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2021

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
(Via Video Conference)**

W.P.A. No. 2607 of 2021

**Gopal Seth
Versus
Election Commission of India and others**

Mr. Biswaroop Bhattacharya,
Mr. Lal Mohan Basu,
Mr. Sanjib Dutta.
...for the petitioner.

Mr. Dipayan Choudhury,
Mr. Suvradal Choudhury,
Ms. Priyanka Chowdhury,
Mr. R. Chakraborty.
...for the respondent nos.1 and 2.

Ms. Sonal Sinha.
...for the respondent no.3.

The petitioner, in his capacity as a citizen of India and a voter in the elections, has preferred the instant writ petition seeking certain reforms to the present system of conduct of election. The petitioner gave a representation in that regard to the Chief Election Commissioner of India on November 15, 2020, as annexed at page 19 of the writ petition.

The suggestions were that after the process of casting of each individual poll, the Electronic Voting Machine would memorize it and one dummy printed ballot paper bearing the 'actual marked

(casted) symbol by the particular voter' will be issued to the voter as a 'receipt', which will then be verified and if the voter is satisfied that his vote has been cast in the machine to his chosen candidate rightly, then the dummy ballot (receipt) would be dropped by him into the Ballot box; if the dummy ballot is erroneous, the voter might raise complaint against the machine and such machine, then, would have to be declared as 'out of service' and the polling process to be cancelled since beginning.

While counting votes, the petitioner moots a proposal that the result provided by each EVM should also be matched with such dummy ballots, which have to be counted manually. If there is a mismatch between the two, a resolution of the dispute has to follow.

Learned counsel submits that the procedure suggested by the petitioner goes beyond the judicial pronouncements governing the field and will lend additional transparency to the system of conduct of elections, which would be to the benefit of the Indian populace as a whole.

Learned counsel cites the judgment of *Dr. Subramanian Swamy Vs. Election Commission of India reported at (2013) 10 SCC 500*, inter alia, to indicate the reform introduced by the Supreme Court

regarding the system of maintaining paper trails for votes cast on EVMs.

Learned counsel further cites *N. Chandrababu Naidu and others Vs. Union of India and another* reported at 2019 15 SCC 377, wherein the Supreme Court, while considering guideline 16.6 of the Manual Electronic Voting Machine and VVPAT, arrived at the conclusion that the number of EVMs in respect of which VVPAT paper slips were to be subjected to physical scrutiny be increased from 1 to 5. Learned counsel submits that the present writ petition goes one step further and suggests that all the EVMs of each Assembly constituency should be physically scrutinized to ensure fairness in the election process.

Learned counsel cites Rule 49 MA of the Conduct of Election Rules, 1961 in such regard.

Learned counsel for the petitioner also places on record, by way of a supplementary affidavit filed with the leave of Court, the reply of the Election Commission of India to the petitioner's representation, which refused to relent to the suggestions of the petitioner on the grounds as given therein. Learned counsel argues that the reasons given therein are arbitrary and not in consonance with law and natural justice. It is argued that under

Article 226 of the Constitution of India this Court has ample power to pass necessary direction to ensure fairness in conduct of election.

Learned counsel for the respondents controverts such submission and relies on the reply given by the Election Commission of India to the petitioner's representation.

A perusal of the report of *Dr. Subramanian Swamy* (supra) indicates that the same pertains to the concept of 'paper trail' being introduced in respect of electronic voting machines for elections, to ensure further transparency in the system.

In *N. Chandrababu* (supra), the Supreme Court went one step further and brought about a modification in Rule 16.6 of the Manual on Electronic Voting Machine and VVPAT by increasing the number of paper slips, for being subjected to random physical scrutiny, to five from one.

However, in *N. Chandrababu* (supra), the Supreme Court took into consideration that such an increase to five paper slips per Assembly Constituency or Assembly Segment in a Parliamentary Constituency, would not required additional manpower which would be difficult for the Election Commission to provide, nor would the

declaration of the result be substantially delayed by such increment.

The Supreme Court, in exercise of its Constitutional powers, deemed it fit to increase the said number, which the present petitioner says ought to be extended to all the polling booths within an Assembly Constituency. However, the increase contemplated by the Supreme Court was specifically based on relevant factors, being the ensuing inconvenience in conduct of elections which would result from a further increase, relating to providing additional manpower and delay in declaration of results.

Sufficient grounds have not been made out by the petitioner for further increasing such number, keeping in mind the factors which were considered by the Supreme Court as well as the consequent difficulties of logistics and unnecessary expenditure which would necessarily be involved in case of such increase.

That apart, Rule 49 MA of the Conduct of Election Rules, 1961 provide a sufficient safety net for taking care of inaccuracies and errors which might crop up in electronic voting machines. Rather akin to the suggestion of the petitioner, it is specifically provided in Sub-Rule 1 thereof that if an elector

alleges that the paper slip generated by the printer has shown the name or symbol of a candidate other than the one he voted for, the presiding officer shall obtain a written declaration from the elector and make a second entry related to that elector in Form 17A as well as permit the elector to record a test vote in the voting machine in his presence and in the presence of the candidates/polling agents, attend the polling station at the relevant juncture and observe the paper slip generated by the printer. Sub-Rule 3 provides that if the voter's allegation is found to be proved, the presiding officer would immediately report to the returning officer and stop further recording of votes in such defective voting machine and proceed as per direction that may be given by the returning officer.

Not stopping there, Sub-Rule 4 further provides that if the allegation is found to be false and the paper slip was generated correctly in the test vote, the presiding officer is empowered to take necessary steps as stipulated therein.

Such provisions, read with stipulations in Rule 16.6 of the Manual on Electronic Voting Machine, provide ample protection to alleviate any apprehension in the mind of the voters and the candidates regarding foul play in the election process.

Since the Election Commission of India, which is the statutory authority to decide such disputes, has taken a reasoned decision on the basis of the apprehension expressed by the petitioner and the suggestions made by him, there is no scope for interference in the matter.

It appears that the reply of the Election Commission to the petitioner's representation, as annexed at page 4 of the supplementary affidavit of the petitioner, amply illustrates why the existing voting system provides an adequate mechanism to allay the apprehension of foul play.

The Commission clearly detailed the voting process, indicating that when a vote is cast, a slip is printed on the VVPAT printer containing the details of the candidates which remains exposed in a transparent window for about seven seconds, which is sufficient for the human eye to catch a meaningful glimpse.

The printed slip thereafter gets cut off and falls in a slip drop box of the VVPAT, which is not much different from the first suggestion made by the petitioner. Since the voters also have a right to lodge complaints regarding erroneous printing by VVPAT, the apprehensions of the petitioners are amply covered by the extant laws and rules, as modified by

the judgments of the Supreme Court governing the field, as demonstrated in the reply of the Election Commission.

In such view of the matter, there is no scope of interference in the present writ petition.

Accordingly, WPA 2607 of 2021 is dismissed on contest without any order as to costs.

Since affidavits have not been invited, it is deemed that the respondents do not admit any of the allegations made in the writ petition.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)