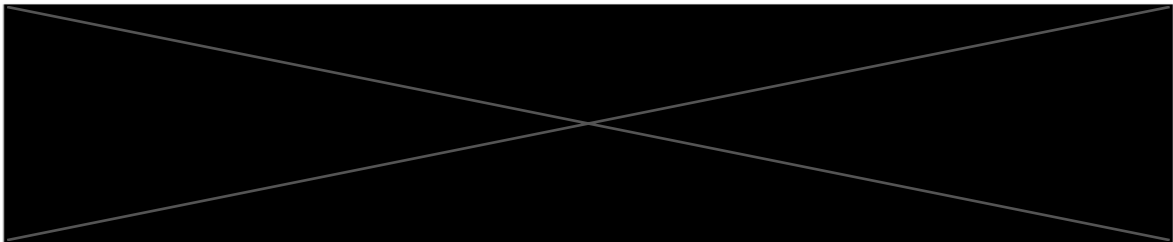
... PETITIONERS

Versus

ELECTION COMMISSION OF INDIA & ANR.

... RESPONDENTS

REPLY AFFIDAVIT ON BEHALF OF THE
RESPONDENT NO. 1 TO THE APPLICATION FOR
DIRECTIONS FILED BY THE PETITIONER

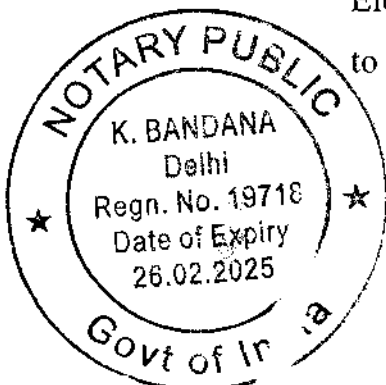


2. I state that I have read and understood the contents of the Interim Application filed by the Petitioner and at the outset, I deny all the averments, submissions, contentions as well as the allegations contained in the present Interim Application, as set out hereinbelow, which is neither maintainable nor it

deserves any consideration / indulgence by this Hon'ble Court. This application / petition deserves to be rejected at the threshold, by the orders by this Hon'ble Court.

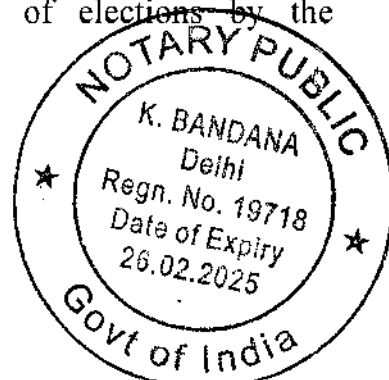
PRELIMINARY OBJECTIONS AND SUBMISSIONS

3. That the Answering Respondent most respectfully submits that the elections for the 19th Lok Sabha are underway and are at an advance stage towards its conclusion. Out of the seven phases scheduled for this election process, five phases have been completed and the remaining two phases are scheduled for 25.05.2024 and 01.06.2024. It has been a settled principle of law, authoritatively and repeatedly laid down by this Hon'ble Court that no petition, which may have the impact of either creating a suspicion and/or impeding the conduct of the process and conclusion of elections by the Election Commission of India, would deserve to be rejected at the threshold itself.
4. It is most respectfully submitted that approximately 97 crore voters had been expected to participate in the election process for election of the 19th Lok Sabha. The gradual shift, with the technological advancement from Paper Ballots to EVM, has brought a positive change in the process of conduct of elections thereby immensely benefiting the democracy. This endeavour on the part of the Election Commission of India to move on from paper ballot to Electronic Voting by adopting the latest technology has

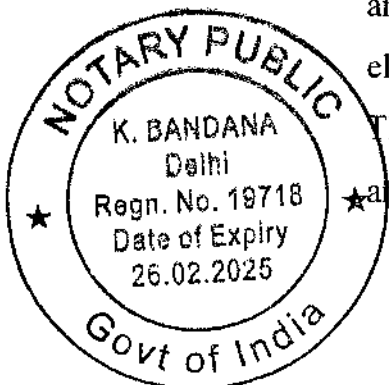


also been duly supported and strengthened by the orders passed by this Hon'ble Court from time to time.

5. That our country, as the biggest democracy in the world, is proud of the process of conducting election by the Election Commission of India at such large scale, by adopting technology (EVMs) for last more than two decades. The Indian nation feels proud of its election process conducted by the Election Commission of India in a fair and transparent manner, for the democracy to have its full play. In fact, various other countries, following the principle of democracy and elections – always look towards the efficacy of the process of conduct of elections by the Election Commission of India [at such a large scale] adopting the latest technology.
6. However, on the other hand, there are also certain elements and vested interests who keep on throwing baseless and false allegations, creating unwarranted atmosphere of suspicion – in the close proximity of time of conduct of every election by the Election Commission of India, to somehow discredit the same. It is most humbly submitted that there is a consistent malafide campaign/design/efforts to keep on raising suspicion and doubt in every possible manner and by misleading assertions and baseless allegations regarding the conduct of elections by the Election Commission of India.

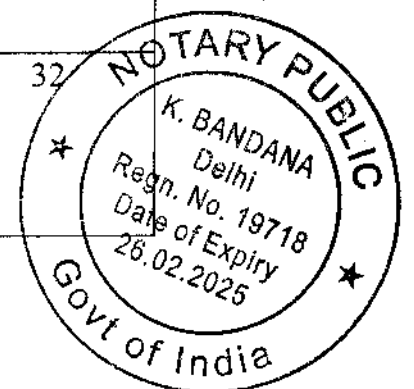


7. This Hon'ble Court had always supported the bonafide efforts of the Election Commission of India in warding off of all such allegations and doubts regarding the conduct of the election process by Election Commission of India and, thereby, extending support for free and transparent conduct of elections by the Election Commission of India. Every such support from this Hon'ble Court augments the faith and trust of the country in the fairness and transparency in the election process, so undertaken by the Election Commission of India on each occasion.
8. It is most humbly submitted that recently in a detailed hearing, this Hon'ble Court, after granting hearing to the same petitioner [Association of Democratic Reforms] and upon satisfying itself of the fact that there had been no substance in any of the allegations made by the same petitioner against the conduct of election process by Election Commission of India, rendered its judgment on 26.4.2024, rejecting the writ petition being W.P.(Civil) No. 434/2023 – *Association of Democratic Reforms vs. Election Commission of India & Anr.*, a copy whereof is annexed herewith and is marked as ANNEXURE – R/1 from pages 68-123.
9. The respondent Election Commission of India most humbly and respectfully submits that 5 out of 7 phases of the present election process have stood completed as on 20th May, 2024. The next two phases are scheduled to be held on 25.05.2024 and 01.06.2024. In terms of the principles of law laid down



by this Hon'ble Court with reference to Article 329(b) of the Constitution of India, the present application being IA No. 115592 of 2024 is not maintainable and the same deserves to be rejected at the threshold itself. The Election Commission of India, in this regard, places reliance, inter alia, on the following judgments of this Hon'ble Court:

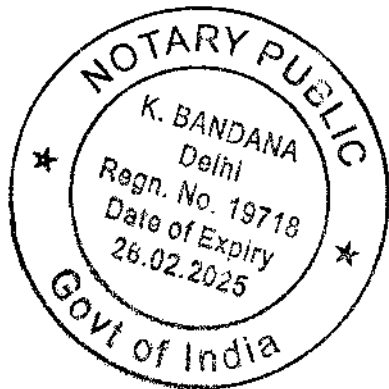
Sl. No.	Name of the Case	Citation	Relevant Paragraphs
1.	N.P. Ponnuswami v. Returning Officer, Namakkal Constituency & Ors.	1952 (1) SCC 94	12-14
2.	Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.	(1978) 1 SCC 405	92
3.	Manda Jaganath v. K.S. Rathnam & Ors.	(2004) 7 SCC 492	8, 12-14, 22
4.	Satta Panchayat Iyakkam v. Chief Election Commissioner	2016 SCC Online Mad 6867	10
5.	Chief Election Commissioner Election Commission	1994 SCC Online AP 272	32



	of India New Delhi v. Dr. Alladi P. Raj Kumar		
6.	Atul Kumar & Anr. v. Election Commission of Bharat & Anr.	PIL No. 17/2022 before the Hon'ble Allahabad High Court (Lucknow Bench)	PIL is not an exception to Article 329. Paragraph number not mentioned.

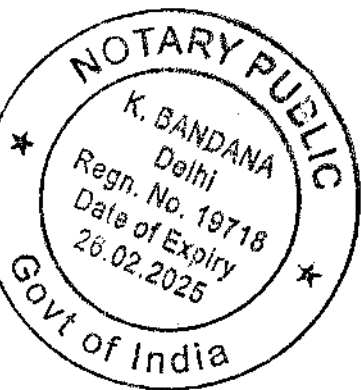
10. That by reiterating the prayer, the present IA and the petition are not maintainable and would deserve to be rejected at the threshold itself on behalf of the respondent Election Commission of India, the following further preliminary submissions /objections are being submitted for the kind consideration of this Hon'ble Court and which are without prejudice to each other:

- (i) The petitioner in this writ petition, which is pending for last more than 4 years, while filing the present IA No. 115592/2024, did not state/inform this Hon'ble Court of the judgment of this Hon'ble Court dated 26.4.2024 in W.P. (Civil) No. 434/2023 - *Association for Democratic Reforms vs. Election Commission of India & Anr.*, and the said decision had been suppressed and concealed by the same petitioner, i.e., Association for Democratic Reforms & Anr. On this



ground also, the present application deserves to be rejected at the threshold itself.

- (ii) It is further respectfully submitted that the present application is also founded on completely untrue and false allegations. It is respectfully submitted that in the hearing before this Hon'ble Court in W.P. (Civil) No. 434/2023 - *Association for Democratic Reforms vs. Election Commission of India & Anr.*, on the second day of final hearing, the petitioner had relied upon a News Report of Manorama to contend that there was variance in the operation of the EVMs. A copy of the said News Report dated 18.04.2024, annexed herewith and marked as ANNEXURE - R/2 (from pages 124-126) was handed over on behalf of the Petitioner and whereby the Election Commission of India was required to verify the allegations against EVM contained in the said article in Manorama and place the true facts before the Hon'ble Court. The inquiries had been made from the local authorities by the Election Commission of India. It was found that the said News Report was entirely untrue and was false. This position was placed before this Hon'ble Court. It is submitted that even now the petitioner has indulged in relying upon untrue and false allegations in filing the present IA No. 115592/24 before this Hon'ble Court. The petitioner did not disclose the fact of making similar untrue and false allegations, based upon a false News



Report in Manorama, while filing the present application. It is respectfully reiterated that the judgment of this Hon'ble Court in W.P. (Civil) No. 434/2023 by the same petitioner has also not been disclosed in the present application.

- (iii) It is submitted that the substance of the W.P. (Civil) No. 1382/2019 and the present IA are almost similar and are to the same effect. It is submitted that the petitioner in W.P. (Civil) No. 1382/2019 and the petitioner in W.P. (Civil) No. 434/2023 is by the same petitioner, namely, Association for Democratic Reforms. It is submitted that the various aspects in relation to the provisions of Rule 49S and Form 17(c) were agitated and were considered by this Hon'ble Court in the judgment dated 26.04.2024. The petitioner, after having failed in its pursuit/design in its attempt, resulting in the judgment dated 26.04.2024, had then [in an impermissible and mischievous manner, by misusing the process of law] filed the present IA No. 115592/2024 in W.P. (Civil) No. 1382/2019 on 10.05.2024. This clearly demonstrates the design of keeping one or another case alive in the midst of election. The practice of creating false narrative and creating suspicion in the minds of voters becomes much more discernible by the simultaneous one side campaign undertaken on social media immediately after court proceedings. Thus, this



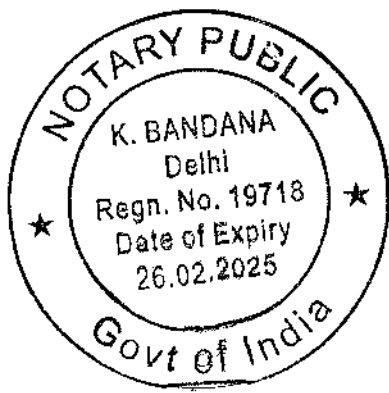
application is not maintainable and deserves to be rejected on the threshold itself. Besides and in addition to the principles laid down in this behalf under Article 329(b) of the Constitution of India, it is submitted that the present application is also not maintainable for suppression and concealment of relevant facts, making untrue and false allegations and also by the principles of res judicata and constructive res judicata, as laid down by this Hon'ble Court. It is submitted that the petitioner, having raised various aspects in relation to Section 49S and Form 17C before this Hon'ble Court, where detailed submissions on behalf of the Election Commission of India had also been considered and this Hon'ble Court, upon getting satisfied with the integrity of the entire election process, arrived at its conclusion, as recorded and incorporated in its judgment dated 26.04.2024. The principles laid down by this Hon'ble Court in its judgment dated 26.04.2024 [suppressed and concealed from this Hon'ble Court in the present I.A.] also covers and fully applies to the present writ petition, which also deserves to be rejected by this Hon'ble Court. In any case, it is most humbly submitted that the filing of the present application in this writ petition by the same applicant, in such manner, deserves to be rejected at the threshold itself.

It is further respectfully submitted that this Hon'ble Court had also witnessed and observed in the



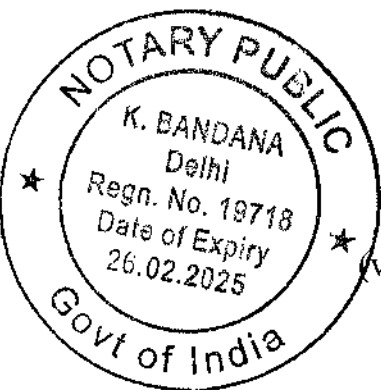
proceedings in W.P. (C) No. 434/2023 that the real objective of filing such repeated petitions and applications, as it was also articulated before this Hon'ble Court on behalf of the petitioner that its objective/design/desire is to compel the Election Commission of India and also the Indian Nation to roll back to the process of conducting elections, at such a large scale, not by the Electronic Process but by retrograde step of going back to the conduct of the elections by Paper Ballots. Such a contention, it is respectfully submitted, made before this Hon'ble Court was a clear expression and conclusive evidence of objection of certain quarters to push back the Election Commission of India and the Indian Nation, being a role model for a number of other countries for conducting elections at such large scale through the electronic methodology, to go back to the paper ballot system.

- (v) It is apparent that the present petition as well as the present IA is yet another attempt on the part of the same petitioner, having failed to succeed before this Hon'ble Court when the judgment dated 26.4.2024 was pronounced, to once again approach this Hon'ble Court in a matter pending for last 4 years and by concealing the fact of the judgment of this Hon'ble Court, to file the present application once again within days, founded on untrue and false allegations to somehow continue to



create prejudice/suspicion/doubts/integrity of the process of election and to succeed in its mala fide design to gain support for its campaign from Electronic Voting Machines to Paper Ballots.

(vii) The present IA No. 115592/24, filed by the same petitioner, are founded on untrue and false allegations. The relief prayed for by them, apart from the fact that it is not maintainable at the threshold itself, would also be barred being contrary to the legislative mandate given by the Representation of the People Act, 1951 and the guidelines made thereunder for 'the conduct of the elections. The prayers, which have been made by the same petitioner against the Election Commission of India are, in fact, contrary to the statutory mandate and, therefore, even otherwise there is no requirement for the Election Commission of India to take steps which are desired and prayed for by the same petitioner [which are contrary to the legislative mandate as incorporated in the Conduct of Election Rules, 1961 made under the 1951 Act] and, therefore, no prayer for mandamus would even otherwise be maintainable and would deserve to be rejected by the orders of this Hon'ble Court.

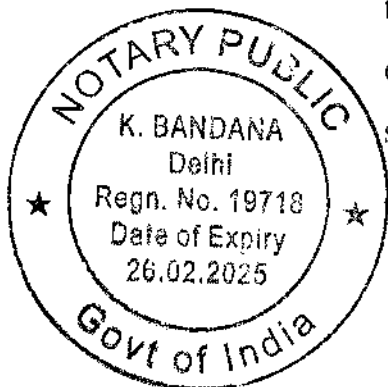


(viii) The continuing mala fide attempt by the petitioner Association for Democratic Reforms by repeatedly creating suspicion by making untrue and false allegations, have been adversely commented upon by

this Hon'ble Court in the judgment dated 26.04.2024 in W.P. (C) No. 434/2023 and the relevant portion thereof is reproduced as under:

"8. [...] This, in essence captures the underlying weakness in the petitioning association's entire case, inasmuch as the only grounds for the reliefs sought lie in the realm of apprehension and suspicion."

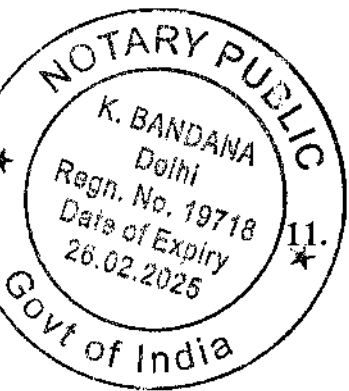
- (ix) The above-mentioned observation made by this Hon'ble Court further makes it clear that why the same petitioner has withheld and suppressed the judgment of this Hon'ble Court dated 26.04.2024 while filing the present IA No. 115592/2014 and thereby disintitiled itself from any indulgence from this Hon'ble Court in the present I.A. – which even otherwise is not maintainable, is barred and in any case deserves to be rejected by the orders of this Hon'ble Court.
- (x) It is further submitted that the procedure and mechanism for any election process, which is divided into phases, even otherwise cannot be changed/alterd midway and when any such alteration would also be not in conformity with the legislative mandate incorporated in the statutory rules strictly adhered to by the Election Commission of India in conducting any election. This submission is without prejudice to the submission on behalf of the Election Commission of India that the present IA and the writ petition are not



maintainable, also in view of the principles of law laid down under Article 329(b) of the Constitution of India.

(xi) It is respectfully submitted that five out of seven phases of the election process, as per the laid down statutory procedure, have already stood concluded. The remaining two phases on 25.04.2024 as well as on 01.06.2024 also deserve to be carried out and concluded in the same manner and procedure, which is mandated by law and where the satisfaction of this Hon'ble Court had also stood achieved through the judgment dated 26.04.2023 passed by this Hon'ble Court.

(xii) It is respectfully reiterated that another attempt to create a mala fide suspicion and integrity of the election process by the same petitioner by making untrue and false allegations for achieving its true design of discrediting the electoral process by creating false narratives, the Election Commission of India respectfully submits, would not get permitted by the orders of this Hon'ble Court and the present application would also deserve to be rejected at the threshold itself.

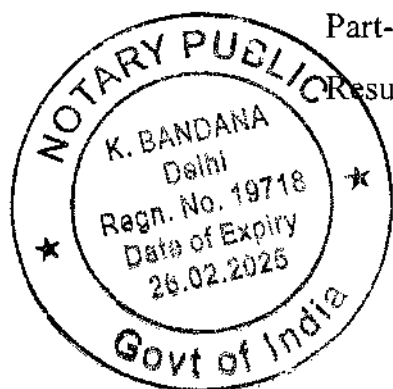


11. Without prejudice to the submissions made hereinabove, [which are without prejudice to each other], praying for rejection of the present application / petition at the threshold itself, it is further respectfully submitted that even

otherwise, there is no truth substance in the allegations made and the contentions raised on behalf of the petitioner/applicant.

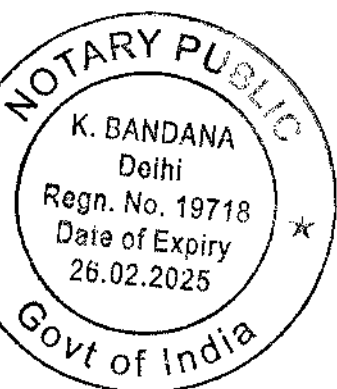
12. For the convenience of this Hon'ble Court and for further appreciation of the contentions / allegations made in the present application, it is most respectfully submitted that the prayers made in the main writ petition filed in 2019 and now in the present I.A., bearing a typed date of 26.04.2024 are virtually to the same effect. The tabulated chart reproducing the prayers made in the main writ petition on the one side and made in the present I.A. on the other side, is annexed as ANNEXURE – R/3 (from pages 127 to128)

13. The present Interim Application has been filed by the Petitioner for seeking directions from this Hon'ble Court to direct the Answering Respondent to disclose authenticated record of voter turnout by uploading on its website scanned legible copies of Form 17C Part-I (Account of Votes Recorded) of all polling stations after each phase of polling in the ensuing General Elections to Lok Sabha, 2024 and to provide in public domain a tabulation of the constituency and polling station wise figures of voter turnout in absolute numbers and in percentage form in the aforesaid election. Furthermore, the Petitioner has also sought disclosure of Part- II of Form 17C, which contains the candidate-wise Result of Counting, after the compilation of results.



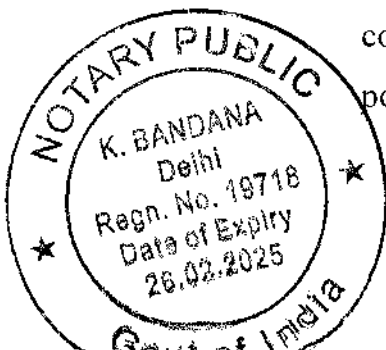
14. While reiterating the submission on behalf of the Election Commission of India that the present application is not maintainable, it is submitted that this Hon'ble Court – in the detailed hearing resulting into the judgment dated 26.04.2024, had considered all such related aspects i.e. related to Rule 49S as well as Form 17C. There had been no further permissibility for this petitioner to seek to raise, in a completely impermissible manner and by misusing the process of law, further allegations in that regard. It is submitted that *vide* order dated 17.05.2024 this Hon'ble Court granted time to the Answering Respondent to file a reply to the present Interim Application.

15. It is submitted that to the main writ petition filed in the year 2019, a detailed Counter Affidavit had been filed on behalf of the Answering Respondent on 15th April, 2022 opposing the main petition by giving the detailed descriptions demonstrating complete absence of any truth or merit in the contentions raised on behalf of the Petitioner. It is submitted that even when the detailed counter affidavit had been filed on 15.04.2022, since there was no merit or substance in the allegations made by the petitioner, as was demonstrated / established by the contents of the counter affidavit, the petitioner could not and had not expressed any disagreement therewith and had never filed any rejoinder in the main writ petition. The obvious design was to not raise the issue before the start of election but to keep it pending and suddenly raise it after the commencement of elections.



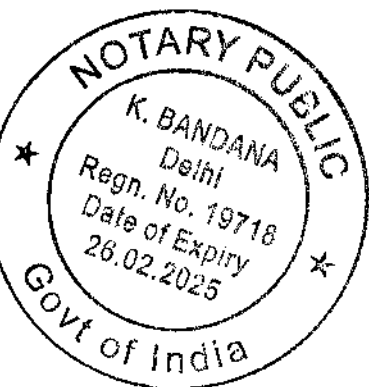
16. It is submitted that in the detailed submissions made by the Answering Respondent in the counter affidavit filed on 15.04.2022, inter alia, the following has been submitted:

- (i) That the voter turnout data, as available on the 'Voter Turnout App' [non-statutory], is only tentative or provisional in nature and through the secondary source. On the other hand, the votes counted are reported as per the statutorily-created mechanisms. The tentative / provisional figures from secondary source can never be the final turnout figure as the final figures are on the basis of the statutory forms and the figures contained therein and are dealt according to the procedure laid down. The Petitioner has based its contentions/allegations on the fallacious assumption that the data available on the 'Voter Turnout App' was the basis on which the results are declared by the Election Commission of India.
- (ii) Under the statutory mandate, the declaration of result by the Election Commission of India is only by the concerned RO – is only on the basis of the statutory data recorded in the aforementioned Form 17C and basis whereupon the result is declared by the RO in Form 21C.
- (iii) It is pertinent to note at this juncture that Form 17C consists of two parts and Part I is filled at the time of poll and Part II is filled at the conclusion of counting.



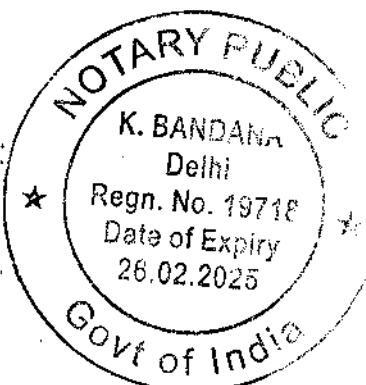
On one hand in Part I, Column 7 is meant for objectively noting whether the number votes recorded in the voting machine tally with the number of voters who casted valid votes, and on the other in Part II, at the bottom of the table recording the number of votes casted in favour of each candidate after counting, there is an objective noting as to whether the total number of votes counted tallies with the total number of votes polled as recorded in Part I of Form 17C.

- (iv) That a perusal of Rules 49S and 56C of the Conduct of Election Rules, 1961 clearly points out that at the close of the poll, the presiding officer prepares an account of votes recorded in Part-I of Form 17-C, as per the requirement under Rule 49S of the Conduct of Election Rules 1961. The same is then made *available to every polling agent present at the close of the poll by the presiding officer, after obtaining a receipt and attestation.*
- (v) It is submitted that there are approx. 2000 to 3000 booths in every Lok Sabha constituency. The incharge of every booth is known as the Presiding Officer. There is one overall incharge of the constituency described as the Returning Officer. The Returning Officer is located at one place where the Strong Room, generally, is also set up. The booths may be at far off places from the Strong Room. In certain constituencies, in some areas, sometimes it

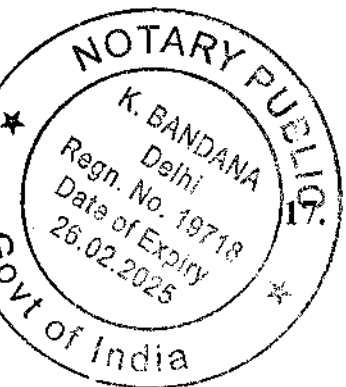


takes a lot of time to bring the sealed EVMs, copies of original Form 17-C etc. by each of the Presiding Officer of every booth to the Strong Room. Each of the Presiding Officer is obliged to hand over the EVMs and the original record etc. in the Strong Room. The Returning Officer, as per the statutory scheme, looks at the EVMs and other original record placed in the Strong Room and sealed, only when the process of counting is to begin. The sealing of the strong room after arrival of all polling parties and opening it on counting day is done in the presence of all the candidates and their authorized representatives.

- (vi) In the counting process, the Returning Officer has the votes recorded in an EVM counted by pressing the 'Result' button provided in the control unit. The same is then recorded in Part-II of Form 17-C, which is then signed *by the counting supervisor and also by the candidates or their election agents or their counting agents present*, as per the mandate under Rule 56C of the Conduct of Election Rules 1961. It is also relevant to mention herein that Part-II of Form 17-C also provides that the Counting Supervisor ought to mention whether the total number of votes shown in Part-II on Form 17-C tallies with the total number of votes shown against item 6 of Part-I on Form 17-C or whether any variance is noticed between the two totals.



- (vii) That the data recorded in the Form 17-C at the close of the poll is the basis on which the total number of votes polled at any polling station is ascertained. It is further submitted that the recorded data is statutory in nature. The results of the election are only declared by the RO thereafter as per Rule 64 of the Conduct of Election Rules 1961.
- (viii) That the present petition/application is based on surmise and conjectures and fails to appreciate the fundamental difference that the voter turnout data is facilitative and a transparency initiative of the Commission, in addition to extant statutory design of providing exact turnout data of each polling booth to the polling agents of the candidates. The present application clearly ignores the disclaimer attached to it including to the effect that the figures in the non-statutory Voter Turnout App on secondary data and is only on provisional basis. That the voter turnout app contained a clear disclaimer issued by the Commission at all times that "this provisional voter turnout data is made available by ROs on regular intervals, which is collated by the Chief Electoral Officers and ECI for wider dissemination and to ensure transparency in information dissemination".



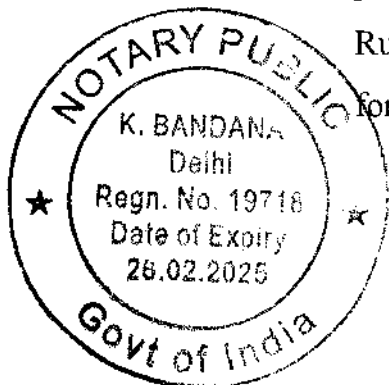
It is submitted that the perusal of prayers made in the main petition and the prayers made in the present Interim

Application shows that the Petitioner is essentially seeking the same reliefs.

18. Without prejudice to the submissions made hereinabove, it is humbly submitted that in any case, granting of any relief on the Interim Application would not be permissible and the main writ petition with the same prayer would deserve to be rejected by the orders of this Hon'ble Court.

The prayer of the Petitioner in seeking a mandamus in absence of any legal duty is not maintainable:

19. It is submitted that in the main petition as well as the present Interim Application, the Petitioner is essentially seeking to direct the Answering Respondent to put in public domain the legible copies of Form 17C (Part I) after conclusion of poll and of Form 17C (Part II) after conclusion of counting. As per the law enacted by the Parliament in its legislative wisdom, the Answering Respondent has been mandated to provide Form 17C (Part I) to polling agents of the candidates only under Rule 49S of the Conduct of Elections Rules, 1961 and not in any other manner. Further, Part II of the Form 17C is signed by the Counting Supervisor and counter-signed by the Returning Officer as mandated under Rule 56C of Conduct of Election Rules, 1961. The aforesaid provisions i.e. Rules 49S and 56C of Conduct of Elections Rules, 1961 (hereinafter 'CER, 1961') are reproduced below for ease of reference:



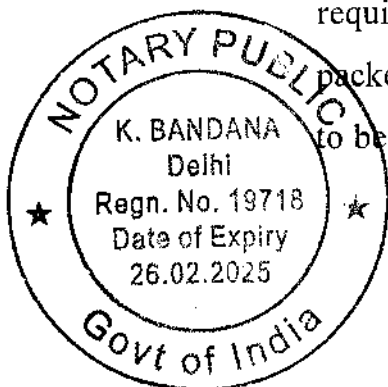
(c) corresponding entries made in a result sheet in Form 20 and the particulars so entered in the result sheet announced."

A flow-chart depicting the use and storage of Form 17C in the electoral process is marked and annexed herewith as ANNEXURE-R/4 (from pages 129)

20. It is submitted that there is no legal mandate to provide the Form 17C to any person other than the candidate or his agent. The Petitioner is trying to create an entitlement when none exists in the law by way of filing an application in the middle of the election period. It is respectfully reiterated that for credible multiple practical reasons, the result – as per the statutory mandate, is declared on the basis of the data contained in Form 17C at the time as prescribed under the statutory rule regime in existence.

All election papers are sealed after close of polls as per Rule 49U and the same are transmitted to the Returning Officer as per Rule 49V of Conduct of Elections Rules, 1961 for safe custody only:

21. It is submitted that as per the laid down law, after the close of poll, all election papers relating to the election are required to be sealed by the Presiding Officer in separate packets as per the provisions of Rule 49U and the same are to be transmitted to Returning Officer as per Rule 49V. The



“Rule 49S. Account of votes recorded.— (1) The presiding officer shall at the close of the poll prepare an account of votes recorded in Form 17C and enclose it in a separate cover with the words ‘Account of Votes Recorded’ superscribed thereon.

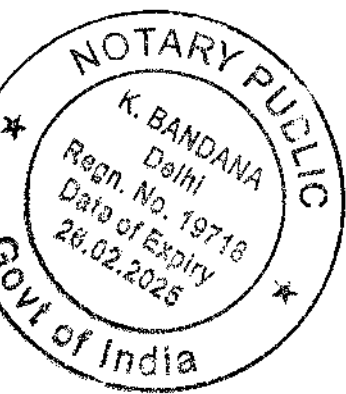
2) The presiding officer shall furnish to every polling agent present at the close of the poll a true copy of the entries made in Form 17C after obtaining a receipt from the said polling agent therefor and shall attest it as a true copy.”

“Rule 56C. Counting of votes.— (1) After the returning officer is satisfied that a voting machine has in fact not been tampered with, he shall have the votes recorded therein counted by pressing the appropriate button marked “Result” provided in the control unit whereby the total votes polled and votes polled by each candidate shall be displayed in respect of each such candidate on the display panel provided for the purpose in the unit.

(2) As the votes polled by each candidate are displayed on the control unit, the returning officer shall have,—

(a) the number of such votes recorded separately in respect of each candidate in Part II on Form 17C;

(b) Part II of Form 17C completed in other respects and signed by the counting supervisor and also by the candidates or their election agents or their counting agents present; and



Rules 49U and 49V are reproduced below for ease of reference:-

"49U. Sealing of other packets.—(1) *The presiding officer shall then make into separate packet,—*

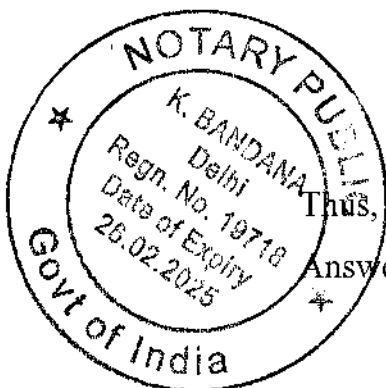
- (a) *the marked copy of the electoral roll;*
- (b) *the register of voters in Form 17A;*
- (c) *the cover containing the tendered ballot papers and the list in Form 17B;*
- (d) *the list of challenged votes; and*
- (e) *any other papers directed by the Election Commission to be kept in a sealed packet.*

(2) *Each packet shall be sealed with the seal of the presiding officer and with the seal either of the candidate or of his election agent or of his polling agent who may be present at the polling station and may desire to affix his seal thereon."*

"49V. Transmission of voting machines, etc., to the returning officer.—(1) *The presiding officer shall then deliver or cause to be delivered to the returning officer at such place as the returning officer may direct,—*

- (a) *the voting machine;*
- (b) *the account of votes recorded in Form 17C;*
- (c) *the sealed packets referred to in rule 49U; and*
- (d) *all other papers used at the poll".*

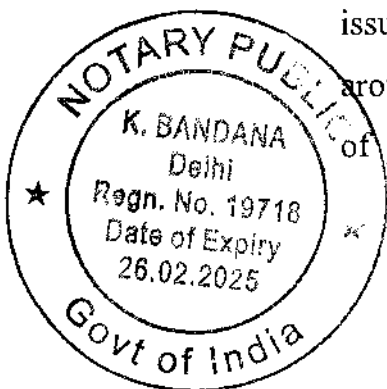
Thus, as per watertight mandate under law, the Answering Respondent is required to provide Form 17C



(Part I) to polling agents of the candidates only under Rule 49S of the Conduct of Elections Rules, 1961 and not to anyone else. Therefore, nowhere in the law is there any mandate to share the information apart from candidate or his agent.

Purpose, Process and Consequence of sharing Voter Turnout data from Non-Statutory Voter Turnout App and Statutory Form 17C are distinct:

22. The Voter Turnout Disclosure method can be divided into two parts - (i) *firstly*, as per statutory mandate, the statutory Form 17C is furnished to polling agents and (ii) *secondly*, as per voluntary non-statutory disclosures, the Answering Respondent discloses voter turnout data through its app, website and various Press Releases.
23. It is submitted that purpose of the aforesaid two methods of disclosing the voter turnout information from Non-Statutory Voter Turnout App is different. While the statutory mandate is to furnish the information in the statutory Forms only to the candidate or his agents (statutory claimant), the Answering Respondent as a measure of voluntary and non-statutory disclosure, publishes the information in the Voter Turnout app continuously, at intervals of two hours on poll day, to reflect live turnout data. The Answering Respondent issues two press notes on the date of poll, the last being at around 23:45 hours after waiting for the maximum number of polling parties to return. Next day scrutiny of polling

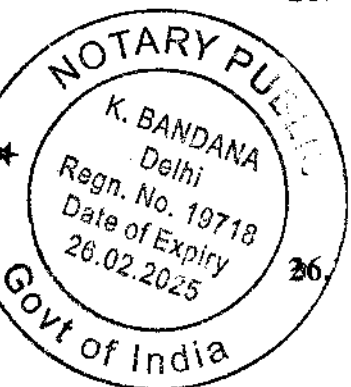


station level records is conducted before candidates. Voter turnout App continuously keeps reflecting data on live basis. On the other hand, Form 17C is given to agents of candidates after the close of poll on polling day itself as per the statutory requirement and the information in the Form 17C gets set in stone.

24. To further clarify / describe the backend processes adopted by the Answering Respondent for publishing voluntary non-statutory voter turnout data, it is submitted that the institutional memory of the Answering Respondent reflects that the curiosity of the public, stakeholders and Press with regard to voter turnout trends and, thereafter, round wise results and result trends, at large, has always been an expectation. Previously, before the IT platform developed by the Answering Respondent came into vogue, such information used to be gleaned in a decentralized manner from returning polling parties, polling agents, sector magistrates and such sources and, then, Press and TV channels used to do their own backend evaluations to project larger trends.

25. The Answering Respondent in the year 2014, took a decision of developing a broad method and framework for collating such information at national level as a facilitative measure, through the use of IT platforms.

26. The core framework of this general public disclosure, which was and is indisputably non-statutory, was facilitative. The



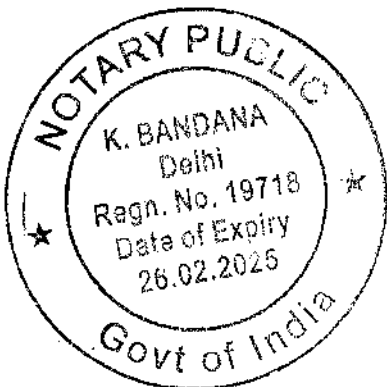
framework cannot supplant the statutory disclosures and the data contained therein (Form 17 A, Form 17C and such like) which, by law, have timelines and authorized capacities, operating as embargo to their public disclosures. The facilitative framework had to balance between the speed of the disclosure to the public vis-a-vis a pin point accuracy and, therefore, in time escalated ladder on the polling day, the broad trends were given the speed priority with clear disclaimers with regard to their accuracy and with the fact that they are liable to change. Nevertheless, systems were developed, in a non-statutory framework, encouraging the Chief Electoral Officers and District Election Officers to ensure and improve both speed of data collation, as well as accuracy.

27. It is submitted that the aforementioned IT platform, therefore, is not constitutive of the data capture. It simply is reflective of the data capture taking place through various non-statutory sources, as is explained below, fed by data operators and then collated on the IT platform, to be publicly disclosed. Further, a time pattern of two-hour disclosure has also been stabilized on the day of poll which basically time slot data disclosures as follows:-

Upto 9:00 AM,

at 9:30 AM,

Upto 11:00 AM, at 11:30 AM,



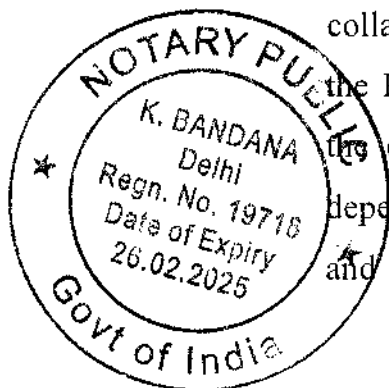
Upto 1:00 PM, at 1:30 PM,

Upto 3:00 PM, at 3:30 PM,

Upto 5:00 PM, at 5:30 PM.

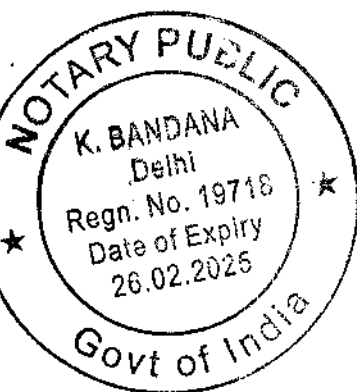
Thereafter, there is a data collation and data disclosure at 7:00 PM and thereafter, it continues through the night, for reasons as explained hereinbelow in the subsequent paragraphs.

28. It is humbly submitted that a "Sector Magistrate" is responsible for 8 to 10 polling stations and carries the core statutory responsibility of reserve EVMs and other legal requirements to deal with possible technical or other disruptions in polling stations under his command. The Sector Magistrate has been given an additional "non-statutory" responsibility to collect the voter turnout data, in percentage, from the polling stations under his control. It may be noted that the statutory regime of not allowing any outside device, including the mobile phones within the polling stations, automatically results in an orally reported and heard data trend given by the Presiding Officer and so noted by the Sector Officer, who has to move in the remaining polling station. Thereafter, Sector Magistrate collates the data he has so heard and noted and transmits to the ROs team at the assembly segment level. Once again the data transmission can be oral or by WhatsApp/SMS, depending upon connectivity. The data is therefore noted and then the feeding begins. The Returning Officer



generally has provisions for 8 to 10 data feeders, who start feeding this data in the ENCORE system of the ECI. At this stage, speed is given higher weightage and therefore, minimum filters of cross checks are in play with the understanding that given the all India volume of data that would be fed in, minor errors, factual, logical or human, can be broadly absorbed in wider trend. Hence when this data is released on the day of the poll, the disclosure about its tentative and non-statutory nature becomes relevant and important, both as having nexus to the modality of the capture, as well as a general industry standard for such circumstances.

29. It is therefore, most humbly submitted that turnout disclosures on the day of poll in voter turnout app is updated in percentage terms. At 7:00 PM, the Commission, keeping in view the Press publication time, issues a press release giving percentages as collated at that particular point of time. It is pertinent to mention here that voting continues at many polling stations for such voters who have reached before prescribed time of close of poll, which is generally kept at 18:00 hours. Though, the APP continues to have data updation and is visible to public at large, the Commission has started issuing a press note at 23:30 - 23:45 hours giving state wise voter turnout percentage. Many polling parties from various polling stations return after close of poll quite late and sometimes, on the next day depending upon the distance and inaccessibility of terrain. Many such parties



trek long hours and even get airlifted the next day. In many cases, re-polls also take place generally on 3 days after poll. The escalatory variation, thus, is inbuilt into the situation.

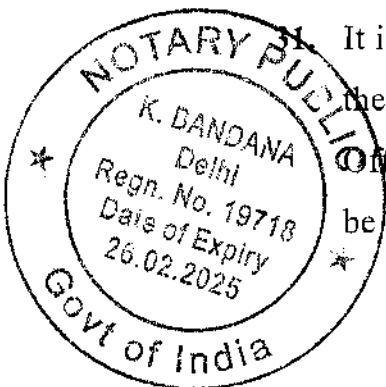
To illustrate, a chart for phase 1 to 5 disclosures at 7:00 – 08:00 PM and at 11:00 PM - 12:00 AM is annexed herewith as ANNEXURE – R/5 (from pages 130)

30. It is further submitted that when the poll actually closes at the respective polling stations as per Rule 43 of Conduct of Election Rules, 1961 a copy of Form 17C, marked as true, is given to the polling agent present at the polling station. It is pertinent to note that the polling station has no wherewithal to directly upload the said form. Further, it has to be understood that the legal stacking up of the credibility of the data is layered as below-

- a. The data contained in Form 17C
- b. The votes cast and recorded in the EVMs
- c. The comparison between the votes recorded in the EVM and paper slips of VVPAT.

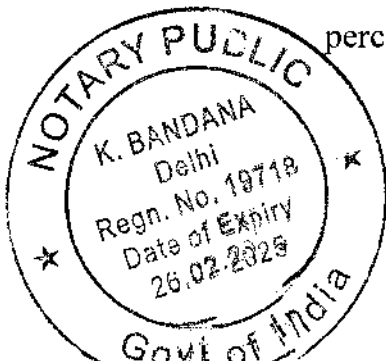
There exist a legal hierarchy/forensic rules, as to which will prevail.

It is further submitted that when the polling parties return at the close of the poll to collection centre at Returning Officer's / Assistant Returning Officer's locations, it has to be appreciated that the core election material such as EVM,

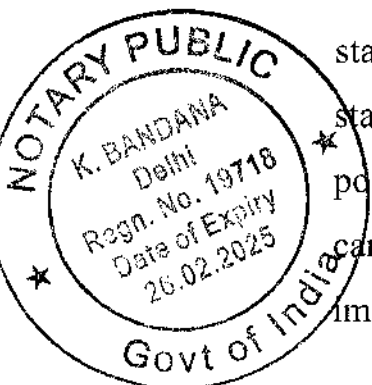


statutory forms, other papers (used and unused), seals, etc have to be very carefully accounted for and are to be deposited back. This is the statutory priority. Given the volume of arrival at the level of checking, before the deposit, the responsibility of giving the non-statutory facilitative disclosure of the close of poll data is carried out in parallel. Various CEOs have designed their own non-statutory forms and trained their respective polling teams to note down, in parallel, the end of poll voter turnout data when the EVM is closed and sealed. These non-statutory formats are deposited by the polling parties to the IT teams who then continue to update the data throughout the night as the teams arrive. Once again, no foolproof checking method with various formats is in play as that would delay the data capture itself. However, training and persuasion has been resulting in a higher consistency of data capture both in terms of speed and accuracy. Nevertheless, it is trite to state that the disclosures are at best, provisional and designed to be only facilitative for enhanced transparency.

A chart showing the trend of release of data on poll day (Day P) , P+1 day and gap of number of days in releasing final data since 2019 general elections and in Legislative elections conducted thereafter is annexed as **ANNEXURE – R/6** (from pages 131 to 136) which would reveal that there has always been a gap, and will remain so, in percentage of data at day P, P+1 and P+ 6/7.



32. It is further submitted that as has been explained above, the legal regime with regard to Form 17C is peculiar that while it authorizes the polling agent at the close of the poll to get a copy of Form 17C, a general disclosure of the nature as sought by the Petitioner is not provided in the statutory framework. The Rules do not permit giving of the copy of Form 17C to any other entity. The contention of the petitioner creates a situation where any member of the public or the elector at the Polling Station can demand a copy of Form 17C on the argument that it partakes into a character of a public document. The rule position w.r.t. Form 17C is very clear. After the end of poll, when the polling party submits the same to the RO, RO [under Rule 49V(2) of Conduct of Election Rules, 1961] has to ensure that along with the EVM and other materials, said Form 17C in original is safely stored in Strong Room. Once again the legal framework has a direct and intelligent nexus to the end of poll process which concludes by depositing all the vital physical election vectors such as forms, envelopes, seals, EVMs and such like, as a complete priority. If an additional responsibility and wherewithal is to be created to scan any Form, before going to the Strong Room, the statutory priority would be at risk. The load for the non-statutory and facilitative work that can be placed on the polling parties or at the RO Reception Centre, has to be carefully judged on both the grounds of legal impermissibility and practical undesirability.

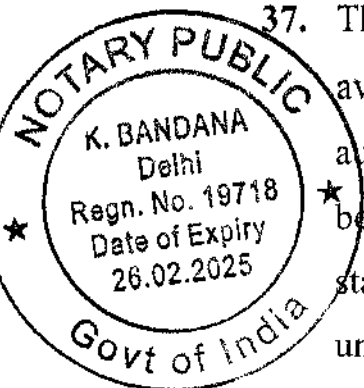


33. It is further submitted that the data disclosure by the Answering Respondent transitions after the close of poll phase and enters what is called the “end of poll” phase on Day 2 what can be called P+1 (i.e. Poll Day + 1). This phase corresponds to what is defined as “scrutiny of papers”. This takes place by the RO and his team on P+1. At this stage, the data disclosure framework shifts to accuracy of data being captured. The portal is opened and as the scrutiny of the polling stations takes place, the data is fed. It is once again noted that the Answering Respondent is giving/ disclosing data that is beyond Form 7C and contains details such as male, female, third gender and such like gleaned from other non-statutory forms as PS 5. This establishes the point that the data being captured is outside the statutory framework and, does not have one to one relation with any particular statutory format. At best, it has intersections with the data that is also going in with the statutory formats.
34. It is therefore most humbly submitted, at the cost of repetition, that this entire disclosure framework comes with the rider of possibility of human, logical and mathematical error and therefore, comes with the disclaimer and proceeds with its own speed, depending on capacity of the various ROs and given the distance and other criteria in several constituencies of the country.

A chart indicating the “close of poll” data in Phase 1 to 5 as finalized, and the variation and deviation in percentage,

as finally revealed, is annexed as ANNEXURE - R/7 from pages 137

35. It is submitted that the higher pedestal of Form 17A flows from the guarantee of the secrecy of vote. Further, Form 17C is designed to be immutable paper trail which ensconces the EVM and concludes the poll. The form is co-shared with its content, contemporary to the point of time, to the election agent and, becomes relevant at the day of counting in terms of Part II.
36. It is submitted that a wholesome disclosure of Form 17C is amenable to mischief and vitiation of entire electoral space. At the moment, the original Form 17C is only available in the Strong Room and a copy only with the polling agents whose signature it bears. Therefore, there is a one-to one relationship between each Form 17C and its possessor. It is submitted that indiscriminate disclosure, public posting on the website increases the possibility of the images being morphed, including the counting results which then can create widespread public discomfort and mistrust in the entire electoral processes.
37. Therefore, the relief claimed, by virtue of a disclosure available to the polling agent, on the understanding that it automatically classifies Form 17C as having no fetters for being generally released on the public domain, is outside the statutory scheme. Further, if Form 17C is seen as an unfettered document then, hypothetically at the end of poll,



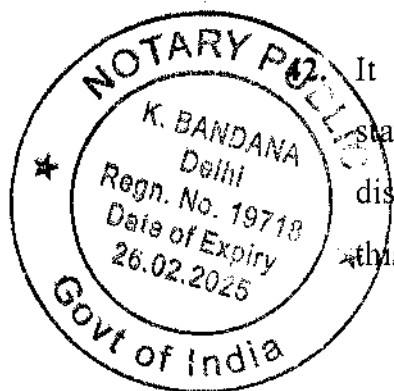
the polling station can be overwhelmed by a large number of public demanding a copy of Form 17C on the argument that it is being given to the polling agent.

38. The statutory scheme of conduct of elections is such that each RO is responsible to conduct elections by exercising statutory functions assigned to him. Thus, each constituency forms a unit from where a candidate acquires the right to contest by following statutory prescribed process and thus, also the right to participate in an election process to ensure fullest transparency, also get copy of Form 17C. Therefore, there is a spatial linkage between RO of the constituencies and candidates and fullest possible disclosure, including sharing of data under Form 17C, is ensured which further forms the basis of candidates' satisfaction in counting process.
39. The above narration of the statutory scheme clearly indicates that Form 17C partakes into a document available for wider public disclosure posterior to the counting. The simple reading and, what has been continuously interpreted by the Commission, is that Part I and Part II of Form 17C are non-segregable from the perspective of Election Commission. The relationship between Part I and Part II completes the election process, and only thereafter, the electoral scheme makes the forms in its entirety available for public inspection. The limited disclosure to a counting agent underwrites the design of the election steps and process contained in the statutory scheme.

40. It is further submitted that the consequence of variance of information furnished in the statutory Forms, in case of a given booth and the circumstances which had prevailed there – may lead to a decision for a re-poll. It may also become a subject matter of an election petition. The candidates as well as the voters have the statutory remedy of filing an election petition under Section 80 of the Representation of the People Act, 1951 if they have any cause of action relating to any variance in statutory forms mentioned above. However, no such consequence flows from a mismatch of information furnished in a voluntary non-statutory disclosure method such as that published in the Voter Turnout App. It is also relevant to mention that it is the vote recorded and reflected in the EVMs which forms the basis of declaration of results and not the data reflected in the voter turnout app.

41. It is further submitted that for overall integrity of the electoral process and its transparency, several Forms containing facts pertaining to Electoral Roll, EVM and close of poll- are co-shared with the relevant stakeholders - being the political party and the candidate or his agents contemporary to the point of time as the particular electoral step / process unfolds.

It is further submitted at the cost of repetition that the statutory claimant with whom Form 17C is shared / disclosed with are the candidates through their agents and this Rule framework has held the field for the last 60 years.

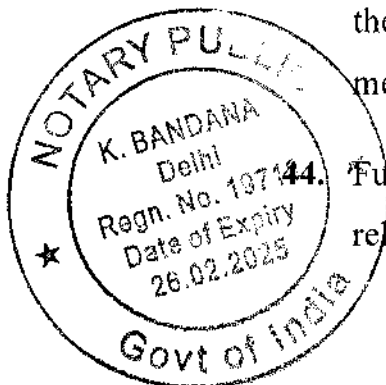


Any change in the same will require amendment to the statutory framework itself. Accordingly, the Answering Respondent has retained its policy of *suo-motu* disclosure and is always attempting to bring time efficiency and data capture efficiency. The Answering Respondent is always in favor of highest form of disclosures and transparency within the statutory framework, and in fact has gone much beyond.

The grounds raised in the present application are baseless and have been responded to by the Commission:

43. It is pertinent to mention that in the main petition filed in the year 2019, the Petitioner had alleged that there were variations in the voter turnout data given by the Commission. As mentioned above, the voters and the candidates have a statutory remedy to challenge the election in their concerned constituency, by way of filing an election petition. However, the Petitioner in the present application has failed to mention a single instance where such candidates or voters had filed an election petition on the basis of the allegations raised by the Petitioner with respect to the General Elections to the Lok Sabha, 2019. This indicates that the allegation of discrepancies in voter turnout data made by the Petitioner in the main petition as well as the present application is misleading, false and based on mere suspicion.

Further, it is submitted that the Petitioner has specifically relied on the voter turnout data published by the Answering

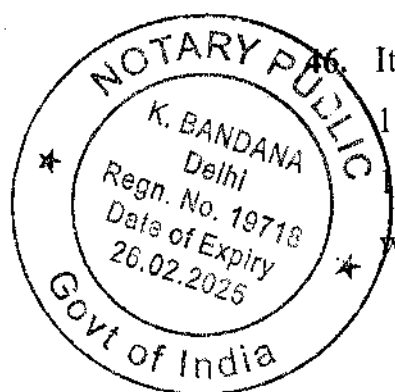


Respondent with respect to the first two phases of the ongoing General Elections to the Lok Sabha, 2024 and has alleged that there was an increase of ~5-6% in the voter turnout data released on the day of polling and in the subsequent press releases for each of the two phases. In this regard, it is submitted that the aforesaid allegation is misleading and is unsubstantiated.

45. It is submitted that the Answering Respondent in the Press Note No. ECI/PN/56/2024 dated 19.04.2024, annexed as ANNEXURE - R/8 (from pages 138 to 143), issued on the date of poll of the first phase of the election, it was mentioned that:

“Tentative figure of voter turnout across 21 States/UTs reported is over 60% at 7 PM [...] The voting percentage is likely to go upwards when reports from all polling stations are obtained as polling is scheduled till 6 PM in many constituencies. Also, voters reaching the Polling stations till the end of polling hour are allowed to cast their vote. Final figures will be known tomorrow after the scrutiny of form 17A”.

(emphasis supplied)

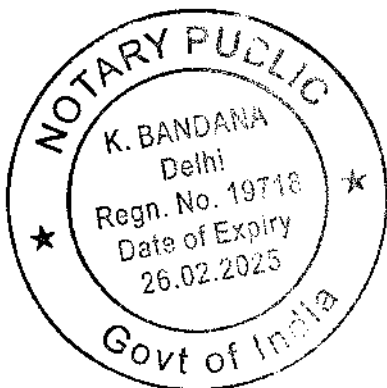


46. It is also pertinent to mention that on the same day i.e., 19.04.2024, the reported turnout had risen to 63.5% by 11 pm and this updated data was also in public domain and was reported by various media outlets including the Times

of India. Thus, the allegation of the Petitioner that the initial turnout on the aforesaid date was around 60% which was sharply increased to 66% *vide* Press Note No. ECI/PN/62/2024 dated 30.04.2024 issued by the Answering Respondent is misleading and has been made with *mala fide* intention. True copy of the article "*Turnout touches 64% in Ph 1 of LS polls, against 66% in '19*" as published by the Times of India on 20.04.2024 is annexed as ANNEXURE-R/9 (from pages 144. True copy of the Press Note No. ECI/PN/62/2024 dated 30.04.2024 issued by the Answering Respondent is annexed as ANNEXURE-R/10 (from pages 145 to 165).

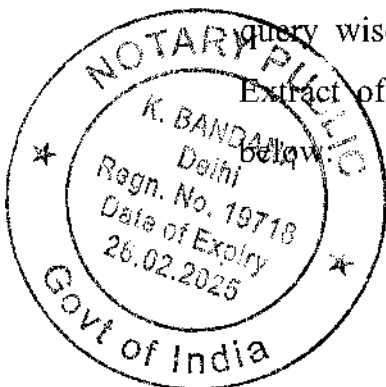
47. It is also apposite to mention that in the Press Note No. ECI/PN/74/2024 dated 07.05.2024, annexed at pg. 166-178 ANNEXURE - R/11, the Answering Respondent published the tentative voter turnout data with respect to the polling in the third phase held on 07.05.2024. In this Press Note, it was mentioned that:

"The voter turnout figures which are approximate as of 8 pm will continue to be further updated on VTR App on continuous basis as various polling parties formally close the poll and hand over Form 17 C to the polling agents of candidates at each of the polling station. As per statutory requirements, voter turnout is to be recorded at every polling station in absolute numbers in Form 17C, which prevails. As an embedded measure of transparency,



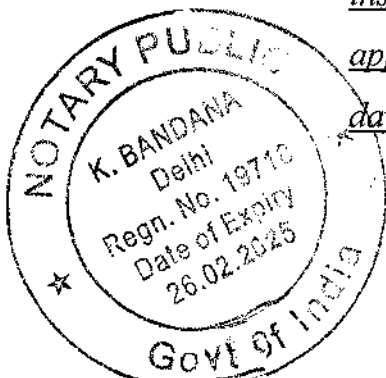
the copies of Form 17C, duly signed by Presiding Officer and all present polling agents, are invariably shared with all present polling agents of contesting candidates. Thus, booth wise data of actual number of votes polled is always available with the candidates, which is statutory requirement."

48. Similarly, the Answering Respondent in the Press Note No. ECI/PN/61/2024 dated 26.04.2024, annexed at pg. 179-184, ANNEXURE - R/12, issued with respect to the polling in the second phase of the election clearly mentioned that the data mentioned was the "approximate voter turnout of 60.96% as of 7 PM".
49. It is further submitted that the main ground for filing the present IA are the letters written by the leaders of opposition parties, wherein apprehension of variance in the initial voter turnout data and the later data published in the press note dated 30.04.2024 has been raised. In this regard, it is stated that the Commission has taken cognizance of this apprehension and written a letter allaying all such fears and bringing the relevant legal position regarding recording of voter turnout data on record. The said letter contains the query wise reply to the six questions raised in the letter. Extract of the relevant portion of the same is reproduced below:



"It is incorrect assertion about any delay and denied upfront. The Commission, on its own motion and to facilitate public at large, has created "Voter Turnout App" which is available in public domain for anybody to download where voter turnout of every PC (to the level of assembly segments/constituency), every State and every Phase of election are displayed live. The "Voter Turnout App" displays estimated approximate voter turnout on poll day every two hours (9:30 am, 11:30 am, 1:30 pm, 3:30 pm, 5:30 pm), then it displays live updation of estimated approximate voter turnout from 7:00 pm onwards till mid-night, as further reports are received from the field. The "Voter Turnout App" is largely a public facilitation measure and may be subject to usu issues of technical functionality at times."

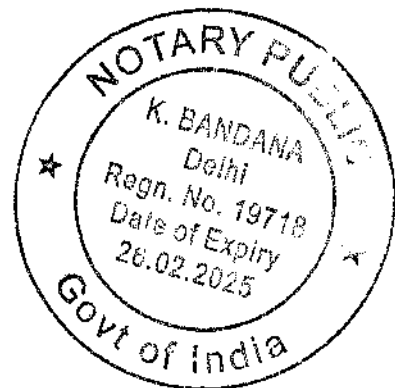
"Normally, after arrival of parties and scrutiny of documents by returning officers, in presence of all candidates and observes, about poll day proceedings, complaints and concerns, the returning officers proceed to update polling station wise exact voter turnout data. After complete data entry, the returning officers publish that data which is instantly visible on voter turnout app updating approximate data published till mid-night of poll day. This process takes P+1 or P+2 days depending



on constituencies and arrival schedule of polling parties due to geographical and weather conditions (known to all candidates). This data may further gets updated for any constituency where repoll is being conducted, on conclusion of repoll and arrival of parties which is normally on P+4 days. Thus, there is no delay in publication of data for a constituency or a State on voter turnout application. Issuance of press note on 30th April 2024 was nothing but presenting the data already displayed and available in App live. It is thus not a delay."

"Nothing has changed this time in the reporting system and hence no justification is required to be given. In fact, "Voter Turnout App" has been improved with new features, like display of phase wise total voter turnout apart from Assembly segment wise, PC wise and State/UT wise voter turnout, so as to make more user friendly."

"It may be noted that the Commission is not legally bound to publish any voter turnout data at aggregate level of a constituency, a State or in a phase of election because voter turnout is recorded at polling station level in statutory Form 17C which is prepared by the Presiding Officer and signed by polling agents of candidates present. Copies of Form 17C are shared with polling agents present immediately, as the strongest measure of

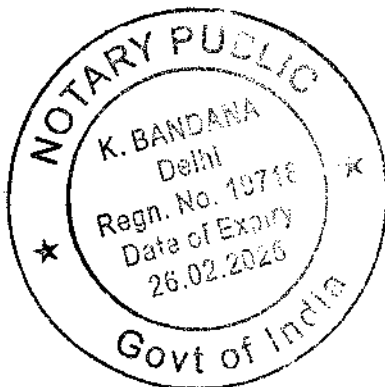


transparency. So, candidates are aware and in possession of exact voter turnout data in absolute numbers even before it is known to ECI."

"While preparing Form 17C, final voter count data as recorded in EVM are also entered in Form 17C which is signed by all polling agents and copy provided. It is clarified that EVM has nothing to do with voter turnout data sharing. EVM follows very strong and transparent administrative safeguards, well known to political parties and candidates."

"It is very clear that such allegations are being made even without understanding content and intent of law on the subject and without appreciating the system already put in place by the Commission to provide voter turnout details without any delay, leave aside 24 hours delay mentioned. Needless to add that Table in Annexure I will reveal that it has been the consistent practice followed by the Commission.

"The very premise that voter turnout data was released late is devoid of facts as it has always been available on the Voter turnout APP. Commission has not changed the design or periodicity of displaying voter turnout data in any manner. Needless to add that polling station wise data of electors and voters is given to agent of the candidate



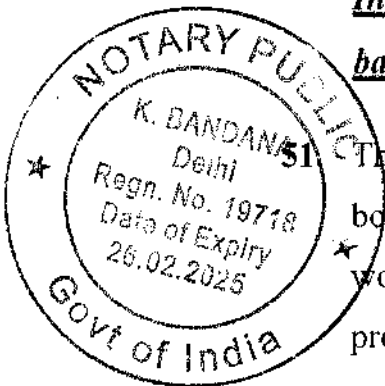
on the day of poll itself at close of poll. The table at Annexure 1 as gleaned from the press conferences held or press notes released after polls, showing factual matrix of release of data across various elections, would testify that there is no unusual delay than what is required to collect data from large number of polling stations. As the table 1, cumulatively in a time series sense, will confirm that this is the general time run, which is required for this purpose”.

(Emphasis supplied)

50. It is pertinent to mention that the Petitioner herein has instituted this application by making the said communications made by the opposition leaders/ political parties as the main ground for seeking the reliefs herein. It is submitted that once the Answering Respondent has responded to the allegations made above by way of issuing the aforesaid letter dated 10.05.2024, which was immediately put in public domain, the grounds for filing the present IA no longer survive.

Incessant suspicions on electoral processes without any basis:

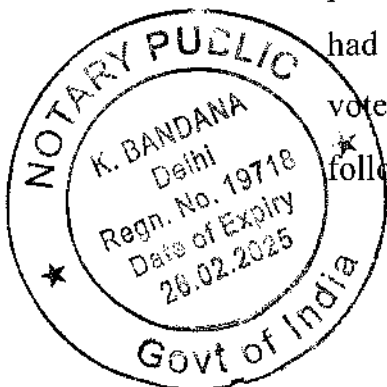
The Commission recognizes that being a constitutional body, it shall always remain subject to public scrutiny and works continuously towards transparency in electoral processes. It is a matter of fact that during various stages of



such processes, such as preparation & revision of electoral rolls, management of EVMs, counting of votes, etc., the Commission has procedures in place which allows the political parties, candidates, their agents and representatives to be part of such processes in order to allay any fears of murkiness and opaqueness.

52. It is humbly submitted that baseless suspicions had led to the filing of a Writ Petition, being *Samvidhan Bachao Turst vs. ECI & Ors.* [W.P.(C) No. 1228/2023] wherein this Hon'ble Court examined the meticulous process of preparing the roll filed by the Commission with fullest possible transparency and disposed of the petition *vide* Order dated 12.02.2024 after taking on record the submissions made by the Commission and expressing satisfaction with the same.

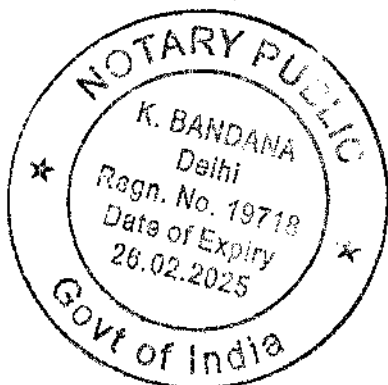
53. However, continuous attempts are made to create doubts about the electoral processes which demotivates the voters. The Petitioner herein had earlier filed a petition titled *Association for Democratic Reforms vs. Election Commission of India & Anr.* [W.P.(C) No. 434/2023, reported as 2024 INSC 341] wherein aspersions were cast over the EVM VVPAT system. However, this Hon'ble Court *vide* judgment dated 26.04.2024 dismissed the petition. While dismissing the petition, this Hon'ble Court had painstakingly perused the entire process of recording of votes in various statutory forms and had observed as follows:



"48. As per instructions issued by the ECI, the presiding officer is periodically required to check the total number of votes cast as recorded in the control unit with the data as recorded in Form 17A.

49. As per Rule 49S, at the close of the poll, the presiding officer is required to prepare an account of votes recorded in Form 17C. This is a detailed form, which in Part I, requires the presiding officer to mention the total number of electors assigned to the polling station, the total number of voters as entered in the register for voters, that is, Form 17A, the total number of voters who had decided not to vote even after recording their details in Form 17A (Rule 49O scenario), and the total number of voters not allowed to vote (Rule 49M scenario). The form also requires to give details of the total number of votes recorded per voting machine. This total number recorded in the voting machine should tally with the total number of voters entered in Form 17A minus the number of voters deciding not to vote and the number of voters not allowed to vote. The details of the paper seals supplied for use, paper seals used, unused paper seals returned to the returning officer etc. are also recorded and entered after the close of the poll.

50. Under Rule 49S of the 1961 Rules, at the time of close of the poll, the presiding officer furnishes attested true copy of the account of votes recorded



in Part I of Form 17C to the polling agents of the candidates. He also retains a receipt of the same from the polling agent.

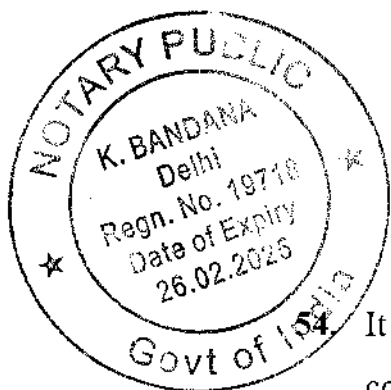
51. Before start of counting of votes, the serial number of the EVMs and the paper seals affixed on the EVMs are verified with details mentioned in Form 17C and are shown to the counting agents. The total votes displayed by pressing the 'TOTAL' button on the control unit is also tallied with the total votes polled as per Form 17C.

52. The counting is done in the presence of the polling agents/candidates by pressing the 'RESULT' button on the control unit. The total votes polled and the total votes polled by each candidate is thereupon displayed on the display panel.

[...]

56. As per the ECI guidelines, in case there is any mismatch between the total number of votes recorded in the control unit and Form 17C on account of non-clearance of mock poll data or VVPAT slips, in terms of Rule 56D(4)(b) of the 1961 Rules etc., the printed VVPAT slips of the respective polling stations are counted and considered if the winning margin is equal to or less than total votes polled in such polling stations."

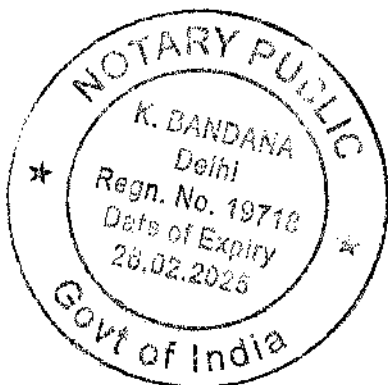
It is also apposite to refer to the relevant observations in the concurring judgment dated 26.04.2024 delivered in the



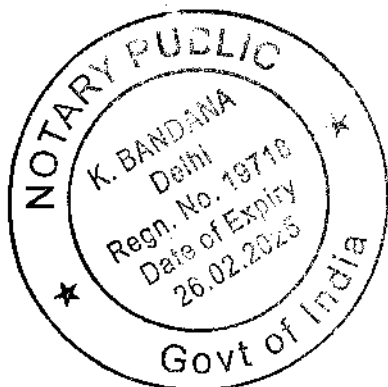
aforesaid case wherein his Lordship was pleased to observe that:

“[...] 5. It is of immediate relevance to note that in recent years, a trend has been fast developing of certain vested interest groups endeavouring to undermine the achievements and accomplishments of the nation, earned through the hard work and dedication of its sincere workforce. There seems to be a concerted effort to discredit, diminish, and weaken the progress of this great nation on every possible frontier. Any such effort, or rather attempt, has to be nipped in the bud. No Constitutional court, far less this Court, would allow such attempt to succeed as long as it (the court) has a say in the matter. I have serious doubt as regards the bona fides of the petitioning association when it seeks a reversion to the old order. Irrespective of the fact that in the past efforts of the petitioning association in bringing about electoral reforms have borne fruit, the suggestion put forth appeared inexplicable. Question of reverting to the “paper ballot system”, on facts and in the circumstances, does not and cannot arise. It is only improvements in the EVMs or even a better system that people would look forward to in the ensuing years.

[...]



7. *Conducting elections in India is a difficult task, is an understatement; rather, it is a humongous task and presents a novel challenge, not seen elsewhere in the world. India is home to more than 140 crore people and there are 97 crore eligible voters for the 2024 General Elections, which is more than 10% of the world population. These voters represent the largest electorate in the world. The Representation of the People Act, 1951 which, to my mind, amidst the vast legislative landscape of the nation is the most important enactment after the Constitution of India, is also the most effective instrument to uphold democratic and republican ideals, which are the hallmarks of our preambular promise. The RoP Act, which has established the legal framework for conducting elections, ensures that each and every citizen has a fair and equal opportunity to exercise his/her right of vote and to participate in the democratic process for electing his/her governor. The duties, functions and obligations to be performed/discharged by the ECI are ordained by the RoP Act, which are paramount and nonnegotiable. Being a complete code in itself, the RoP Act reinforces the rule of law and upholds the principles of justice, fairness and transparency. The larger the electorate, greater are the challenges associated with the elections. As it is, the ECI has an onerous responsibility to shoulder and there is*



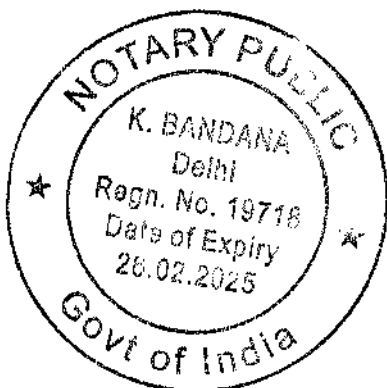
absolutely no margin for error. Periodical challenges to electoral processes, which gain momentum particularly when General Elections are imminent, require the ECI as of necessity to raise robust, valid and effective defence to spurn such challenges failing which any adverse judgment by a court is bound to undermine the authority and prestige of the ECI and bring disrepute to it.

[...]

18. The Republic has prided itself in conducting free and fair elections for the past 70 years, the credit wherefor can largely be attributed to the ECI and the trust reposed in it by the public. While rational scepticism of the status quo is desirable in a healthy democracy, this Court cannot allow the entire process of the underway General Elections to be called into question and upended on mere apprehension and speculation of the petitioners. The petitioners have neither been able to demonstrate how the use of EVMs in elections violates the principle of free and fair elections; nor have they been able to establish a fundamental right to 100% VVPAT slips tallying with the votes cast.

[...]

21. The first is the very issue of maintainability of writ petitions of the nature presented before us. Should mere suspicion of infringement of a right be

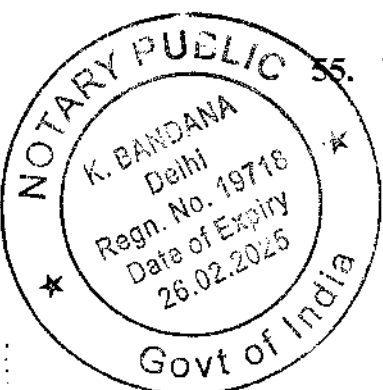


considered adequate ground to invoke the writ jurisdiction? In my

opinion, the answer should be 'NO'.

22. A writ petition ought not to be entertained if the plea is based on the mere suspicion that a right could be infringed. Suspicion that a right could be infringed and a real threat of infringement of a right are distinct and different.

23. To succeed in a claim under Article 32 or 226, one must demonstrate either mala fide, or arbitrariness, or breach of a law in the impugned State action. Though a writ of right, it is not a writ of course. The writ jurisdiction under Article 32/226 of the Constitution of India being special and extraordinary, it should not be exercised casually or lightly on the mere asking of a litigant based on suspicions and conjectures, unless there is credible/trustworthy material on record to suggest that adverse action affecting a right is reasonably imminent or there is a real threat to the rule of law being abrogated. It must be shown, at least prima facie, that there is a real potential threat to a right, which is guaranteed by law to the person concerned."



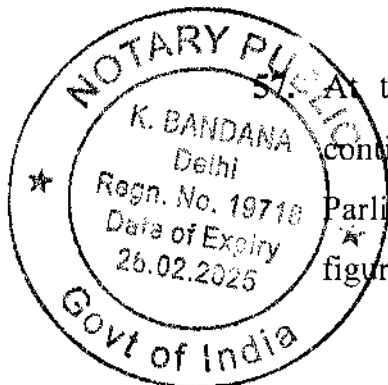
55. Thus, in the aforesaid judgment, this Hon'ble Court had observed that the credibility or trustworthiness of a

Constitutional authority cannot be questioned merely on the basis of suspicion, apprehension and conjectures.

56. In this context it is pertinent to note that the present IA for Direction has also, admittedly, been filed on apprehensions which are noted in the following places in the IA for Direction:

- i) Para 5 on Page 6: "It is submitted that the inordinate delay in the release of final voter turnout data, coupled with the unusually high revision (of over 5%) in the ECI's press note of April 30, 2024, and the absence of disaggregated constituency and polling station figures in absolute numbers, has raised concerns and *public suspicion regarding the correctness of the said data*";
- ii) Para 7 on Page 7: "The ECI not releasing absolute number of votes polled, coupled with the unreasonable delay in release of votes polled data, *has led to apprehensions in the mind of the electorate* about the sharp increase between initial data and data released on 30.04.2024. These *apprehensions* must be addressed and put to rest."

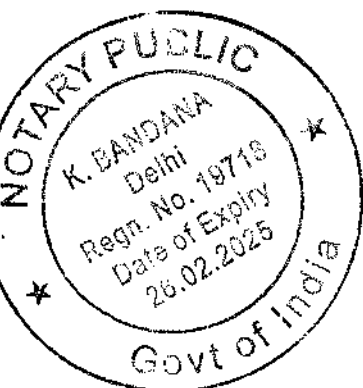
At the outset it may be stated that voter turnout APP continuously provides Assembly Constituency, Parliamentary Constituency and State wise voter turnout figures in percentage. Electors' data has also been released



constituency wise. Hence the averment that constituency wise data is not available is misleading.

58. It is most humbly submitted that the Petitioner has not approached this Hon'ble Court with clean hands as can be seen from Para 13 at Page 11 of the IA for Direction where the Petitioner has quoted an excerpt of a media interaction of a former Chief Election Commissioner while intentionally concealing his observation that "*the non-disclosure of the number of voters by the EC is not unacceptable*" as can be seen from the words : "**(delete because he said not unacceptable).**" It is submitted that this raises the serious issue of the Petitioner misusing the process of law that when the Petitioner seeks to rely upon the excerpts from the interview of a former CEC, it seeks to change the said excerpt because the actual content is going contrary to the allegation and prayer made by the petitioner in the present application.

59. It is pertinent to mention that aspersion over the polling process and secrecy of voting was recently raised on mere suspicion and apprehensions in another petition titled as *Agnostos Theos vs. Election Commission of India & Ors.* [W.P.(C). No. 330/2024] filed before this Hon'ble Court. However, the Hon'ble Court dismissed the petition *vide* order dated 17.05.2024 by holding that there was no merit in the same. It is relevant to mention herein that as per the reporting of the proceedings by LiveLaw for the aforesaid matter, it was observed by the Hon'ble Court that in the

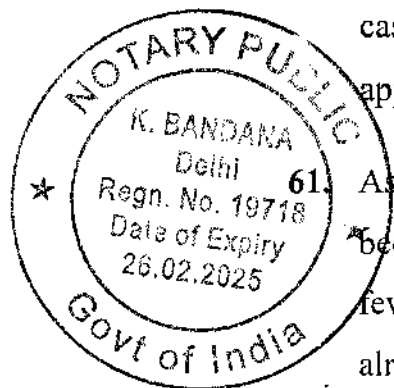


previous case of *Association for Democratic Reforms vs. Election Commission of India* [W.P.(C) No. 434/2024 reported as 2024 INSC 341], the Hon'ble Court had already dealt with the entire process of recording of votes and thus, the issue raised was already dealt with by the Hon'ble Court. True copy of the order dated 17.05.2024 passed by the Hon'ble Supreme Court in *Agnostos Theos vs. Election Commission of India & Ors.* [W.P. (C) No. 330/2024] is annexed as ANNEXURE - R/13 from pages 185

True copy of the article titled "*Polling Officer Doesn't Know Who Has Voted For Whom*": *Supreme Court Dismisses Plea raising Doubts About Secrecy in Voting Process*" published by LiveLaw on 17.05.2024 is annexed as ANNEXURE -R/14 from pages 186 to 188.

60. It is submitted that since this Hon'ble Court has examined the process of recording of data and their dissemination by way of the statutory forms prescribed under Conduct of Election Rules, 1961 in the aforesaid case of *Association for Democratic Reforms vs. Election Commission of India* [W.P.(C) No. 434/2024 reported as 2024 INSC 341] and did not express any dissatisfaction with the same, the doubts casted over the same process by way of the present application has no merit and ought to be rejected.

As mentioned above, the present Interim Application has been filed based on the unsubstantiated allegations raised by few political leaders/ parties to which the Commission has already given detailed reply. However, the Petitioner herein



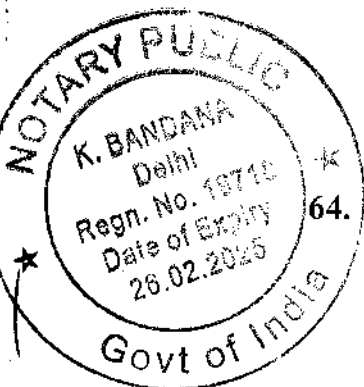
is casting aspersion on the electoral process based on speculations and apprehensions.

Changing the procedure in the last two phases of the elections by a PIL will amount to interference in election process and will be in teeth of Article 329(b) of the Constitution:

62. It is most humbly submitted that the Petitioner has sought reliefs which will essentially change the procedure followed by the Answering Respondent and will amount to interference in election process and therefore, the present Interim Application is not maintainable in view of express bar of Article 329(b) of the Constitution.

63. It is most humbly submitted that Article 329(b) of the Constitution bars judicial interference in electoral process from the date of issue of notification of election and till the declaration of results. This position has been affirmed by this Hon'ble Court in a catena of judgments including *N.P. Ponnuswami vs. Returning Officer, Namakkal Constituency & Ors.* [1952 AIR SC 64], *Mohinder Singh Gill vs. Chief Election Commissioner* [(1978) 1 SCC 405], and *Manda Jaganath vs. K.S. Rathnam & Ors.* [(2004) 7 SCC 492]. It is pertinent to mention that allowing the reliefs sought in the present Interim Application in the middle of the Lok Sabha Elections will be in teeth of Article 329(b).

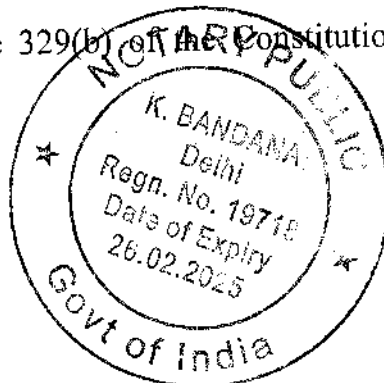
64. It is most humbly submitted that the above noted judgments given by this Hon'ble Court have inspired and informed the



Hon'ble High Courts to enforce the bar provided under Article 329(b) of the Constitution of India which has played a key role in the achievement of smooth conduct of elections over past seven decades. In this context a few judgments given by the Hon'ble High Courts are also noted below.

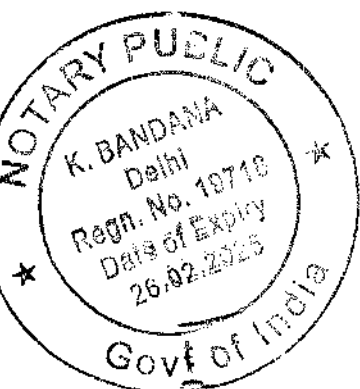
65. In *Atul Kumar & Anr. Vs. Election Commission of Bharat & Anr [PIL No. 17/2022]*, the Lucknow Bench of the Hon'ble Allahabad High Court, while dismissing a PIL questioning the legality of the election schedule, had held that "*Public Interest Litigation is not an exception to Article 329 of the Constitution of India*". In this context it is pertinent to note that the present petition is also a public interest litigation. A true copy of the judgment of the Lucknow Bench of the Hon'ble Allahabad High Court in *Atul Kumar & Anr. Vs. Election Commission of Bharat & Anr [PIL No. 17/2022]*, is annexed as **ANNEXURE - R/15 from pages 189 to 191.**

66. It is further submitted that in *Satta Panchayat Iyakkam v. Chief Election Commissioner [2016 SCC OnLine Mad 6867]*, the Hon'ble Madras High Court dealt with a PIL filed wherein again the schedule of election was question, however, the Hon'ble Court dismissed the PIL in view of the bar of Article 329(b) of the Constitution and held as follows:



"10. The main question arises for consideration is whether the Writ Petitions filed under the guise of Public Interest Litigation are maintainable in view of the bar in Article 329(b) of the Constitution of India, before culmination of the Election process. Article 329 of the Constitution of India takes away the jurisdiction of the Courts in certain matters relating to Election, which are governed by Part XV of the Constitution. Clause (b) of Article 329 excludes the jurisdiction of the Courts to entertain any matter relating to Election. The question as to whether the word "Election" in Article 329(b) of the Constitution would embrace the whole procedure of Election or whether it is not confined to the final result, came up for consideration before the Constitutional Bench of the Hon'ble Supreme Court in N.P. Ponnuswami's case. In the said case, the Hon'ble Supreme Court has interpreted Article 329(b) of the Constitution of India and held that the word "Election" in the said provision would include the entire process of Election commencing with the issue of notification and terminating with the declaration of election of a candidate and that a petition under Article 226 of the Constitution of India challenging the validity of any of the facts forming any part of that process would be barred."

A true copy of the judgment of the Hon'ble Madras High Court in *Satta Panchayat Iyakkam v. Chief Election*



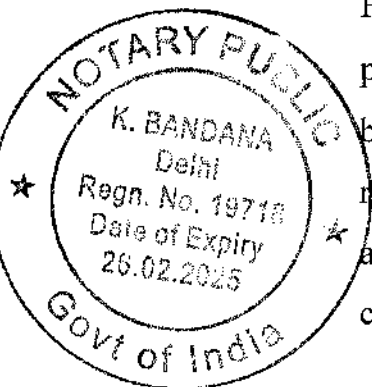
Commissioner [2016 SCC OnLine Mad 6867] is annexed as ANNEXURE - R/16 from pages 192 to 199.

67. In *Chief Election Commissioner Election Commission of India New Delhi v. Dr. Alladi P. Raj Kumar [1994 SCC OnLine AP 272]*, the Hon'ble Andhra Pradesh High Court dealt with a PIL to countermand and rescind the election in certain district of Andhra Pradesh. On the maintainability of the PIL, the Hon'ble Court held as follows:

"Obviously, if a petition under Article 226 cannot be filed in view of the bar created by Article 329(b), a petition filed in public interest which, incidentally, is also filed under Article 226 will not be maintainable."

A true copy of the judgment of the Hon'ble Andhra Pradesh High Court in *Chief Election Commissioner Election Commission of India New Delhi v. Dr. Alladi P. Raj Kumar [1994 SCC OnLine AP 272]* is annexed as ANNEXURE - R/17 from pages 200 to 219.

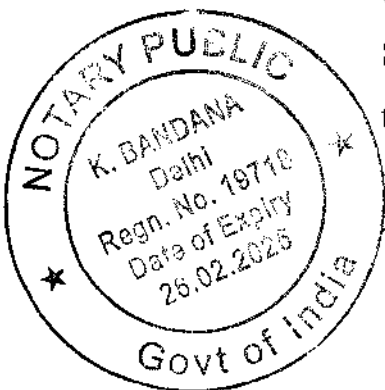
68. It is pertinent to consider the possible confusion that may arise in the minds of the voters due to publishing of Form 17C in public domain. It is submitted that the aforesaid Form takes into account the votes recorded inside the polling station and not the votes casted by way of postal ballots. The number of postal ballot votes recorded with respect to any constituency may vary from a few hundred to a few thousand. It is further submitted that in any electoral contest, the margin of victory may be very close. In such



cases, disclosure of Form 17C in public domain may cause confusion in the minds of the voters with regard to the total votes polled as the latter figure would include the number of votes polled as per Form 17C as well as the votes received through postal ballots. However, such difference may not be easily understood by the voters and may be used by persons with motivated interests to cast aspersion on the whole electoral process.

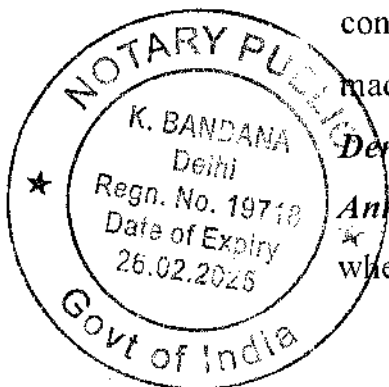
69. It is submitted that if the reliefs sought by the Petitioner is allowed, it will not only be in teeth of the aforesaid legal position but will also cause chaos in the election machinery which is already in motion for the ongoing General Elections to the Lok Sabha, 2024. It is submitted that for the conduct of elections, requisition of staff is undertaken under Section 159 of the Representation of the People Act, 1951. As mentioned in the aforesaid provision, such staff are requisitioned from local authorities, universities, banks and other institutions of the State. Such officials are trained through a rigorous process running into months.

70. It is submitted that practical difficulties may arise in granting the reliefs sought by the Petitioner and such consequent practical difficulties have to be seen in light of the enormity of the election process. In the ensuing Lok Sabha Elections, 2024, the Commission has set up more than 10 lakh polling stations across the 543 constituencies to facilitate the exercise of voting by almost 97 crore voters. The Commission has deployed nearly 1.5 crore personnel,



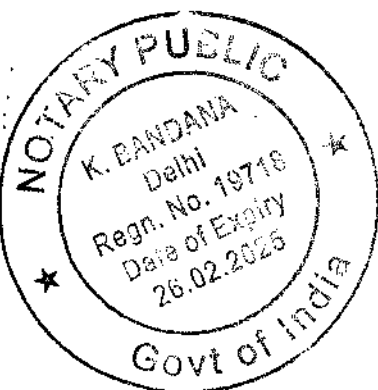
mostly on deputation basis, to ensure the smooth conduct of free and fair elections. The election personnel have to face various challenges in their duties which include movement across difficult geographic terrains, creating facilities for smooth voting and ensuring peaceful voting even in areas facing law and order problems. The massive training of such staff deployed for election duty is very meticulous and conducted over a period of time, elaborating and dividing each step of the process amongst the individuals. Thus, any change in the process or addition of any step to this process of polling would require human resource training. Now, any change at the close of the election period will cause hardship and confusion in the electoral process as no time is left for providing adequate training to the polling parties which will be on duty for the last two phases of the election.

71. Furthermore, it is submitted that apart from the aforesaid difficulties pertaining to the training of the polling staff, there will be logistical deficiencies which are to be taken into consideration. For instance, there are various polling stations in remote areas which suffer from issues of internet access, availability of electricity and lack of required technology for scanning and uploading of data. In this context, it is pertinent to take refuge in the observations made in the concurrent judgment in *Association for Democratic Reforms vs. Election Commission of India & Anr.* [W.P.(C) No. 434/2023, reported as 2024 INSC 341] where his Lordship was pleased to observe as under:



“8. [...] The EVMs are carried to the remotest areas of this country, occasionally on the backs of horses and other animals; voting booths have been set up in far-off villages at the foothills of the Himalayan mountains as well as the delta of the Sundarbans which are only accessible through boats. These challenges are unique to India, and the election process has to be considered in this context”.

72. Furthermore, if it is assumed without prejudice that Form 17C is to be uploaded, the most critical aspect would be as to the location from which Form 17C should be scanned and uploaded. There are no scanners at the polling stations. Further no internet facility is allowed at the polling stations to ensure there remains no doubt on connectivity with EVMs, even though by design that is not possible. If it is to be done centrally after aggregation by ARO or RO at Sub-Divisional or District head quarter, it violates the extant legal design of straight away keeping Form 17C in strong room after giving a copy to the agent of the candidate as per Rule 49S of the Conduct of Elections Rules, 1961. Further, there may be instances where the polling staff may not be so accustomed with technological aspects or may not be apt in scanning and uploading of data. Lastly, the data sought to be uploaded on ECI's website would require creation of a dedicated portal and the training of the polling staff to use such platforms. These aspects though may seem manageable, require planning and scheduling of training



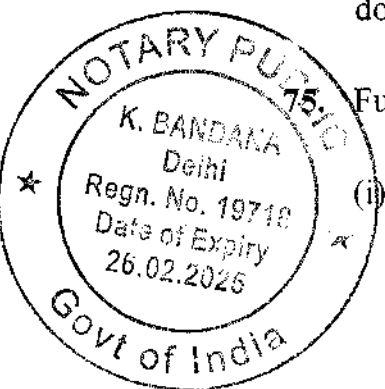
that must be done in advance. For a level-playing field, the rules of the process must be set in advance with all parties in the know and cannot be changed in the middle of the process. It is emphasized here that the purpose of Article 329(b) is to ensure that the election process remains consistent and is not interfered with while it is ongoing.

73. Thus, it is submitted that by way of the present Interim Application, the Petitioner has attempted to evade the mandate of Article 329(b) of the Constitution.

74. It is further humbly submitted that the Petitioner has admitted in the aforesaid IA for Direction (Para 8 at Page 8) that under the existing rules a copy of Form 17C is provided to the polling agents, however "*there may be instances that polling agents may not be available*". In this context, it is pertinent to note that taking signature of Polling Agents on Form 17C is a statutory requirement, however, if a provision is made for making the same available on website, then polling agents may not remain at polling stations towards the close of poll leading to further difficulty in discharge of statutory duty and the absence of signature of any polling agent on Form 17C may itself become a ground to challenge the veracity of the Form 17C and create further doubt and suspicion on the sanctity of the electoral process.

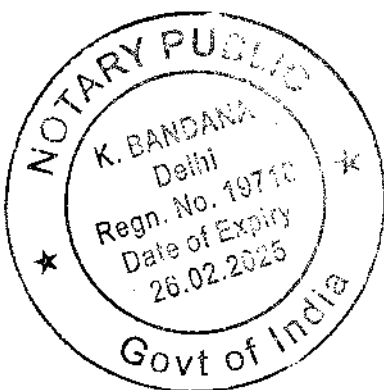
Further, the Answering Respondent submits the following:

(ii) The Answering Respondent reiterates that a colorable use of PIL route is in play to derail the



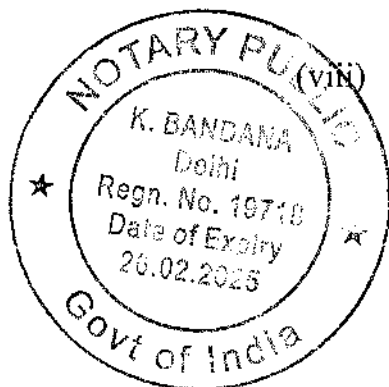
ongoing election process and that is in continuation of the previous conduct of the Petitioner;

- (ii) The statutory design of Representation of the People Act, 1950 and 1951 read with Electoral Registration Rules, 1960 and Conduct of Election Rules, 1961 is built upon transparency of every step of the electoral process through disclosures to the stakeholders and to the public at large;
- (iii) That the Answering Respondent in different litigations, whether challenging the electoral roll, the EVMs and now, the issue of release of facilitative data has brought out in detail such built-in intersections with the stakeholders;
- (iv) That the design of the electoral steps is legally sequential and each step concludes itself with available information to stakeholders an opportunity to challenge and finally, if required, to seek the route of judicial remedy;
- (v) That on the day of the poll, details of approximately 97 crores on the Electoral Roll has been shared with the political parties after publication of the final roll on 05.01.2024. The meticulous process of preparing the roll with fullest possible transparency has been filed by the Commission before the Hon'ble Court. The Hon'ble Court in the matter of *Samvidhan Bachao Turst vs. ECI & Ors.* [W.P.(C) No.



1228/2023] had already examined the allegations pertaining to the process of revision and preparation of electoral roll and disposed of the petition *vide* order dated 12.02.2024 after taking on record the submissions made by the Commission and expressed satisfaction with the same.

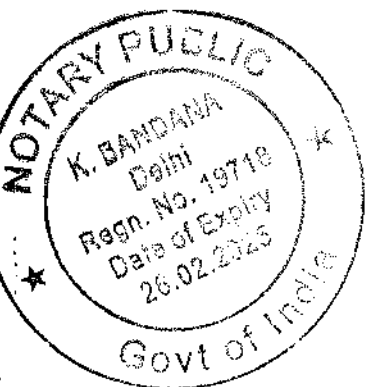
- (vi) Similarly, details of 5.5 million EVMs have also been shared with the political parties and candidates know the exact serial number of the EVM being used at each of the Polling Station in the constituency. Suspicion on EVMs were also raised during the current electoral cycle and this Hon'ble Court after detailed submissions and hearing the Commission's Officer, disposed of the W.P. (C) No. 434/2023 *vide* Judgment dated 26.04.2024;
- (vii) It is recalled that the present writ petition has been pending before this Hon'ble Court since 2019 and through the present interim application, it again came up in the middle of the ongoing General Elections to the Lok Sabha, 2024 and similar design was also used by the same Petitioner in W.P. (C) No. 434/2023;



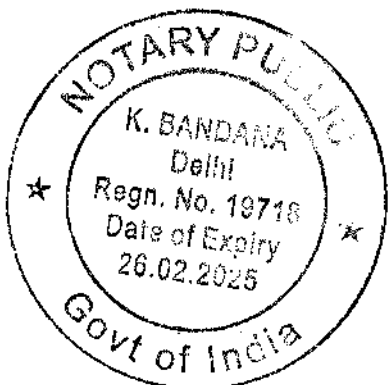
(viii) That the entire electoral space managed by the Commission is primarily persuasive as neither electoral registration is compulsory nor is the act of voting. Therefore, disclosures and participative

framework is the only reliable tool available to the Commission to create in the mind of the new voter and to retain in the mind of the previous voter their faith in the electoral steps.

- (ix) That the data trend over the years has validated this approach of the Commission, especially its granularity where there is great deal of familiarity and control to the elector, to the potential candidate and to the political party as well as the election machinery. The data pyramid is based upon the small data set of 1500 voters to a particular polling station and it slowly adds up to Assembly Constituency wise, Parliamentary Constituency wise facts, which have statutory reliability and verifiability.
- (x) That the scenario being conjured by the Petitioner is misplaced and respondent expresses concern that it hides a concerted intent to bring disrepute to the electoral space in India.
- (xi) That the Petitioner is deliberately confusing the non-statutory facilitative data disclosure on the date of the poll with the statutory forms in which the data is captured, whose disclosure in terms of who can claim and at what stage are they to be disclosed, is very much part of the embedded design of the statute which serves to create a credible framework.



- (xii) The factual basis of the grievance, namely, the alleged delay and variance in the data has also been conclusively dealt with in the preceding paragraphs and shown that there is neither delay nor difference in percentages of voter turnout data, more than what is inbuilt into the process, scale and magnitude in play.
- (xiii) While the Commission categorically resists, both on the normative ground as explained above, as well as on the ground of legality, practicality and the logistics involved of uploading Form 17C after the conclusion of the poll, yet, it would like to assure the Court that it is completely committed to ensuring its own voluntary scheme of public disclosure of data on poll day both with speed and with accuracy.
- (xiv) That under no circumstance would the Commission like to contribute to any misapprehension in the minds of the public at large that there is hesitation in disclosing the statutory data contained in Form 17C. It simply is asserting the value that the extant of the statutory scheme has. It has a direct nexus to the other aspects of the credibility of the electoral steps and process, including disputes in election. Therefore, the Commission has designed parallel and non-statutory methods to collate the data which keeps intersecting with the information in various statutory formats. However, it does not *ipso facto*



create a circumstance for making such formats publicly disclosable *en masse* in the time frame that the petitioners are asking for.

- (xv) That the tenner, language, design of the public messaging including tweets and social media posts made by the Petitioner during many stages of hearing of the case(s) in this Hon'ble Court should be taken note of in persuasion of the Commission's concern that there is a design, a pattern, selection of timing that is in play and the petitioners are not approaching the Hon'ble courts with clean hands and to misuse the forum of the Court with an agenda to perpetually keep creating doubt in the mind of voters based on conspiracy theory. It is also pertinent to state that the petitioners have not been able to prove the assertions in none of the cases, either on purity of electoral roll or EVMs. However, the design and pattern in play is to spread doubts and damage is done by the time truth of robustness of all meticulously planned and executed process, perhaps unparallel in any other exercise of this magnitude, with fullest level of transparency and involvement of political parties, candidates, media, and public scrutiny, comes out.

Thus, in view of the aforementioned facts and circumstances, it is humbly prayed that the aforementioned Interim Application be dismissed by this Hon'ble Court.

