



2024:DHC:6061-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 11103/2024 & CM APPL. 45889/2024**

HANS RAJ JAIN

.....Petitioner

Through: Petitioner in person.

versus

ELECTION COMMISSION OF INDIA

.....Respondent

Through: Mr. Ankit Agarwal, Standing counsel
for ECI with Ms. Viyushti Rawat and
Mr. Ashish Shukla, Advocates.

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Date of Decision: 12th August, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present public interest litigation has been filed seeking directions to the Respondent, the Election Commission of India, to use appropriate prototype of Voter Verified Paper Audit Trail ("VVPAT") system in the future, in which the printer is kept open and the printed ballot, which gets cut and falls out of the printer, is subject to verification by the voter, before providing the same to a presiding officer before leaving the polling station. Petitioner also seeks directions to the respondent, to allow a representation, submitted by the Petitioner on 15th April, 2024.

2. Petitioner, who appears in person, states that there should be 100% counting of the VVPAT slips in addition to electronic counting by the

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control unit. He further states that he is capable of counting all the VVPAT slips within eighteen hours.

3. *Per contra*, learned counsel for respondent-Election Commission of India states that the matter in issue is fully covered by the judgment of the Supreme Court in ***Association for Democratic Reforms vs. Election Commission of India & Another, W.P.(Civil) No.434/2023***. The relevant portion of the said judgment is reproduced hereinbelow:-

“Sanjeev Khanna, J

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3. *On a pointed question put by the Court, it was argued, without prejudice and in the alternative, on behalf of the petitioner – Association for Democratic Reforms, that the Court should direct:*

- a) *return to the paper ballot system; or*
- b) *that the printed slip from the Voter Verifiable Paper Audit Trial machine (For Short, ‘VVPAT’) be given to the voter to verify, and put in the ballot box, for counting; and/or*
- c) *that there should be 100% counting of the VVPAT slips in addition to electronic counting by the control unit.*

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9. *In N. Chandrababu Naidu and Others v. Union of India and Another, (2019) 15 SCC 377, the petitioners prayed that 50% randomised VVPAT slip verification be conducted in every General and Bye Elections instead of one EVM per assembly constituency or assembly segment in a parliamentary constituency. This Court held as under:*

“9. At the very outset the Court would like to observe that neither the satisfaction of the Election Commission nor the system in vogue today, as stated above, is being doubted by the Court insofar as fairness and integrity is concerned. It is possible and we are certain that the system ensures accurate electoral results. But that is not all. If the number of machines which are subjected to verification of paper trail can be increased to a reasonable number, it would lead to greater satisfaction amongst not only the political parties but the entire electorate of the country. This is what the Court should endeavour and the exercise, therefore, should be to find a viable number of machines that should be subjected to the verification of Vvpap paper trails keeping in mind the infrastructure and the manpower difficulties pointed out by the Deputy Election Commissioner. In this regard, the proximity to the election schedule announced by the ECI must be kept in mind.



10. Having considered the matter, we are of the view that if the number of EVMs in respect of which Vvpaper slips is to be subjected to physical scrutiny is increased from 1 to 5, the additional manpower that would be required would not be difficult for the ECI to provide nor would the declaration of the result be substantially delayed. In fact, if the said number is increased to 5, the process of verification can be done by the same team of polling staff and supervisors/officials. It is, therefore, our considered view that having regard to the totality of the facts of the case and need to generate the greatest degree of satisfaction in all with regard to the full accuracy of the election results, the number of EVMs that would now be subjected to verification so far as Vvpaper trail is concerned would be 5 per Assembly Constituency or Assembly Segments in a Parliamentary Constituency instead of what is provided by Guideline No. 16.6, namely, one machine per Assembly Constituency or Assembly Segment in a Parliamentary Constituency. We also direct that the random selection of the machines that would be subjected to the process of Vvpaper trail verification as explained to us by Mr Jain, Deputy Commissioner of the Election Commission, in terms of the guidelines in force, shall apply to the Vvpaper trail verification of the 5 EVMs covered by the present order.”

Accordingly, instead of one EVM per assembly constituency or assembly segment in a parliamentary constituency, as stipulated under the erstwhile Guideline 16.6 of the Manual on EVM and VVPAT, it was held that five EVMs per assembly constituency or assembly segment in a parliamentary constituency would be subject to VVPAT verification.

10. This Court vide order dated 22.11.2018 dismissed Writ Petition (Civil) No. 1332/2018 titled **Nyaya Bhoomi and Another v. Election Commission of India**, seeking return to the ballot paper system instead of EVMs.

11. This Court vide order dated 21.05.2019 dismissed Writ Petition (Civil) No. 692/2019 titled **Tech for All v. Election Commission of India**, seeking 100% verification of VVPATs against the EVM outcomes, as the issue had already been decided in **N. Chandrababu Naidu** (supra).

12. Even earlier, this Court vide order dated 30.10.2017 in **Prakash Joshi v. Election Commission of India**, 2017 SCC OnLine SC 1734, had rejected a similar prayer with regard to modification of the procedure for counting of votes by use of EVMs, leaving it to the discretion of the ECI. It was observed that this Court was not inclined to enter into the said arena.

13. This Court vide order dated 30.09.2022 dismissed Special Leave Petition (Civil) No. 16870/2022 titled **Madhya Pradesh Jan Vikash Party v. Election Commission of India** regarding use of EVMs with costs. This Court observed that:

“The election process under the representation of the People Act, 1951 is monitored by a Constitutional Authority like Election Commission. Electronic Voting Machines (EVM) process has been utilized in our Country for decades now but periodically issues are sought to be raised. This is one such endeavor in the abstract.”

14. Recently, this Court vide order dated 22.09.2023 dismissed Writ Petition (Civil) No. 826/2023 titled **Sunil Ahya v. Election Commission of India** seeking



independent audit of the source code of EVMs. This Court observed that:

“The Election Commission is a constitutional entity entrusted under Article 324 of the Constitution with superintendence and control over the conduct of the elections. The petitioner has placed no actionable material on the record of the Court to indicate that the Election Commission has acted in breach of its constitutional mandate. Ultimately, the manner in which the source code should be audited and the way the audit should be dealt with bears on sensitive issues pertaining to the integrity of the elections which are conducted under the superintendence of the Election Commission. On such a policy issue, we are not inclined to issue a direction as sought by the petitioner. There is no material before this Court, at this stage, to indicate that the Election Commission is not taking suitable steps to fulfill its mandate.”

15. This Court in **Kamal Nath v. Election Commission of India and Others, (2019) 2 SCC 260**, observed that it was without doubt that over the last several decades ECI has built the reputation of an impartial body and a constitutional authority which strives to hold fair election in which the people of this country participate with great trust and faith. The challenge to the EVMs and prayer for conducting VVPAT verification on random basis for 10% of the votes was rejected.

16. 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.”

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DIPANKAR DATTA, J

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9. Taking an example, West Bengal is the 13th largest state in terms of area, spread over 88,752 sq. km. The density of population of the state is 1028 persons/sq. km. Even a small state like West Bengal is more densely populated than most European nations. This being the scenario, any comparison of the nature which was sought to be drawn on behalf of the petitioning association with a particular European nation, may not be adequately representative since the demographic and logistical challenges in the conduct of elections in each country are unique to it. Also, it was not demonstrated before the Court that the machines put to use in the electoral system of such nation are similar and what was said by its court applies *ex proprio vigore* to India.



10. Electronic voting is not something which is prevalent only in India. Multiple countries use electronic voting in varying degrees in their national elections. However, use of EVMs in elections in India are not without its checks and balances. Reasonable measures to ensure transparency, such as tallying VVPAT paper trail in 5 EVMs per assembly constituency or assembly segment in a parliamentary constituency, are already in place after the decision of this Court in N. Chandrababu Naidu v. Union of India, (2019) 15 SCC 377. This measure, as has been noticed by Hon'ble Khanna, J., was undertaken out of abundant caution and not as an admission of a flaw in the process.

11. The aforesaid exercise of tallying VVPAT paper trail in 5 EVMs with votes cast by the electors has not, till date, resulted in any mismatch. This assertion of the ECI has not been proved to be incorrect by the petitioners by referring to any credible material or data. So long no mismatch is detected even after such an exercise, as directed in N. Chandrababu Naidu (supra), it would defy the sense of logic and reason of a prudent man to issue a Mandamus to the ECI to arrange for tallying 100% VVPAT slips on the specious ground of the petitioners' apprehension that the EVMs could be manipulated."

4. Keeping in view the aforesaid judgment of the Supreme Court, this Court is of the view that the issue raised in the present writ petition is no longer res integra.
5. Accordingly, the present writ petition and application are dismissed.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

AUGUST 12, 2024

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