

(2019) 04 SC CK 0159

In the Supreme Court Of India

Case No : Writ Petition (C) No. 273 Of 2019

N. Chandrababu Naidu & Ors

APPELLANT

Vs

Union Of India & Anr.

RESPONDENT

Date of Decision : 08-04-2019

Acts Referred:

Conduct Of Election Rules, 1961 — Rule 56C

Citation : (2019) 15 SCC 377 : (2019) 6 Scale 225

Hon'ble Judges : Ranjan Gogoi, CJ;Deepak Gupta, J;Sanjiv Khanna, J

Bench : Full Bench

Advocate : Dr. Abhishek Manu Singhvi, Saif Mahmood, Varun K. Chopra, Amit Bhandari, Avishkar Singhvi, Ms. Madhavi Khanna, Anish Dayal, Sumant De, Mayank Mikhail Mukherjee, Vivek Agarwal, Arjun Singh Bhati, L. Nidhiram Sharma, Azeem Samuel, Chandy Oomen, Zulfikar Menon, Kapil Sibal, Sanjay Hegde, Prasanna S., Nizam Pasha, Pranjal Kishore, Shantanu singh, Goutham Shivshankar, Sanjay Hegde, Pranjal Kishore, Aakarsh Kamra, Rana Mukherjee, Runamoni Bhuyan, S. Chatterjee, Piyush Sachdev, Rajkumar Thorat, C.A. Sundaram, Arvind P. Datar, Amit Sharma, Dipesh Sinha, Ms. Ayiala Imti, Prateek Kumar, Neelesh Singh Rao, K.K. Venugopal, Tushar Mehta, S.G. Rajat Nair, Sachin Sharma, Ankur Talwar, A.K. Sharma

Final Decision : Disposed Off

Judgement

Writ Petition (C) No. 273/2019:

This writ petition has been filed seeking the following reliefs:

"A. Issue a writ of mandamus or any other appropriate writ, order or direction thereby quashing and setting aside Guideline No.16.6 of the Manual on Electronic Voting Machine and VVPAT as framed and issued by the Election Commission of India; and

B. Issue a writ of mandamus or any other appropriate writ, order or direction thereby directing that minimum of 50% randomized VVPAT paper slip verification of EVM shall be conducted in every General and Bye Election in each Assembly

Segment of a Parliamentary Constituency, in case of Election to the House of the People; and in each Assembly Constituency, in case of an election to a State Legislative Assembly; and

C. Pass such other order or direction as it deems fit in the facts of the present case and in the interest of justice."

Guideline No. 16.6 of the Manual on Electronic Voting Machine and VVPAT in respect of which the first prayer has been made would require to be specifically noticed to appreciate the issues involved in the writ petition. We, therefore, deem it appropriate to extract Guideline No. 16.6, which reads as follows:

"16.6. Mandatory Verification of VVPAT Paper Slips:

Mandatory verification of VVPAT paper slips of randomly selected 01 (one) polling station shall be conducted in all future General and Bye Elections to the House of the People and State Legislative Assemblies, in addition to the provisions of Rule 56D of the Conduct of Elections Rules, 1961, after the completion of the last round of counting of votes recorded in the EVMs, as under:

a) In case of General and Bye elections to State legislative Assemblies, verification of VVPAT paper slips of randomly selected 01 (one) polling station per Assembly Constituency.

b) In case of General and Bye elections to the House of the People, verification of VVPAT paper slips of randomly selected 01 (one) polling station of each Assembly Segment of the Parliamentary Constituency concerned.

For this mandatory verification of VVPAT paper slips, the following procedure shall be followed.

16.6.1. The verification of VVPAT paper slips of randomly selected 01 (one) polling station for each Assembly Constituency/Segment shall be taken up after the completion of the last round of counting of votes recorded in the EVMs.

16.6.2. The random selection of 01 (one) polling station per Assembly Constituency/Segment shall be done by Draw of lots, by the Returning Officer concerned, in the presence of candidates/their agents and the General Observer appointed by the Commission for that Constituency.

16.6.3. The draw of lots must be conducted immediately after the completion of the last round of counting of votes recorded in the EVMs (Control Units) in the designated Counting Hall for the particular Assembly Constituency/Assembly Segment.

16.6.4. A written intimation regarding the conduct of draw of lots for the random selection of 01 (one) polling station for verification of VVPAT Slips shall be given by the Returning Officer to the Candidates/their election agents well in advance.

16.6.5. The following procedure shall be followed for the conduct of draw of lots:

- a) White colour paper cards of postcard size shall be used for conducting the draw of lots.
- b) Total number of such paper cards should be equal to total number of polling stations in the Assembly Constituency.
- c) The paper cards shall have pre-printed Assembly Constituency/ Assembly Segment number, AC/AS name and date of polling on the top, and the polling station number in the centre. Each digit of the polling station number shall be atleast 1" x 1"(1 inch by 1 inch) size and printed in black ink.
- d) The paper cards to be used for draw of lots should be four-folded in such a way that polling station number is not visible.
- e) Each paper card shall be shown to the candidates/their agents before folding and dropping in the container.
- f) The paper cards shall be kept in the big container and must be shaken before picking up 01 (one) slip by the Returning Officer.

16.6.6. The verification of VVPAT paper slips shall be done in a 'VVPAT Counting Booth' (VCB), specially prepared for this purpose inside the Counting Hall. The booth shall be enclosed in a wire mesh just like a bank cashier's cabin so that no VVPAT paper slip can be accessed by any unauthorized person. One of the Counting tables in the Counting Hall can be converted into the VCB and can be used for normal counting of round-wise EVM votes before the count of VVPAT slips as per random selection after the completion of round-wise EVM counting.

16.6.7. The Verification count of the VVPAT paper slips of the randomly selected 01 (one) polling station shall be conducted strictly in accordance with the instructions of the Commission on counting of printed paper slips.

16.6.8. The Returning Officer and Assistant Returning Officer, as the case may be, shall personally supervise the counting of VVPAT paper slips at this booth. The General Observer concerned shall ensure close and careful observation of the entire exercise and ensure strict compliance of the Commission's instructions.

16.6.9. The above process shall be fully videographed.

16.6.10. After completion of the above process, the Returning Officer shall give a certificate in the annexed format (Annexure-30)."

The petitioners, who are 21 in number, are representatives of 21 political parties, who claim to represent about 70-75% of the total population of the country and also to represent the entire opposition in the Lok Sabha. The thrust of the petition is that, to maintain the purity of the electoral process and to ensure foolproof result of the mandate expressed by the voters in the forthcoming General Elections of the Lok Sabha as well as to some Assembly seats in different States it is necessary to increase the percentage of verification of VVPAT paper trails to atleast 50% of the EVMs to be used in the forthcoming elections.

The Election Commission of India has not responded very favourably to the prayers made in the writ petition, as noticed above.

Very broadly, the Election Commission of India ("ECI") contends that a query had been posed to the Indian Statistical Institute ("ISI"), namely, "what would be the reasonable sample size of Polling Stations where VVPAT slips verification is required to be carried out to achieve the object of establishing the credibility and integrity of the electoral process".

According to the ECI, the said query was posed to an Expert Body, namely, ISI. In response, the ISI had submitted an elaborate report, the crux of which is that verification of VVPAT paper trail of 479 (randomly selected) Electronic Voting Machines ("EVMs") would generate over 99% accuracy in the election results. It is also pointed out that as per Guideline No. 16.6 i.e. verification of VVPAT paper trails of one Assembly Constituency or Assembly Segment in a Parliamentary Constituency would involve verification of VVPAT paper trail of 4125 EVMs instead of 479 EVMs which is eight times more than what has been reported by the ISI. Additionally, the ECI has pointed out infrastructure difficulties, including manpower availability, at this point of time, in increasing the number of EVMs for verification. According to the Election Commission of India, the sample verification of the VVPAT paper trail of one EVM is done by a team of three Officers under the direct supervision of the Returning Officer and the Election Observer of the constituency. The process takes about an hour. If what the petitioner asks for i.e. verification of VVPAT paper trail of 50% of the EVMs, the declaration of result of election could be delayed by 5-6 days.

In a situation where the ECI, a constitutional body, is satisfied on the integrity of the EVMs and which is further fortified by the sample verification of VVPAT paper trail of one EVM per Assembly Constituency or Assembly Segment in a Parliamentary Constituency, the exercise sought for by the petitioner would be a futile exercise, which the Court should not order, it is contended.

We have heard learned counsel for the parties and we have also interacted with Mr. Jain, Deputy Election Commissioner, who is personally present in Court.

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 VVPAT 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.

Having considered the matter, we are of the view that if the number of EVMs in respect of which VVPAT paper 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 VVPAT paper 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 VVPAT paper 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 VVPAT paper trail verification of the 5 EVMs covered by the present order.

With the aforesaid directions, the Writ Petition shall stand closed.

Writ Petition (C) No. 23/2019:

We express our reluctance to go into the issues regarding the integrity of the EVMs which have been raised at a belated stage. The petition was filed in the month of December, 2018 raising various technical issues which are not possible to be gone into at this stage.

With the aforesaid observations, the writ petition shall stand closed.

Writ Petition (C) No. 385/2019:

We are of the view that the present practice of recounting of votes in terms of Rule 56-C of the Conduct of Election Rules, 1961 shall continue.

With the aforesaid observation, the writ petition shall stand closed.

Writ Petition (C) No. 1514/2018 and Writ Petition (C) No. 215/2019:

The writ petitions shall stand disposed of in terms of the observations made in the connected writ petitions i.e. Writ Petition (C) No.273/2019 etc.