



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

PUBLIC INTEREST LITIGATION NO. 33 of 2024

Suhas Manohar WankhedePetitioner

VERSUS

Election Commission of India & othersRespondents

.....

Mr. S. M. Wankhede, Party-in-person.

Mr. Alok Sharma, Standing Counsel for Respondent No. 1.

Mr. A. B. Kadethankar, Advocate for Respondent No. 2.

**CORAM : RAVINDRA V. GHUGE
AND
R. M. JOSHI, JJ.**

DATE : 22nd MARCH, 2024.

ORDER (Per : Ravindra V Ghuge, J)

1. The issue raised by the Petitioner in person, is as regards the endeavour to be made by the Election Commission of India for making the voters aware of the Electronic Voting Machine (EVM) and more specifically, the use of '**None of The Above**' (NOTA). Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of People's Union for Civil Liberties and another vs. Union of India and another, **(2013) 10 Supreme Court Cases 1.**

2. The learned Standing Counsel/Advocates for the Union of India and the Election Commission of India, as well as the Chief Electoral Officer, Maharashtra, submit that since the Petitioner had earlier filed an identical PIL No. 121/2019, this Court should not entertain the instant Petition, which deserves to be dismissed with heavy costs since it is publicity oriented.

3. After having considered the submissions of the PIL Petitioner, the learned Standing Counsel for Respondent No. 1, we have perused PIL No. 121/2019, filed earlier by the same PIL Petitioner before us. This Court [Coram : Prasanna B. Varale (as His Lordship then was) & Avinash G. Gharote, JJ.], had heard the PIL Petitioner and had passed a detailed order on 14th October, 2019, which reads thus :-

On considering the issue raised in the present public interest litigation, namely, the direction to the respondents-authorities to take effective steps for general public awareness in regard to the option available to the voters to the 'NOTA' (None Of The Above), notice was issued to the respondents. In response to the notice, Mr. Kadethankar, learned Counsel appearing on behalf of respondent No. 1 submitted that the necessary steps so as to make the public general aware of the option 'NOTA'

area already taken and there is a large circulation of the availability of this option by various modes. He placed on record the compilation of the various communications issued by the State Election Commission, which are taken on record and marked 'X' for identification.

2. The petitioner in the present public interest litigation sought for direction in view of the judgment of the Honourable the Apex Court in the case of **People's Union for Civil Liberties and anr. Vs. Union of India & anr.**

3. Bare perusal of the communication shows that the State Election Commission specifically referred to the judgment and order of the Honourable the Apex Court in the very case i.e. People's Union for Civil Liberties and ors. Vs. Union of India & anr. Mr. Kadethankar, learned Counsel for respondent No. 1 submitted that the State Election Commission had taken the steps in all ensuing elections including the elections of Municipal Corporations, Zilla Parishads, Panchayat Samitis, Nagar Parishads, Nagar Panchayats and Gram Panchayats, etc.

4. Perusal of the order dated 12th November, 2013, issued by the State Election Commission refers to the option of the 'NOTA' to be made available to the voters and also the modalities and the procedures. This order also refers to the option being made available in the language in which the name of the candidates are

published on the ballot paper. It also takes care of the visibility of the option by making assured that the font size of the option 'NOTA' being equal with the font size of the name of the candidates published on the ballot paper. This order takes care of counting all the votes by exercising the option of 'NOTA'. The annexure-1 to the said order is the proforma ballot papers for elections of Corporations, Zilla Parishads, Panchayat Samitis, Nagar Parishads, Nagar Panchayats and Gram Panchayats. The compilation of the documents also refers to a documentary being prepared by the State Election Commission and availability of the said documentary on the website of the State Election Commission, namely, "www.mahasec.com. Then there is also an additional order passed by the State Election Commission on 26th November, 2013, whereby the directions are issued to the Election Officers so as to take appropriate care in the process of elections by making aware the voters of the option 'NOTA'.

5. Considering the aforesaid communications, this Court is satisfied and we are of the opinion that respondent No. 1 – State Election Commission had taken on its own as well as in view of the directions of respondent No. 3 – Election Commission of India, sufficient steps for making aware the voters the availability of the option 'NOTA'.

6. *In view above, as the grievance of the petitioner is not only addressed to but is duly redressed, the purpose of approaching this Court is duly served. As such, the present public interest litigation is disposed of accordingly.*

4. The pleadings in the present PIL Petition are practically identical to the earlier PIL filed by this Petitioner. The Petitioner's grievance is that the Election Commission of India is violating the directions of the Hon'ble Supreme Court. The Petitioner relies upon the same judgment cited before us today, viz. **People's Union for Civil Liberties and another, (supra)**.

5. The learned Advocate for the Election Commission of India places on record a pamphlet received by him from the Election Commission of India with the title "Chunav Ka Parv, Desh Ka Garv, Lok Sabha Election 2024". The said pamphlet is a voters' guide published by the Election Commission of India. The learned Advocate Mr. Sharma submits that the office of the CEO, Maharashtra, with regard to creating awareness about 'NOTA', has informed him in writing as under :-

1. Awareness regarding EVMs machines through the Mobile Demonstration Van and EVM Demonstration Centre started from 18th December 2023 to 29th

February 2024 in all districts of Maharashtra. During this awareness programme, NOTA awareness was also done in all districts.

2. Electoral Literacy programme modules have information and awareness on NOTA aspect. ELC programme is conducted at different places in a country, in schools, colleges and at polling booths as Chunav Pathshala.

3. ECI gives importance to NOTA among other themes, during their general awareness programmes.

4. ECI has planned to release an advertisement in leading National dailies, regarding awareness of NOTA, closer to the elections.

5. Voter Guide, which is distributed to every household across the Country, 5-9 days prior to the polls, includes awareness on NOTA.

6. After the last day of withdrawal of the candidate, we will create awareness of NOTA through SVEEP activities.

6. The pamphlet placed on record by Mr. Sharma is marked as '**X**' for identification. The voters' guide pamphlet is said to be published even in the local language in the State of Maharashtra. Copy of the same is placed on record, which is marked as '**Y**' for identification. The pamphlet contains information to educate a voter beginning with a voter standing in a queue to approach the Polling Officer who checks his name in the voters' list by verifying it with the ID proof, followed by the Polling Officer marking the finger nail of the voter with an indelible ink and giving him a slip after taking his signature. The voter then proceeds with the slip and approaches the Electronic Voting Machine. The voter can press any button to cast his vote in favour of the candidate of his choice or even NOTA. The long form of 'NOTA' is conspicuously mentioned in bold letters and catches the attention of the voter, immediately. The instructions are also set out in bold letters that 'NOTA' is available as the last option on the Electronic Voting Machine.

7. This pamphlet is actually a pictorial guide to the voters in order to make them aware of their rights and duties. It begins with making the voter aware of, (a) the process of registration online as well as off line,

(b) verification of details, (c) enrollment as a new voter, (d) method of searching the name in the voters' list, etc. So also, the voter is made aware that a holiday is declared on the polling day to facilitate casting of vote. A catchy statement is also set out as "It is not a holiday, it is a voting day".

8. The PIL Petitioner prays that the Election Commission of India should appoint a brand ambassador. He further submits that the Election Commission of India should start a campaign for NOTA. We find that these issues have already been dealt with by the Hon'ble Supreme Court in *People's Union for Civil Liberties and another* (supra). Infact, the Hon'ble Supreme Court declared that Rules 41(2) and (3) and 49-O, of the Conduct of Election Rules, 1961 were ultra vires to section 128 of the Representation of the People Act and Article 19(1)(a) of the Constitution of India, to the extent that they violate secrecy of voting. The Election Commission was directed to make a necessary provision in the ballot paper/EVMs and add another button called "NOTA" in the EVMs, so that the voters who come to the polling booth and decide not to vote for any candidate, are able to exercise their right to vote for NOTA, while maintaining

their right of secrecy. The Election Commission was directed to undertake an awareness programme to educate the masses.

9. We find that the Election Commission has already come out with a manual on Systematic Voters Education and Electoral Participation (SVEEP), which was published in July 2020. The SVEEP Strategy 2022-2025 (4) was also published. A provision for budget allocation was also made in SVEEP Strategy 2022-2025.

10. Having considered the above factors and the steps taken by the Election Commission of India and the State Election Commission, and the fact that this Petitioner had filed an identical Petition earlier, **this PIL Petition is dismissed.**

11. We could have imposed costs on the Petitioner, for filing a second Petition in the same cause. However, since the Petitioner is pursuing his Ph.D. research in Dr. Babasaheb Ambedkar Marathwada University and informs us that he has submitted his Ph.D. Thesis, and is awaiting viva-voca, that we are not imposing costs. However, we direct the Registry that, any time in future, if the present Petitioner files any Petition touching the issue of voting,

voters awareness programme or NOTA, the said Petition shall be subjected to due scrutiny and will not be registered, with out the permission of the learned Registrar (Judicial), of this Bench.

(R. M. JOSHI)
JUDGE

dyb

(RAVINDRA V. GHUGE)
JUDGE