

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/4/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.11583 of 2019

S. Nirmal Kumar ... Petitioner

Vs

1. Union of India
rep. by the Chief Election Commissioner of India
Election Commission of India
Government of India
Nirvachan Sadan
Ashoka Road
New Delhi 110 004.
 2. The Principal Secretary to
Election Commission of India
Government of India
Nirvachan Sadan
Ashoka Road
New Delhi 110 004.
 3. The Public (Elections) Department
Secretariat
Fort St. George
Chennai 600 009.
 4. The Chief Electoral Officer
Lawsthottam
Villianur Road
Reddiarpalayam
Puducherry 605 010.
- ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the respondents 1 to 4 to create awareness about the concept and reason behind for introduction of NOTA (None of the above) in Lok Sabha as well as Member of Legislative Assembly Election among the people, especially new/first time voters and aged people, across India through indoor and outdoor media such as Mobile APP, Television, Radio, print, social and digital media,

Cinemas and etc., as directed by the Hon'ble Supreme Court in the judgment dated 27/9/2013 passed in W.P.(C) No.161 of 2004 titled as People's Union for Civil Liberties Vs. Union of India.

For petitioner ... Mr.Prakash Adiapadam

For respondents ... Mr.Niranjan Rajagopalan

O R D E R

(Order of the Court was delivered by Subramonium Prasad, J)

Petitioner, a resident of Kanchipuram District, has filed this petition, for a writ of mandamus, directing the respondents 1 to 4, to create awareness, about the concept and reason behind for introduction of NOTA (None of the above), for the forthcoming Lok Sabha, as well as Legislative Assembly Elections, in the State of Tamil Nadu amongst the people, especially new/first time voters and aged people, across India through indoor and outdoor media, such as Mobile APP, Television, Radio, print, social and digital media, Cinemas and etc., as directed by the Hon'ble Supreme Court, in the judgment, dated 27/9/2013, passed in W.P.(C) No.161 of 2004, People's Union for Civil Liberties Vs. Union of India.

2. Heard Mr.Prakash Adiapadam, learned counsel for the petitioner and Mr.Niranjan Rajagopalan, learned Standing counsel for the Election Commission of India.

3. The Hon'ble Supreme Court, in {(2013) 10 SCC - 1} People's Union for Civil Liberties and Another Vs. Union of India and Another, was dealing with a petition, under Article 32 of the Constitution of India, challenging the constitutional validity, by Rules 41 (2), (3) and 49 (o) of the Conduct of Election Rules, 1961, to the extent that these provisions violate secrecy of voting. Petitioners, in the said petition, approached the Hon'ble Supreme Court, for the issuance of a writ or direction (s) of like nature, on the ground that though the abovesaid rules, viz., Rules 41 (2) and (3) and 49 - O, of the Conduct of Election Rules, 1961, recognise the right of a voter not to vote, but still the secrecy of his having not voted is not maintained in its implementation and thus the impugned rules, to the extent of such violation of the right to secrecy, are not only ultra vires to the said Rules but also violative of Articles 19 (1) (a) and 21 of the Constitution of India besides international covenants. The petitioners therein prayed for, declaring Rules 41 (2) and (3) and 49 - O of the Rules, ultra vires and unconstitutional and also prayed for a direction to the Election Commission of India, respondent No.2 herein, to

provide necessary provision, in the ballot papers as well as in the electronic voting machines, for the protection of the right of not to vote, in order to keep the exercise of such right a secret under the existing RP Act/the Rules or under Article 324 of the Constitution. In this regard, the Hon'ble Supreme Court has observed as under:-

"53. Democracy being the basic feature of our constitutional set-up, there can be no two opinions that free and fair elections would alone guarantee the growth of a healthy democracy in the country. The "fair" denotes equal opportunity to all people. Universal adult suffrage conferred on the citizens of India by the Constitution has made it possible for these millions of individual voters to go to the polls and thus participate in the governance of our country. For democracy to survive, it is essential that the best available men should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical values, who win the elections on a positive vote. Thus in a vibrant democracy, the voter must be given an opportunity to choose none of the above (NOTA) button, which will indeed compel the political parties to nominate a sound candidate. This situation palpably tells us the dire need of negative voting.

54. No doubt, the right to vote is a statutory right but it is equally vital to recollect that this statutory right is the essence of democracy. Without this, democracy will fail to thrive. Therefore, even if the right to vote is statutory, the significance attached with the right is massive. Thus, it is necessary to keep in mind these facets while deciding the issue at hand.

55. Democracy is all about choice. This choice can be better expressed by giving the voters an opportunity to verbalise themselves unreservedly and by imposing least restrictions on their ability to make such a choice. By providing NOTA button in the EVMs, it will accelerate the effective political participation in the present state of democratic system and the voters in fact will be empowered. We are of the considered view that in bringing out this right to cast negative vote at a time when electioneering is in full swing, it will foster the purity of the electoral process and also fulfil one

of its objective, namely, wide participation of people.

56. Free and fair election is a basic structure of the Constitution and necessarily includes within its ambit the right of an elector to cast his vote without fear of reprisal, duress or coercion. Protection of elector's identity and affording secrecy is therefore integral to free and fair elections and an arbitrary distinction between the voter who casts his vote and the voter who does not cast his vote is violative of Article 14. Thus, secrecy is required to be maintained for both categories of persons.

57. Giving right to a voter not to vote for any candidate while protecting his right of secrecy is extremely important in a democracy. Such an option gives the voter the right to express his disapproval with the kind of candidates that are being put up by the political parties. When the political parties will realise that a large number of people are expressing their disapproval with the candidates being put up by them, gradually there will be a systemic change and the political parties will be forced to accept the will of the people and field candidates who are known for their integrity.

58. The direction can also be supported by the fact that in the existing system a dissatisfied voter ordinarily does not turn up for voting which in turn provides a chance to unscrupulous elements to impersonate the dissatisfied voter and cast a vote, be it a negative one. Furthermore, a provision of negative voting would be in the interest of promoting democracy as it would send clear signals to political parties and their candidates as to what the electorate thinks about them.

59. As mentioned above, the voting machines in Parliament have three buttons, namely, AYES, NOES, and ABSTAIN. Therefore, it can be seen that an option has been given to the members to press the ABSTAIN button. Similarly, the NOTA button being sought for by the petitioners is exactly similar to the ABSTAIN button since by pressing the NOTA button the voter is in effect saying that he is abstaining from voting since he does not find any of the candidates to be worthy of his vote.

60. The mechanism of negative voting, thus, serves a very fundamental and essential part of a vibrant democracy. The following countries have provided for neutral/protest/negative voting in their electoral systems:

Sl. No.	Name of the country	Method of voting	Form of negative vote
1.	France	Electronic	NOTA
2.	Belgium	Electronic	NOTA
3.	Brazil	Ballot paper	NOTA
4.	Greece	Ballot paper	NOTA
5.	Ukraine	Ballot paper	NOTA
6.	Chile	Ballot paper	NOTA
7.	Bangladesh	Ballot paper	NOTA
8.	State of Nevada, USA	Ballot paper	NOTA
9.	Finland	Ballot paper	Blank vote and/or "write-in [Write-in.-The 'write-in' the form of negative voting allows a voter to cast a vote in favour of any fictional name/candidate.] "
10.	Sweden	Ballot paper	Blank vote and/or "write-in [Ed.: Matter between two asterisks has been emphasised herein.] "
11.	United States of America	Electronic/Ballot (Depending on State)	Blank vote and/or "write-in [Ed.: Matter between two asterisks has been emphasised herein.] "
12.	Colombia	Ballot paper	Blank vote
13.	Spain	Ballot paper	Blank vote

61. The Election Commission also brought to the notice of this Court that the present electronic voting machines can be used in a constituency where the number of contesting candidates is up to 64. However, in the event of there being more than 64 candidates in the poll fray, the conventional system of ballot paper is resorted to. The learned counsel appearing for the Election Commission also asserted through supplementary written submission that the Election Commission of India is presently exploring the possibility of developing balloting unit with 200 panels. Therefore, it was submitted that if in case this Court decides to uphold the prayers of the petitioners herein, the additional panel on the balloting unit after the last panel containing the name and election symbol of the last contesting candidate can be utilised as the NOTA button. Further, it was explicitly asserted in the written submission that the provision for the above facility for a negative or neutral vote can be provided in the existing electronic voting machines without any additional cost or administrative effort or change in design or technology of the existing machines. For illustration, if there are 12 candidates contesting an election, the 13th panel on the balloting unit will contain the words like "None of the Above" and the ballot button against this panel will be kept open and the elector who does not wish to vote for any of the abovementioned 12 contesting candidates, can press the button against the 13th panel and his vote will be accordingly recorded by the control unit. At the time of the counting, the votes recorded against Serial Number 13 will indicate as to how many electors have decided not to vote for any candidate.

62. Taking note of the submissions of the Election Commission, we are of the view that the implementation of the NOTA button will not require much effort except for allotting the last panel in the EVM for the same.

63. In the light of the above discussion, we hold that Rules 41(2) and (3) and Rule 49-O of the Rules are ultra vires Section 128 of the RP Act and Article 19(1)(a) of the Constitution to the extent they violate secrecy of voting. In view of our

conclusion, we direct the Election Commission to provide necessary provision in the ballot papers/EVMs and another button called "None of the Above" (NOTA) may be provided in EVMs so that the voters, who come to the polling booth and decide not to vote for any of the candidates in the fray, are able to exercise their right not to vote while maintaining their right of secrecy. Inasmuch as the Election Commission itself is in favour of the provision for NOTA in EVMs, we direct the Election Commission to implement the same either in a phased manner or at a time with the assistance of the Government of India. We also direct the Government of India to provide necessary help for implementation of the above direction. Besides, we also direct the Election Commission to undertake awareness programmes to educate the masses. (emphasis supplied)

4. The petitioner has filed the instant writ petition, based on the last sentence of the judgment by which the Hon'ble Supreme Court has directed the Election Commission of India, to undertake awareness programmes to conduct masses.

5. The Hon'ble Supreme Court, in the said judgment has not encouraged people from abstaining from voting. In fact, the Hon'ble Supreme Court, observed that Democracy is all about the choice and the choice is expressed by giving the voters an opportunity to verbalise themselves. NOTA should be only the last option. It cannot be encouraged as the first option. The Hon'ble Supreme Court only said that NOTA only signifies the right of voter, to express his disapproval, to the candidates that are put up by the authorities or who offer themselves to contest the election.

6. Petitioner in the instant writ petition has filed a reply received from the Election Commission of India, regarding queries raised by him, under the Right to Information Act, 2005. The said question and answer reads as under:-

"With reference to your RTI application No.Nil dated 16/3/2019, received in Commission, on 20th March 2019, I am directed to furnish herewith the point wise information as under:-

S. No.	Question	Reply
1	Please furnish the details of NOTA awareness program initiated to create awareness to new voters across India	Educating masses regarding NOTA is one of the parts of voter awareness programmes, however, no separate awareness campaigns are held for NOTA
2	Please furnish the details of platforms in which such NOTA awareness programs were published and printed	Commission's website for "Systematic Voters" Education & Electoral Participation (SVEEP) may be visited regarding more information related to awareness material. The weblink is http://ecisveep.nic.in .
3	Please furnish the details of budget allocated to create awareness on NOTA across India	
4	Please furnish the details of names of brand ambassador appointed for NOTA awareness program by Election Commission of India.	No separate brand ambassador is appointed for for NOTA awareness.

7. Reply of the CPIO & Under Secretary of Election Commission of India would show that the Election Commission of India is creating awareness regarding NOTA. This Court cannot give directions to the Election Commission of India as to how it must proceed and what are all the steps they must take in this process.

8. Mr.Niranjan Rajagopalan, learned counsel appearing for the Election Commission of India has stated that various activities are being carried out by the office of the Chief Electoral Officer and the DEO's offices, as part of the (SVEP) Systematic Voter Education and Electoral Participation initiative. In all the activities, details of NOTA are also included. Posters depicting NOTA are also displayed as part of awareness and the posters have been uploaded in the websites of CEO and DEOs.

9. He has also said that awareness is being spread among the voters through various process like

1. Awareness through - Display Methods
 - . Display of informative posters at prominent locations
 - . At bus stands
 - . At parking places

- . Theatres
- . Distribution of Informative Pamphlets at busy centres
 - . In buses
 - . In restaurant
 - . In theatres
 - . In markets
- . Theatres
- . LED screen displayed at the following prominent places
 - . Marina beach
 - . Koyambedu
 - . Besant Nagar beach
 - . LED mobile van at 32 District Collectorates
 - . LED screen at all Taluks
 - . LED screen at Government canteens
- 2. Awareness through - Physical events and activities
 - . Posters displayed at Southern Railways
 - . Posters displayed at metro stations
 - . Folk events
 - . Rallies/Marathons
 - . Competitions

10. Learned counsel appearing for Election Commission of India explained that in Systematic Voters Education & Electoral Participation (SVEEP) the process is explained through games and this will increase awareness regarding NOTA. Assumption of the writ petitioner that no awareness is created, regarding NOTA is not correct.

11. In view of the above, the submission of the Election Commission of India would show that Election Commission of India is taking adequate steps, to generate awareness, among voters about NOTA. As stated earlier, NOTA can never be the first choice but only the last choice of the voters. Election is all about choosing the best amongst the available alternative and not discarding all of them.

12. In the result, writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

mvs.

To

1. The Chief Election Commissioner of India
Election Commission of India
Government of India
Nirvachan Sadan
Ashoka Road
New Delhi 110 004.
2. The Principal Secretary to Election Commission of India
Government of India
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4. The Chief Electoral Officer
Lawsthottam
Villianur Road
Reddiarpalayam
Puducherry 605 010.

+2cc to Mr.Prakash Adiapadam, Advocate SR.No.37167

+1cc to M/s.GR.Asociates, Advocate SR.No.37961

+1cc to Government Pleader SR.No.37664

Writ Petition No. 11583 of 2019

RD(CO)
GMY(19/06/2019)

सत्यमेव जयते

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