IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1402 OF 2025

r. Chetan Chandrakant Ahire.) ...Petitioner

vs.

1. **Union of India**, through Department of Legal Affairs.)
2. **The Chief Election Commission of India**)
3. **The Chief Electoral Officer,** The State Election Commission)
4. **The State of Maharashtra.**) ...Respondents

Mr. Prakash Ambedkar with Mr. Hitendra Gandhi, Mr. Ajay Gaikwad, Ms. Priyadarshi Telang, Mr. Sarwajeet Bansode i/b. Mr. Sandesh More for Petitioner.

Dr. Uday Warunjikar i/b. Mr. Jenish Jain for Respondent No.1/UOI.

Mr. Ashutosh Kumbhakoni, Senior Advocate with Mr. Akshay Shinde for Respondent No.2/ECI.

Mr. Sachindra Shetye with Mr. Akshay Pansare for Respondent No.3.

Mr. Y. D. Patil, AGP for State/Respondent No.4.

CORAM: G. S. KULKARNI &
ARIF S. DOCTOR, JJ.

DATE: 25 JUNE 2025.

Oral Judgment (Per G. S. Kulkarni, J.) :-

1. This petition under Article 226 of the Constitution of India is filed praying for very wide and peculiar reliefs *inter alia* challenging the entire election of the Maharashtra State Legislative Assembly held by the Election Commission of India (for short **"the ECI"**), on 20 November 2024, the results of which were declared on 24 November 2024. It is prayed that the elections on the grounds as urged in the petition be declared to be null and void. Apart from the prayers for a mandamus for certain disclosure of information by the ECI, there are prayers

made in the writ petition *inter alia* for issuance of a writ of mandamus to declare the results of the elections of each Assembly Constituencies issued by the Returning Officers as null and void, for the alleged non-compliance of the established legal provisions, procedural lapses, and irregularities in the electoral process. There is also a prayer for a relief that a writ of mandamus be issued for immediate withdrawal of the certificates of election issued by the Returning Officers of each constituency, as such certifications lack legitimacy, on account of procedural violations and discrepancies in the conduct of elections. The canvass of the thirteen prayers as made in the petition needs to be noted, which read thus:-

> "(a) By an appropriate writ, order, or direction, including a writ of mandamus, this Hon'ble Court may direct Respondent Nos. 2 and 3 to provide a detailed disclosure before this Hon'ble Court regarding the exact number of tokens distributed to voters after the official closing time (i.e., after 6:00 PM) at each polling station, along with the cumulative total of tokens distributed across all Assembly Constituency segments.
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> (b) By an appropriate writ, order, or direction, including a writ of mandamus, this Hon'ble Court may direct Respondent Nos. 2 and 3 to provide a comprehensive and detailed disclosure before this Hon'ble Court regarding the total number of votes cast and polled in each constituency of the State of Maharashtra between 5:00 PM and 6:00 PM on 20/11/2024, ensuring accuracy and accountability in the electoral process.
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> (c) By an appropriate writ, order, or direction, including a writ of mandamus, this Hon'ble Court may direct Respondent Nos. 2 and 3 to provide a comprehensive disclosure of the total number of votes cast and polled in each constituency of the State of Maharashtra after 6:00 PM until the final closing time of polling on 20/11/2024.
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> (d) By an appropriate writ, order, or direction, including a writ of mandamus, this Hon'ble Court may declare the entire election process as void and illegal in the event of failure by Respondent Nos. 2 and 3 to produce or disclose, with accuracy and transparency, the number of tokens distributed to each voter at each polling station and the cumulative total of tokens distributed across all Assembly Constituency segments. Such failure constitutes a gross non-compliance with the provisions of the Act, the Rules, the guidelines, and directions established under the law, thereby

undermining the sanctity of the electoral process.

(e) By an appropriate writ, order, or direction, including a writ of mandamus, this Hon'ble Court may declare as null and void the results declared by the respective Returning Officers of each Assembly Constituency due to the non-compliance with established legal provisions, procedural lapses, and irregularities in the electoral process.

(f) By an appropriate writ, order, or direction, including a writ of mandamus, this Hon'ble Court may direct the immediate withdrawal of the certificates of election issued by the Returning Officers of each constituency, as such certifications lack legitimacy in light of the procedural violations and discrepancies in the conduct of elections.

(g) By an appropriate writ, order, or direction, including a writ of mandamus, this Hon'ble Court may declare that the guidelines issued by the Election Commission of India, which impose a duty on the Returning Officer to refer cases of mismatches between polled and cast votes to the Election Commission for directions, effectively suspend the powers of the Returning Officer under Rule 56D of the Conduct of Election Rules, 1961, until such directions are received. Furthermore, if the Returning Officer fails to refer such discrepancies to the Election Commission, any declaration of results for the said constituency should be deemed illegal, null, and void.

(h) By an appropriate writ, order, or direction, including a writ of mandamus, this Hon'ble Court may declare that the amendment made to Rule 93(2)(a) of the Conduct of Election Rules, 1961, is arbitrary, unconstitutional, and violative of transparency and accountability principles, and accordingly, quash and set it aside.

(i) By an appropriate writ, order, or direction, including a writ of mandamus, this Hon'ble Court may direct Respondent Nos. 2 and 3 to conduct an independent and comprehensive audit of the voting machines (EVMs) and VVPAT systems used in the elections, including an audit of their software and hardware, to ensure the accuracy and integrity of the electoral process.

(j) By an appropriate writ, order, or direction, including a writ of mandamus, this Hon'ble Court may direct Respondent No. 2 to provide full public access to all election-related records, including CCTV footage of polling stations, video recordings of vote counting, and detailed data on polling times and discrepancies, to uphold transparency and public trust.

(k) By an appropriate writ, order, or direction, this Hon'ble Court may direct Respondent Nos. 2 and 3 to implement a robust grievance redressal mechanism to address complaints of electoral irregularities promptly and effectively.

(l) By an appropriate writ, order, or direction, this Hon'ble Court may direct Respondent Nos. 2 and 3 to revert to the use of paper ballots in

> elections, citing the numerous technical, procedural, and reliability concerns associated with EVMs and the lack of public confidence in the existing electronic voting system.
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> (m) To grant all other just equitable and consequential reliefs in favour of the Petitioner as this Hon'ble Court may deem fit and proper."

2. Mr. Prakash Ambedkar, learned counsel for the petitioner has made extensive submissions. What we gather from such submissions is that, primarily the case of the petitioner is in regard to 6.80 % of the total number of votes (i.e. about 76 lakhs votes), which were cast from 06.00 p.m. till the end of voting, are illegal for the reason that for such votes, according to the petitioner, there is no data available with the ECI. The petitioner's case on such count is *inter alia* on the basis of a limited material, stated to be obtained from the ECI under the Right to Information Act, by one Mr. Venkatesh Nayak having his address at Kalusami, New Delhi. As submitted by Mr. Prakash Ambedkar, such RTI application was made by Mr. Venkatesh Nayak at the behest of the petitioner on 18 December 2024, seeking information from the Central Public Information Officer ("CPIO") of the ECI seeking the following information:-

> "1) The constituency-wise total number of pre-numbered slips issued by the Presiding Officers of all polling stations in Maharashtra during the General Elections to the Vidhan Sabha in November 2024 as per procedure provided at paragraph no. 1.2(xxviii) read with paragraph no. 7.1.2 of the Handbook for Presiding Officer, 2023 Edition, Document No. 324.6.EPS:HB:009:2023 published on your website,
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> and
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> The constituency-wise total number of pre-numbered slips issued by the Presiding Officers of all polling stations in Maharashtra during the General Elections to the Lok Sabha between April and May 2024 as per procedure provided at paragraph no. 1.2(xxviii) read with paragraph no. 7.1.2 of the Handbook for Presiding Officer, 2023 Edition, Document No. 324.6.EPS:HB:009:2023 published on your website."

3. It is the petitioner's case that to such RTI application, reply dated 06 November 2024 was received by Mr. Venkatesh Nayak from the CPIO-ECI, that such information was not available with the ECI. The RTI applicant however was not aggrieved by the said information so as to avail of an appellate remedy. Only on such information as received by Mr. Venkatesh Nayak under the RTI Act, the petitioner has contended that 76 Lakh votes were cast in or after 06.00 p.m. on the date of polling, which cannot be taken into consideration in declaring the results of all the elections in respect of any of the constituencies, for the reason that there was no data qua such votes available with the ECI. Hence, the only conclusion is that the entire exercise of the Election Commission in considering the 76 lakhs votes is wholly illegal and contrary to the procedure for a free and fair elections as set out in the Handbook for Returning Officer 2023 and more particularly referring to Clause 13.47 of the Handbook which prescribes the following:-

> "13.47. CLOSE OF POLL
> 13.47.1. The poll should be closed at the hour fixed for the purpose, even if for certain unavoidable reason it had commenced somewhat later than the hour appointed for the commencement of poll. However, all electors present at the polling station at the hour appointed for the close of poll should be permitted to cast their vote even if the poll has to be continued for some time beyond the appointed closing hour. For this, the Presiding Officer should distribute pre-numbered slips to all electors standing in queue, starting from the last person in queue at the prescribed time for end of polling."
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> (emphasis supplied)

4. Mr. Ambedkar would submit that the aforesaid paragraph of the Handbook for Returning Officer casts an obligation on the Returning Officers to maintain the requisite information of such number of persons, who were present

at the polling station at such hour, appointed for the close of the poll and who were granted tokens and were permitted to cast their votes, beyond the appointed time as prescribed. It is submitted that the Returning Officers/Polling Officers not making available such information to the ECI is a clear indication of illegal voting, vitiating the election process. It is hence submitted that the ECI has failed to discharge its Constitutional obligations in the conduct of the State Assembly Election which amounts to the election process being rendered unconstitutional, not amounting to fair and free elections. In support of such contention, Mr. Ambedkar has referred to the decisions of the Supreme Court in **Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors.**[1] and **A. C. Jose vs Sivan Pillai & Ors.**[2].

5. Mr. Ambedkar would submit that this is a rare case warranting the exercise of jurisdiction under Article 226 of Constitution, as the petitioner does not have any remedy of filing an election petition under Section 80 of the Representation of the People Act, 1951 (for short the **"RP Act 1951"**). Referring to Article 170 of the Constitution of India, it is submitted that none of the elections of the territorial constituencies can be said to have been validly held as per the expectations of the Constitution of free and fair elections, which is the basic structure of the Constitution, when 76 lakhs votes were illegally cast after 6 p.m. i.e. after scheduled closing time for casting votes. This for the reason that there was no account or information available with the ECI on the number of persons

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1 AIR 1978 SC 851

2 (1984) 2 SCC 656

qua each of the polling booths, who were issued tokens to cast vote beyond the scheduled time. It is hence Mr. Ambedkar's submission that the inclusion of such voting is a fraud on the Constitution. It is submitted that it is an issue of faith of the common man in the election process. It is hence his submission that considering the petitioner as a voter, who is concerned with the purity of the election process, hence, this petition needs to succeed. It is also his submission that even a candidate, who is not privy to anything which has happened *inter se* between the polling officer and the ECI, is not entitled to maintain an election petition challenging elections of a particular candidate.

6. Mr. Ambedkar next submits that once the ECI replied to Mr. Venkatesh Nayak, that the ECI had no information/documents or the record of number of votes cast after 6 p.m., there is a presumption that the polling staff themselves had cast vote on behalf of the voters and/or there was a false voting. Mr. Ambedkar states that there are issues which would fall outside the ambit of any scrutiny, in an adversarial proceeding like an election petition. It is also Mr. Ambedkar's submission that petitioner is ready and willing to grant another opportunity to the ECI to produce such records as required by the petitioner, so that it can be ascertained whether 6.8% of the total votes (i.e. about 76 lakhs votes) were at all cast all over the State after 6 p.m. and whether there are lawful votes cast as per the requirements of the Constitution. It is his contention that when there is such fraud by the polling officers, and as the polling/returning officer cannot be made a party to any election petition, the Constitutional Court would certainly interfere, considering that free and fair elections is the basic

feature of the Constitution. In supporting such contention, reliance is placed on the decision of the Supreme Court in **Jammu and Kashmir National Panthers Party vs. Union of India**[3] **and Hari Vishnu Kamath Vs. Syed Ahmad Ishaque**[4]**.**

7. Mr. Ambedkar would next submit that the result of such elections which according to the petitioner, stands vitiated, has resulted in gross unconstitutionality which would require emergency provisions to be invoked by the Hon'ble President of India under Article 356 of the Constitution.

8. Mr. Ambedkar, in urging all such contentions referring to the provisions of the Handbook for the Returning Officer (supra) requiring slips to be issued at the closing hours of the election to the voters who are standing in the queue awaiting their turn for voting, would submit that it was necessary for the time to be notified when the poll would stand finally closed, after the last elector casts his / her vote. It is submitted that all such information was required to be supplied to the ECI under the signature of the polling officer. In such context, reference is made to Paragraph 20(a) and 20(b) of Annexure 56, and items 15 and 16 of Annexure 57 which provide for a format for the Presiding Officer's Additional Report to be submitted to the Constituency Observer/ Returning Officer, in regard to such number of voters, who have voted after 5 p.m. and who has received token at the end of polling hour. Such information also would include intimation whether any significant incident took place during the poll. Mr. Ambedkar has also referred to the 2023-Handbook for the Returning Officer,

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3 (2011) 1 SCC 228

4 AIR 1955 SC 233

requiring similar compliances in regard to number of slips issued at the closing hour of the poll.

9. Mr. Ambedkar submits that this is also a case where one Constitutional organ namely the judiciary is called upon to decide the functioning of another Constitutional organ namely the Election Commission and it is in such context Mr. Ambedkar has referred to the Third Schedule of the Constitution namely the Forms of Oath, which according to him, would be relevant in this High Court considering the present proceedings. This contention is wholly unwarranted in the present context.

10. On the other hand Mr. Kumbhakoni, learned Senior Counsel for ECI has raised several objections including preliminary objections to the maintainability of the petition. The objections are:-

I. There is a Constitutional and statutory bar in assailing the elections which need to be challenged only in the manner as provided by law. In such context, a reference is made to Article 329 of the Constitution which provides a bar to interference by the Courts in electoral matters. A reference is also made to the provisions of Part VI of the R.P. Act 1951, specifically providing for "Disputes Regarding Elections" and more particularly Section 80 thereof being a provision for filing of election petitions before the High Court to question an election. It is his submission that such statutory machinery is a Code by itself.

II. The petitioner does not have locus to challenge the entire State

Assembly elections as the petitioner is a voter from one electoral constituency, namely the Vikhroli – Mumbai constituency and who has not contested any election. The petitioner, hence, cannot have the *locus standi* to challenge the elections of all the 288 constituencies in the State.

III. The petitioner has not spelt out any cause of action in the petition so as to invoke the jurisdiction of this Court under Article 226 of the Constitution. Even the purported challenge to the constitutional validity of Rule 93 (2)(a) of the Conduct of Election Rules, 1961 is untenable as there is 'no legal injury' caused to the petitioner. The petitioner cannot assail a statutory provision in vacuum.

IV. The petition is devoid of any factual details as the same is filed on the basis of newspaper reports and merely on suspicion, apprehension and/or a doubt. Hence, there is no basis whatsoever to maintain such petition.

V. The petitioner before seeking a relief(s) for a writ of mandamus has not made any demand for justice by addressing any representation either to the Election Commission of India or to any other authority in regard to the grievances as raised in the petition. On such count also, the petition deserves to be summarily dismissed.

VI There is no information of any candidate having filed an election petition in regard to any constituency on such cause of action as urged by the petitioner, and hence, single petitioner cannot maintain such petition.

VII The whole basis on which the petitioner intends to prosecute this petition is vague, ambiguous and is in the realm of disputed question of facts. There is not an iota of material whatsoever that there is a difference between the votes which were cast and the polled votes, as sought to be vehemently canvassed by the petitioner. On such specious pleas the petitioner cannot call upon the High Court to delve into the merits of the petitioner's contentions as such contentions can be entertained on merits only if the Court assumes jurisdiction.

11. In supporting the above submissions, Mr. Kumbhakoni has relied on the decision of this Court in **Vijaysingh Gajrajsingh Chauhan Vs. Governor of Maharashtra & Ors.**[5]; **Arun Yashwant Kulkarni vs. State of Maharashtra & Ors.**[6]; **Association for Democratic Reforms Vs. Election Commission of India & Anr.**[7]; **People's Union for Civil Liberties & Anr. Vs. Union of India & Anr**.[8].

12. Dr. Warunjikar, learned Counsel for Union of India has supported Mr. Kumbhakoni's objections. He submits that considering the nature of the cause of action as asserted by the petitioner, in fact the petitioner would have filed a Public Interest Litigation, however to wriggle out of the rigours of the PIL Rules 2010 as framed by this Court, and more particularly Rule 11 which would mandate cost to be imposed for frivolous petitions, the petitioner has filed the present petition which according to Dr. Warunjikar, is an abuse of the process of

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5 Civil Writ Petition No.3077/2020, decision dt.09/02/2021

6 2021(4)Mh.L.J.613

7 (2025)2 SCC 732

8 (2013)10 SCC 1

law. It is also his submission that at the most the petitioner could have assailed the elections pertaining to his constituency namely the Vikhroli - Mumbai constituency as the petitioner cannot have a locus to challenge the entire elections of the State Legislative Assembly. It is submitted that merely obtaining some information published in some local newspapers, which cannot have an authenticity and / or relying on any RTI information received by third party, cannot form the basis to maintain a writ petition. Dr. Warunjikar submits that the petitioner cannot be holding a brief for Mr. Venkatesh Nayak, who is shown to be a resident of Delhi and who has obtained some information from the ECI in regard to the State Assembly Elections. It is next submitted by Dr. Warunjikar that the petitioner had missed the bus, if at all he wanted to assail the elections on such purported cause of action, as an election petition under the RP Act, 1951 is required to be filed within a period of 45 days from the date of declaration of result i.e. from 26 November 2024 whereas this writ petition was filed on 27 January 2025. The next objection of Dr. Warunjikar is that the prayers (a), (b), (c) and (d) as made by the petitioner for issuance of a writ of mandamus is a relief sought without approaching the ECI. The petitioner cannot approach the High Court directly with such prayers unless a demand for justice was made by the petitioner by first approaching the ECI. According to Dr. Warunjikar, this is contrary to settled principles of law. It is hence the submission of Dr. Warunjikar that the petition is frivolous and is to be dismissed.

13. Mr. Sachin Shetye, learned Counsel for respondent No.3 – the State Election Commission would submit that the State Election Commission is in no

manner concerned with the State Assembly Election and hence, the petition is not maintainable against his client.

Analysis

14. We have heard learned Counsel for the parties. With their assistance, we have perused the record. At the outset we may observe that the petitioner as described in the petition is a voter from one of the Mumbai constituencies, namely the Mumbai-Vikhroli Constituency. He has not contested the State Assembly Elections. He has not made any representation, in regard to elections either in relation to this constituency or the entire elections, to the Union of India or to ECI. More particularly, he has not addressed any specific representation to the ECI on the cause being pursued by him in this petition namely that there is an illegal voting of 76 lakhs votes at the closing hours of the polling. He has also not addressed any application under the RTI Act to seek any information from any authorities, and merely on the basis of some information received either from newspapers or an RTI application made by one Mr. Venkatesh Nayak, the petitioner has thought it appropriate to file this petition invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution. Thus, on such extremely weak, feeble and inadequate plea, the petitioner is desirous to maintain this writ petition.

15. We have noted in detail the objections as urged by Mr. Kumbhakoni and Dr. Warunjikar in questioning the maintainability of the petition. We find that such objections are valid and would persuade us to summarily dismiss this

petition on the ground that the petition amounts to a gross abuse of the process of law. The following discussion would aid our conclusion.

16. At the outset we may observe on an issue which certainly goes to the root of the proceedings. The substantive prayers are for a writ of mandamus to be issued by this Court, in such context, in our considered opinion, this petition is filed oblivious to the well settled principles of law a litigant would be required to adhere, before invoking the jurisdiction of this Court under Article 226 of the Constitution namely of the petitioner seeking redressal of an enforceable legal right and in such context, a need that the petitioner makes a demand for justice. Admittedly, the petitioner has not approached the ECI in making any such 'demand for justice' on any of the issues as raised in the petition, before approaching this Court and in making prayers for issuance of writ of mandamus. In such context we may refer to a decision of the Division Bench of this Court in which one of us (G.S.Kulkarni, J.) was a member in **Sansar Texturisers Pvt. Ltd. Vs. Union of India & Ors.**[9] wherein this Court, considering the settled principles of law as laid down in the decisions of the Supreme Court, held that the demand for justice is *sine qua non* to maintain a writ petition for such reliefs. The observations of the Court are required to be noted which read thus:

> **14.** At the outset, we find from the frame of the petition that the basic requirement for maintaining a writ of mandamus, namely, a request for demand for justice, which would be the first and foremost consideration, before any party could approach the writ court is not fulfilled by the petitioner. We find that there was no prior representation made by the petitioner to the appropriate Department of Government of India, pointing out any illegality on the notifications, much less of making a refund application which in the normal course of law a prudent litigant and that too an importer would follow.

9 (2024) 135 GSTR 26

15. In such context, we may observe that it is well-settled that a prayer for a writ of mandamus is not maintainable in the absence of an enforceable legal right as well as a legally protected right. In such context, the Supreme Court in *Mani Subrat Jain* v. *State of Haryana* [(1977) 1 SCC 486.] has observed thus:

> "9. The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something. . ."

16. Further, it is also well settled that unless there has been a distinct "demand for justice" in maintaining a prayer for mandamus, and after such demand being made when the authorities did not act in accordance with the law, only in such event, a prayer for a writ of mandamus would be maintainable. In *Saraswati Industrial Syndicate Ltd.* v. *Union of India* [(1974) 2 SCC 630.] , the Supreme Court referring to the Halsbury's Laws of England, observed that the powers of the High Court under article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. The relevant observations of the Supreme Court are required to be noted, which reads thus:

> "24…. The powers of the High Court under article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless, the well recognized rule that no writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by us, as it is in England, when a writ of mandamus is asked for, could be stated as we find it set out in Halsbury's Laws of England (3rd Edn.), vol. 13, p. 106):
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> 'As a general rule, the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that demand was met by a refusal.'
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> 25. In the cases before us, there was no such demand or refusal. Thus, no ground whatsoever is shown here for the issue of any writ, order, or direction under article 226 of the Constitution. . ."

17. In *Amrit Lal Berry* v. *Collector of Central Excise, New Delhi* [(1975) 4 SCC 714.] , the Supreme Court observed that there was no assertion that any representation was made against any violation of a petitioner's right, hence, the rule recognized by the Supreme Court in *Kamini Kumar Das Choudhury* v. *State of West Bengal*[(1972) 2 SCC 420.] that a demand for justice and its

refusal must precede the filing of a petition asking for direction or a writ of mandamus, would operate against the petitioners. The relevant observation of the Supreme Court reads thus:

> "25. In the petition of K.N. Kapur and others, we do not even find an assertion that any representation was made against any violation of a petitioner's right. Hence, the rule recognized by this court in *Kamini Kumar Das Choudhury* v. *State of West Bengal* [(1972) 2 SCC 420.] , that a demand for justice and its refusal must precede the filing of a petition asking for direction or writ of mandamus, would also operate against the petitioners."

18. In *Federation of Retail Traders Welfare Associate* v. *State of Maharashtra* [2022 SCC OnLine Bom 388.] , the Division Bench of this court has observed that it seems to have become a habit in this court to seek a high prerogative remedy of a mandamus without averring that the petitioner has made a demand for justice and the same having been denied or has even not made a demand at all, let alone explaining how the case fits in the few limited and well-known exceptions to the general rule. The Division Bench in making such observations also took into consideration the decisions which we have referred hereinabove.

(emphasis supplied)

17. A challenge to the aforesaid decision of this Court was dismissed by the Supreme Court by an order dated 12 July 2024 in the proceedings of Special Leave Petition (Civil) Diary No.17323 of 2024.

18. This apart, we wonder as to how the petitioner can have a *locus standi* to seek such wide, sweeping and drastic reliefs to question the entire elections of the State Legislative Assembly. It is a relief, too far fetched, that too on the basis of no cause of action as the facts clearly demonstrate. This more particularly in the context of the Constitutional and Statutory requirements of a bar being created under Article 329(b) which *inter alia* provides that no election to either House of the Legislature of a State shall be called in question, except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature. As a

requirement of such constitutional provision the RP Act, 1951 in Part VI makes adequate provisions for filing of election petitions before the High Court, to challenge the elections. Such petition is maintainable at the behest of a voter or a contesting candidate. These provisions constitute a Code by itself and cannot be by-passed in questioning the solemnity of the elections as conducted by the ECI within the constitutional set-up.

19. Further as rightly urged by Mr. Kumbhakoni relying on the decision of the Division Bench of this Court in **Vijaysingh Gajrajsingh Chauhan** (supra) and **Arun Yashwant Kulkarni** (supra), the petitioner cannot be called to be a person aggrieved to invoke the jurisdiction of this Court under Article 226 so as to maintain the prayers as raised in the petition in blanketly assailing of the State Assembly elections, that too without impleading the successful candidates whose elections are being challenged. This is quite preposterous.

20. Even to assail the constitutionality of a provision, the person invoking the extraordinary writ jurisdiction needs to have suffered a legal injury. In the present case we do not find “a scratch” of a legal grievance, much less “any legal injury”. The petitioner having failed to demonstrate a legal injury, the sequel is automatically the lack of petitioner's locus to maintain the writ petition.

21. We are also not inclined to accept Mr. Ambedkar’s submission that the conduct of the State Assembly Election of the nature as complained, by any stretch of imagination either breaches the basic structure of the Constitution and / or has breached the fundamental rights of the petitioner. Although free and

fair election is one of the basic requirements of a democracy, as recognized by the Constitution and as observed by the Supreme Court in **Jammu and Kashmir National Panthers Party vs. Union of India & Ors.** (supra) referring to the celebrated commentary Shorter Constitution of India by D.D. Basu (14th Edn). However, a three Judge Bench of the Supreme Court in **People's Union of Civil Liberties vs. Union of India** (supra) has clearly held that right to vote is neither a fundamental right nor a constitutional right, it is purely a statutory right. Thus, the petitioner's grievance on voting cannot partake character of breach of any of his fundamental rights and/or in the present facts, any bald contention of the basic structure of the Constitution being violated. Such argument on behalf of the petitioner, in our view, is wholly without foundation.

22. We are further surprised from the frame of the petition and the purported cause of action the petitioner intends to canvass on the basis of materials placed on record that the only basis for the petitioner to contend that there is an invalid / bogus voting of 76 lakhs votes is founded on a singular RTI reply received by Mr. Venkatesh Nayak from the CPIO-ECI, which is in the context of the information as sought *inter alia* under paragraph No.7.1.2 of the Handbook for Presiding Officer 2023 Edition. Paragraph 7.1.2 reads thus:

> "7.1.2 A few minutes before the hour appointed for closing the poll, announce to all those within the limits of the Polling Station who are waiting to vote that they will be allowed to record their votes in turn. Distribute to all such electors, slips signed by you in full, which should be serially numbered from serial No. 1 onwards according to the number of electors standing in the queue at that hour. The last elector should be given slip no. 1 and next voter in front of him/her shall get slip no.2 and so on. Continue the poll even beyond the closing hour until all these electors have cast their votes. Depute police or other staff to watch that no one is allowed to join the queue after the appointed

> closing hour. This can be effectively ensured if the distribution of slips to all such electors is commenced from the last elector standing in the queue and preceded backwards towards its head."

23. The aforesaid paragraph of the Handbook for Presiding Officer is the procedure to be adopted by the Polling Officer. At every polling station, there are several precautions provided by the ECI to strictly adhere to the fair procedure of the elections. There is nothing on record that at any polling station in the State of Maharashtra, any untoward incident/fraud had taken place. We, hence, fail to discern as to how, in the absence of any tangible material acceptable in law, which also needs to be booth wise, that there was any fraudulent voting or there was no voting. Thus, the said reply to the RTI application would not support the petitioner's contention of elections to all the constituencies in the State of Maharashtra can at all be illegal. In fact on the face of it, such case of the petitioner appears to be quite absurd to say the least.

24. We are also of the opinion that although such farcical claims are made on the purity of the process of the elections of the State Assembly, and more particularly in the context of the electronic voting machines (EVM) and a need to discard such system of voting to be replaced by a traditional method of voting by ballot papers, such plea of the petitioner, appears to be in absolute desperation. This more particularly in view of the settled principles of law on the use of EVMs which are held to be legal and valid by the Supreme Court in a very recent decision of the Supreme Court in **Association for Democratic Reforms vs. Election Commission of India & Anr.** (supra). In such decision, it is held that the

use of EVMs cannot be held to be a system which in any manner would take away free and fair elections. In such context, in the lead decision of Mr. Justice Sanjiv Khanna (as his Lordship then was) the following observations in the context in hand are significant:-

> 15. We could have dismissed the present writ petitions by merely relying upon the past precedents and decisions of this Court which, in our opinion, are clear and lucid, and as repeated challenges based on suspicion and doubt, without any cogent material and data, are execrable and undesirable. However, we would like to put on record the procedure and safeguards adopted by the ECI to ensure free and fair elections and the integrity of the electoral process. For this purpose, we shall refer to and take on record the features of EVMs. [In view of the issue raised, we are not dealing with the post counting handling of EVMs.] Lastly, we would give two directions, and take on record suggestion(s) for consideration of the ECI.
>
> 65. The ECI has also in its counter-affidavit stated that the EVMs have been continuously used in different elections since the year 2000. The electoral outcome had been divergent, favouring or disfavouring different political parties. … … ..
>
> … … ..
>
> 66. We have referred to the data, after elucidating the mechanics and the safeguards embedded in the EVMs to check and obviate wrongdoing, and to evaluate the efficacy and performance of the EVMs. We acknowledge the right of voters to question the working of EVMs, which are but an electronic device that has a direct impact on election results. However, it is also necessary to exercise care and caution when we raise aspersions on the integrity of the electoral process. Repeated and persistent doubts and despair, even without supporting evidence, can have the contrarian impact of creating distrust. This can reduce citizen participation and confidence in elections, essential for a healthy and robust democracy. Unfounded challenges may actually reveal perceptions and predispositions, whereas this Court, as an arbiter and adjudicator of disputes and challenges, must render decisions on facts based on evidence and data. This is the reason why we had re-listed the matters for directions and clarifications on 24-4-2024, when specific points/questions raised were answered by the ECI. The petitioners were also heard.
>
> 72. We must reject as foible and unsound the submission to return to the ballot paper system. The weakness of the ballot paper system is well known and documented. In the Indian context, keeping in view the vast size of the Indian electorate of nearly 97 crores, the number of candidates who contest the elections, the number of polling booths where voting is held, and the problems faced with ballot papers, we would be undoing the electoral reforms by directing reintroduction of the ballot papers. EVMs offer significant advantages. They have effectively eliminated booth capturing by restricting the rate of vote casting to 4 votes per minute, thereby prolonging the time needed and thus check insertion of bogus votes. EVMs have eliminated invalid votes, which were a major issue with paper ballots and had often sparked disputes during the counting process. Furthermore, EVMs reduce paper usage and alleviate logistical challenges. Finally, they provide administrative convenience by expediting the counting process and minimising errors."

25. In **Association for Democratic Reforms vs. Election Commission of India & Anr.** (supra) we may also refer to the supplementing judgment of Mr. Justice Dipankar Datta, wherein His Lordship observed that there is no hesitation to accept the submission as urged on behalf of the ECI that reverting to the "paper ballot system" of the bygone era, reveals the real intention of the petitioner, to discredit the system of voting through the EVMs and thereby derail the election process that is by creating unnecessary doubts in the minds of electorate. His Lordship observed that electronic voting is not something which is prevalent only in India as multiple countries use electronic voting in varying degrees, in their national elections. It was also observed that use of EVMs in election in India is not without its checks and balances.

We are also in complete agreement with Mr. Kumbhakoni when he emphasized the observations of Mr. Justice Dipankar Datta on the principles of maintainability of a writ petition, which are relevant in the present context. The following observations, in our opinion, are clearly applicable in the facts of our case:-

> "98. 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".
>
> 99. 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.
>
> 100. To succeed in a claim under Article 32 or 226, one must demonstrate either mala fides, 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 Articles 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.
>
> 103. In *Adi Saiva Sivachariyargal Nala Sangam* v. *State of T.N.* [*Adi Saiva Sivachariyargal Nala Sangam* v. *State of T.N.*, (2016) 2 SCC 725 : (2016) 2 SCC (Civ) 243] a Bench of two Hon'ble Judges of this Court held : (SCC p. 737, para 12)
>
> > "*12.* … The institution of a writ proceeding need not await actual prejudice and adverse effect and consequence. An apprehension of such harm, if the same is well founded, can furnish a cause of action for moving the Court."

Further, Mr. Kumbhakoni's contention that the present petition is filed on mere suspicion, surmises or without any basis and in the absence of any tangible material, as also there was no breach of any of the petitioner's legal rights, also find support in the following observations in the said supplementing judgment of Mr. Justice Dipankar Datta :-

> "105. The mere suspicion that there may be a mismatch in votes cast through EVMs, thereby giving rise to a demand for a 100% VVPAT slips verification, is not a sufficient ground for the present set of writ petitions to be considered maintainable. To maintain these writ petitions, it ought to have been shown that there exists a tangible threat of infringement; however, that has also not been substantiated. Thus, without any evidence of malice, arbitrariness, breach of law, or a genuine threat to invasion of rights, the writ petitions could have been dismissed as not maintainable. But, considering the seriousness of the concerns that the Court suo motu had expressed to which responses were received from the official of the ECI as well as its Senior Counsel, the necessity was felt to issue the twin directions in the greater public interest and to subserve the demands of justice.
>
> ……
>
> 114. Be it the citizens, the judiciary, the elected representatives, or even the electoral machinery, democracy is all about striving to build harmony and trust between all its pillars through open dialogue, transparency in processes, and continuous improvement of the system by active participation in democratic practices. Our approach should be guided by evidence and reason to allow space for meaningful improvements. By nurturing a culture of trust and collaboration, we can strengthen the foundations of our democracy and ensure that the voices and choices of all citizens are valued and respected. With each

pillar fortified, our democracy stands robust and resilient."

26. Now coming to the decisions as cited on behalf of Mr. Ambedkar, there can be no two opinions, on the principles of law as laid down in the decision of the Constitution Bench of the Supreme Court in **Mohinder Singh Gill** (supra), wherein the question before the Supreme Court was on the grievance of the appellant that once in all probability he had won the poll, he was deprived of his hard-won victory by the arbitrary action of the Election Commission, going contrary to the fair play and in negation of the basic cannons of principles of natural justice and the direction of the Election Commission of cancellation of the election and directions to hold fresh polls. The facts in the present case are fully distinct. Be that as it may the principles as discussed in paragraph 39 in the context of Article 324, are salutary, however, we are at a complete loss to perceive as to how the said observations which are repeatedly emphasized by Mr. Ambedkar, would at all assist the petitioner. Such observations read thus:

> "39. Even so, situations may arise which enacted law has not provided for. Legislators are not prophets but pragmatists. So it is that the Constitution has made comprehensive provision in Art. 324 to take care of surprise situations. That power itself has to be exercised, not mindlessly nor malafide, nor arbitrarily nor with partiality but in keeping with the guidelines of the rule of law and not stultifying the Presidential notification nor existing legislation. More is not necessary to specify; less is insufficient to leave unsaid. Article 324, in our view, operates in areas left unoccupied by legislation and the words 'superintendence, direction and control' as well as 'conduct of all elections' are the broadest terms. Myriad maybes, too mystic to be precisely presaged, may call for prompt action to reach the goal of free and fair election. It has been argued that this will create a constitutional despot beyond the pale of accountability; a Frankenstein's monster who may manipulate the system into elected despotism--instances of such phenomena are the tears of history. To that the retort may be that the judicial branch, at the appropriate stage, with the potency of its benignant power and within the leading strings of legal guidelines, can call the bluff, quash the, action and bring order into the process."

27. We are also not inclined to accept Mr. Ambedkar's submission relying on the decision in **A.C. Jose** (supra) when he refers to the observations in paragraph 21 of the decision in the Supreme Court observing on the role of the Election Commission on interpretation of Article 324 to 329 of the Constitution as laid down in its celebrated decision in **N.P. Ponnuswamy vs. Returning Officer, Namakkal Constituency**[10] in the context of the legal and constitutional position on the role of the Election Commission, when the Supreme Court made the following observations:

> **"21.** The pointed and pungent observations, extracted above, really amount to a Bible of the election law as culled out from an interpretation of the provisions of Articles 324 to 329 of the Constitution, and were referred to with approval even in *Mohinder Singh Gill case* [(1978) 1 SCC 405 : AIR 1978 SC 851 : (1978) 2 SCR 272] . During the last three decades this case has neither been distinguished nor dissented from and still holds the field and, with due respect, very rightly. No other case ever made such a dynamic and clear approach to the problem, perhaps due to the fact that no such occasion arose because the Commission has always been following the provisions of the Act and the Rules and had never attempted to arrogate to itself powers which were not meant to belong to it. Indeed, if we were to accept the contention of the respondents it would convert the Commission into an absolute despot in the field of election so as to give directions regarding the mode and manner of elections by passing the provisions of the Act and the Rules purporting to exercise powers under cover of Article 324. If the Commission is armed with such unlimited and arbitrary powers and if it ever happens that the person manning the Commission shares or is wedded to a particular ideology, he could by giving odd directions cause a political havoc or bring about a constitutional crisis, setting at naught the integrity and independence of the electoral process, so important and indispensable to the democratic system.
>
> **25.** To sum up, therefore, the legal and constitutional position is as follows:
>
> "(*a*) when there is no parliamentary legislation or rule made under the said legislation, the Commission is free to pass any orders in respect of the conduct of elections,

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10 AIR 1954 SC 210

> (*b*) where there is an Act and express Rules made thereunder, it is not open to the Commission to override the Act or the Rules and pass orders in direct disobedience to the mandate contained in the Act or the Rules. In other words, the powers of the Commission are meant to supplement rather than supplant the law (both statute and Rules) in the matter of superintendence, direction and control as provided by Article 324,
>
> (*c*) where the Act or the Rules are silent, the Commission has no doubt plenary powers under Article 324 to give any direction in respect of the conduct of election, and
>
> (*d*) where a particular direction by the Commission is submitted to the Government for approval, as required by the Rules, it is not open to the Commission to go ahead with implementation of it at its own sweet will even if the approval of the Government is not given."

28. The context is also completely different from what fell for consideration of the Supreme Court in A.C. Jose (supra). We are hence, not persuaded to accept the petitioner's case referring to such decision. Further, in the present case, the petitioner has not made a single representation to the Election Commission of India pointing out any infirmity whatsoever in the observance of the rules, regulations, or non-adherence to law in the election process in question.

29. Mr. Ambedkar's reliance on the decision of the Supreme Court in **Hari Vishnu Kamath** (supra) is also not well founded. In such case, the question, which fell for consideration, was as to whether the High Court had jurisdiction under Article 226 to issue writs against the decisions of the "Election Tribunal", which was answered in the affirmative. It was held that the High Court would have power to supervise the decision of tribunal by issuance of appropriate writs and directions and that the "Election Tribunal" was subject to the superintendence of the High Court under Article 227 of the Constitution. This is certainly not a proposition which is attracted in the facts of the present case, as

the objection as urged on behalf of the respondent in regard to maintainability of the petition, is wholly on different grounds as discussed herebefore.

30. While parting we may also observe that the approach of the petitioner in filing the present petition, as rightly urged on behalf of the respondents is extremely casual, as seen not only from the contention as urged in the petition in invoking the extraordinary jurisdiction of this Court under Article 226, sans any tangible material whatsoever, but also seen from the frame of the petition by impleading the Election Commission of India with the nomenclature as "Chief Election Commission of India", and impleading State Election Commission by describing such respondent as "Chief Electoral Officer, the State Election Commission". There are no such entities for a writ to be issued.

31. We are also quite astonished as to how a writ petition can be filed on the basis of a single newspaper article purporting to canvass a theory of discrepancies in the 'cast vote' and 'poll votes', and on one such opinion published in the newspaper of one Shri. Ketan Pathak. Except such limited material, there is no other material whatsoever, much less of any authenticity, to the effect that there was any malpractice, fraud or complaint of any nature in regard to the voting at the closing hours of the poll i.e. at about 6 p.m., not by the voters who were not in queue. We are of the clear opinion that merely on political opinions or on unsubstantiated newspaper reports, a petition under Article 226 cannot at all be maintained.

32. In the light of the above discussion, we have no manner of doubt that this writ petition needs to be summarily rejected. It is accordingly rejected. The hearing of this petition has practically taken the whole day leaving aside our urgent cause list, and for such reason the petition would certainly warrant dismissal with cost, however, we refrain from doing so.

(ARIF S. DOCTOR, J.) (G. S. KULKARNI, J.)