

SUPREME COURT OF INDIA

Kamal Nath

Vs.

Election Commission of India

WP(Civil)No.935 of 2018

(A.K.Sikri and Ashok Bhushan,JJ.,)

12.10.2018

JUDGMENT

A.K.Sikri,J.,

1. Writ Petition (Civil) No. 935 of 2018 is filed by the petitioner, who is the President of the Madhya Pradesh Congress Committee, claiming the following reliefs:

“(a) Issue an appropriate writ, order or direction to the Respondents to issue directions for conducting VVPAT verification at least 10% randomly selected polling stations in each assembly constituency/assembly segment to ensure free and fair elections;

(b) issue an appropriate writ, order or direction to the Respondents to publish voter list in text format as per rules, and to expeditiously decide all complaints qua final publication of voter list under Rules 22(1)(c) of the Registration of Electors Rules, 1960 and to prohibit deletion of voters from the voter list without intimation to political parties;

(c) issue an appropriate writ, order or direction to the Respondents to issue fresh guidelines qua VVPAT whilst considering the grounds/issues raised in the present writ petition, including but not limited to random VVPAT checks, mock polls and recounting, quality of Thermal Paper and printing, collection of Paper Trails and storage, unique identification numbers on VVPAT and paper trail collection boxes, transportation of EVMs and VVPAT before and after polls, First Level Checking (FLC) of VVPAT and posting of officials; and

(d) any such further and other order/orders be passed as may be necessary and deemed fit and proper in the facts and circumstances of the case to subserve the interest of justice.

2. As can be seen from the aforesaid prayer clause, essentially two reliefs are prayed for. First relief is for issuance of directions for conducting Voter Verifiable Paper Audit Trail

(VVPAT) verification on random basis for 10% of the votes. In the second place, direction is sought to provide to the petitioner soft copies of the draft electoral rolls published on July 31, 2018 in text format; to decide complaints pertaining to voter list expeditiously; and to prohibit deletion of voters from the voter list without intimation to the political parties.

3. In Writ Petition (Civil) No. 1000 of 2018, similar reliefs were pressed. However, the facts as they appear in Writ Petition (Civil) No. 935 of 2018 are taken note of.

4. We would like to place on record, at the outset, that the detailed arguments which were advanced by the petitioner were highly concentrated on the second prayer, that too for providing soft copies of the draft electoral rolls in text format. Insofar as the first relief is concerned, objection was raised by Mr. Vikas Singh, learned senior counsel appearing for respondent No.1 - Election Commission of India (hereinafter referred to as 'ECI'), to the maintainability of such a prayer on the ground that this issue has already been dealt with by this Court. We will take note of the respective submissions on this aspect at the appropriate stage. Since, the second prayer has become the bone of contention, in the first instance, we would like to deal with that aspect.

5. The main reason for which the petitioner is seeking direction to the respondents to publish voter list in text format and supply the same is that it is necessitated to ensure that the voter list is properly and fairly drawn, which includes all the eligible voters on the one hand and also excludes the duplicate, fake or incorrect voters. It is stated by the petitioner that he along with senior leaders from the State of Madhya Pradesh submitted a detailed representation on June 03, 2018 highlighting various duplicate, repeat, multiple, illegal, invalid and false entries/voters in the electoral rolls of Madhya Pradesh for Assembly Elections, 2018 and the ECI was requested to address the same. As per the petitioner, there is an increase by 40% in numbers of voters vis-a- vis population numbers of electors in the State of Madhya Pradesh since the last Assembly Election, i.e. in the last five years. It is contended that if voters/electors with birth year 1991-2001 will attain age of 18 years between 2008-2018, it can be reasonably expected that new voters added in the years 2008-2018 would be similar to the increase in population i.e. 1,18,18,290. However, it is shocking and alarming to see that increase in total number of voters i.e. 1,45,13,404 (more than 40% increase) in the corresponding increase in population during 2008-2018. Therefore, this additional increase over and above the population increase i.e. 26.95 lakhs of votes in the State of Madhya Pradesh seems inconceivable and incalculable.

6. The petitioner, accordingly, made representations to the ECI to take appropriate action to rectify the mistakes. The ECI sent letter dated July 16, 2018 to the All India Congress Committee (AICC), inter alia, stating that the allegations made in the representation dated June 03, 2018 preferred by the petitioner are not substantiated. At the same time, the ECI had also admitted, to the following effect, that there were some duplicate and fake entries in the voter list:

“(a) INTRA AC - 9664 were found in the repeated entry

(b) INTER AC - 8278 cases were found in the repeated entry

(c) Photo Entries - 2,37,234 photo entries found to be suspicious/unclear/blank photos;”

7. The petitioner also submits that the ECI has, thereafter, dropped more than twenty four lakh voters from the voter list of the State of Madhya Pradesh published in January 2018. The ECI has also admitted that 2,37,234 photo entries are found to be suspicious, unclear and blank photos. On the aforesaid premise, the petitioner submits that the political parties should be provided voter list in text format so that they are in a position to electronically scan the same and find out whether there are any duplicate or fake voters in the voter list prepared by the ECI.

8. In support of the aforesaid demand of supply of electoral roll in form in text mode, Mr. Kapil Sibal, learned senior counsel, referred to Clause 11.2.2.2 of Chapter XI of the Election Manual 2016 which reads as under:

“11.2.2.2 Putting draft roll on website:- Additionally, the draft roll shall be put in public domain, at Chief Electoral Officer’s website, in a PDF format on the same day. The draft roll shall be put on website in a text mode and no photographs would appear against the elector’s details. Instead it would indicate in the box meant for the photograph of elector whether the photograph is available or not.”

9. It was argued that as per the aforesaid clause contained in the Election Manual itself, the ECI was required to prepare the draft roll in text mode, albeit without photographs. The purpose was to enable the political parties to analyse and scrutinise the data and based thereupon to give any suggestions that are needed or submit objections if it is found that there are duplicate or fake voters. As against the aforesaid mandate, the ECI has provided Compact Discs (CDs) containing draft electoral roll published on July 31, 2018 in PDF non-editable form for all 230 constituencies of the State of Madhya Pradesh. Such scanned copies are in fact images and, therefore, inadequate for the purpose of scrutiny wherein data cannot be analysed. It is also stated that in 2013 Assembly Elections in Madhya Pradesh, draft electoral rolls were provided in text mode. Similarly, draft electoral rolls, as published on July 31, 2018 for the State of Rajasthan, have also been provided in text mode. Departure made in the instant case is questioned as unreasonable.

10. The ECI has filed a detailed counter affidavit. It is stated that the ECI has put the voter list on website in text mode and even images on the website are in text mode. However, the ECI has taken a conscious decision not to give copies of these voter list to the political parties in scannable text mode keeping in view the issue of privacy of voters. Various averments in the writ petition are strongly refuted in the counter affidavit. The ECI has stated that the petitioner had submitted a representation dated June 03, 2018 regarding various duplicate, repeat, multiple entries/voters in the electoral rolls of Madhya Pradesh for Assembly elections. As per the complaint received, 26.76 lakh records were submitted for ‘Within AC’ of 91 Constituencies and 26.74 lakh records of ‘Across AC’ of 101 Constituencies. All these entries have been verified physically in a door-to-door campaign. In

physical verification, 23,67,487 electors were found present, 2,34,596 electors were either deleted already or not found enrolled in the respective constituencies. In 46,859 cases, electors were found to be absent and 16,675 electors were found to be deceased. In all such cases, the action for deletion has already been taken. It is emphasised that only 8,728 cases were found in the repeated entry category against which appropriate action has already been initiated as per law.

11. The ECI accepts that during the process of continuous updation from January 19, 2018 to July 31, 2018, there was a net deletion of around 24 lakhs entries from the electoral roll and it is also correct that more than 2 lakh photo entries were flagged as being unclear/blank/repeated photos but out of these entries, 1,04,284 entries were found to be valid and only 97,687 entries had to be corrected during the aforementioned continuous updation of the electoral roll. Explanation given is that electoral roll updation is a continuous and ongoing process and the ECI as well as the office of the Chief Electoral Officer, Madhya Pradesh are committed to ensuring the purity and correctness of the electoral roll through continuous addition or deletion of names of electors on the basis of door-to-door survey by Block Level Officers (BLOs) and by processing all sort of information gathered through NSVP, CEO website or complaints received through the helpline number (1950), etc.

12. It is also claimed that the ECI has been taking transparency measures in electoral registration. The recognized political parties are supplied, free of cost, two copies (one hard copy in pdf with image of electors and another in soft copy without image of electors) of the electoral roll of the constituencies at the time of draft publication and final publication under the provision of Rule 11(c) and 22(c) of the Registration of Electors Rules, 1960. Further, the unrecognized registered political parties/NGOs/public can obtain soft copy of the electoral roll (without images of electors) in a CD in pdf format on a nominal price of Rs.100/- only per CD, containing the electoral roll of an Assembly Constituency, on request. In addition to the above, as per the ECI's existing instructions, image PDF of electoral rolls are published on website of Chief Electoral Officer of the State concerned so as to be placed in the public domain for view of general public. The general public can access such image PDF of electoral rolls through captcha containing alphabet, numeral and special characters.

13. On the basis of the aforesaid averments, Mr. Vikas Singh argued that the ECI itself does the exercise of de-duplication which was informed to the political parties also in the meeting which was conducted by it. He also submitted with vehemence that representation dated June 03, 2018 of the petitioner was replied on June 08, 2018 wherein it was clearly stated that corrections had already been carried out. According to him, these corrections took place on May 25, 2018 itself, i.e. even before the representation dated June 03, 2018 was submitted by the petitioner. It was duly communicated on June 08, 2018. Thereafter, draft voter list was published on July 31, 2018 wherein all the concerns have already been taken care of. Highlighting the issue of privacy of voters, it was argued by Mr. Vikas Singh that in case voter list is supplied in text form, it will enable data mining of various nature. For this reason, there was a re-look into the matter and the ECI had decided to provide the list in image form. It was submitted that Clause 11.2.2.2 of Chapter XI of Election Manual 2016, on which reliance was placed, does not require supply of draft voter list in searchable text

mode. In any case, it was only an administrative manual and had no statutory force. This can always be suitably amended by the ECI having regard to the exigencies. Therefore, there was a conscious decision in the form of instructions dated January 4, 2018 to supply non-searchable text mode in view of the safety and privacy concerns of the voters. Mr. Vikas Singh submitted that right to privacy has now been recognised as a fundamental right in *K.S. Puttaswamy and Another v. Union of India and Others* and it becomes the duty of the ECI to take care of that.

14. It can be discerned that the real issue is whether voter list is to be supplied to the political parties in text mode; albeit in PDF form. Therefore, our discussion concentrates on this issue.

15. There is no doubt about the bona fides of the ECI. It is a matter of record that in the last 25-30 years, ECI has built up the reputation of an impartial body which strives to hold fair elections. It is a Constitutional Authority and has been discharging its functions quite satisfactorily. People of this country, by and large, trust this institution for its impartial manner of discharging its functions. That is absolutely essential as well in a democratic polity where 'We, the people' elect the representatives to the legislative assemblies of the State as well as Parliament at the Centre. It is the will of the people which should be truly translated into reality. In that sense, the function of ECI becomes very important and it is supposed to discharge the same with utmost integrity, impartiality and objectivity. In re: Special Reference No. 1 of 2002, this Court emphasised the importance of Election Commission in the following manner:

“105. ...The duty of the Election Commission is to conduct fresh election and see that a democratically elected Government is installed at the earliest and any decision by the Election Commission, which is intended to defeat this very avowed object of forming an elected Government can certainly be challenged before the Court if the decision taken by the Election Commission is perverse, unreasonable or for extraneous reasons and if the decision of the Election Commission is vitiated by any of these grounds the Court can give appropriate direction for the conduct of the election.”

16. In the process of conducting fair elections, the ECI is also supposed to ensure that only genuine voters cast their votes. It has to ensure that there are no duplicate, fake or incorrect voters in the voting list prepared by it. It has also to ensure that genuine voters are not left out. Voter list should, therefore, be genuine in all respects. It is for this reason the ECI prepares draft voter list. While doing so, it attempts to remove duplicate, repeat or fake voters. It also endeavours to include all genuine voters. This process is not only undertaken with the aid of mechanical devices, namely, computer etc. but by sending its manpower on door-to-door basis. For the same reason, namely, to ensure that voter lists are flawless, these lists are put on the website for the voters to see and those who are excluded can make grievance/representation about the same. Likewise, for the same reason, the copies of the voter lists are supplied to the political parties as well and their objections are invited. This is done to give chance to the political parties to go through these lists so that they are able to

point out any errors, if any, in these lists. The ECI even holds all party meetings for this purpose where such issues are discussed.

17. The ECI claims that it has taken all necessary steps in this behalf.

18. It is stated by the ECI on affidavit that draft electoral roll of January 19, 2018 was rectified by ECI around May 25, 2018, whereas the first complaint of the petitioner and the political party to which he is affiliated regarding duplication/multiplication of voters is dated June 03, 2018. Thereafter, ECI gave a detailed reply to the petitioner and his political party on June 08, 2018, June 15, 2018 and July 16, 2018, pointing out that the electoral rolls had been rectified. Furthermore, ECI also supplied a copy of the rectified draft electoral roll to the petitioner, and the political party to which he is affiliated, on July 31, 2018. It was also stated at the bar that ECI has also now published the Final Electoral Roll on September 27, 2018 and supplied a copy of the same to the petitioner (and his political party) wherein all such defects/discrepancies find no place as they have already been rectified earlier. The ECI has explained that revision and updation of the electoral roll is a continuous process, which the ECI is diligently pursuing continuously .

19. In the aforesaid context, we need to examine the demand of the petitioner for supply of electoral roll in text format. This demand is based upon Clause 11.2.2.2 of the Election Manual which has already been reproduced above. This clause places an obligation on the ECI to put the draft roll on its website in PDF format. The purpose is to bring it in public domain so that each voter is able to access the same and find out whether his/her name is correctly shown and in case of any error, the said voter is in a position to get the same rectified. Likewise, in case a particular voter is missing from the list, that individual would be in a position to take up the matter with the ECI for inclusion of his/her name. A copy thereof is also given to the political parties as well, because these political parties have equal interest in ensuring that the aforesaid mistakes are removed. They can additionally check as to whether there are duplicate or fake voters also in the list and seek correction thereof. To this extent, there is no quarrel. However, the second part of the aforesaid clause mentions that draft roll would be put in a 'text mode'. It also states that no photograph would appear against the electors' details. The entire dispute hinges upon the meaning that is to be assigned to 'text mode'. The argument of the petitioner is that 'text mode' is the one which provides searching techniques as well. For this purpose, following description of 'full text search' from Wikipedia is produced:

“In text retrieval, full-text search refers to techniques for searching a single computer-stored document or a collection in a full-text database. Full-text search is distinguished from searches based on metadata or on parts of the original texts represented in databases (such as titles, abstracts, selected sections, or bibliographical references).

In a full-text search, a search engine examines all of the words in every stored document as it tries to match search criteria (for example, text specified by a user). Full-text-searching techniques became common in online bibliographic databases in the 1990s. Many websites and application programs (such as word processing software) provide full-text-search capabilities. Some web search engines, such as AltaVista, employ full-

text-search techniques, while others index only a portion of the web pages examined by their indexing systems.

20. Refutation of Mr. Vikas Singh is that 'text mode' in Clause 11.2.2.2 of the Election Manual relates to the 'content' of the draft electoral roll and not its 'format'. It is argued that prescription in the aforesaid clause of the Manual requires putting the draft electoral roll in text mode which would mean that it should contain only the text of the elector's details such as his name, address, age, etc. and not his/her photograph. It is explained that any PDF document generally contains two kinds of content: (i) Text and (ii) Pictures/Photographs/Pictorial Content. Any elector's details would include his name, age, address, etc. (i.e. 'the text part') as well as his photograph (i.e. 'the photograph/picture/pictorial content part'). Thus, the use of the phrase 'text mode' in Clause 11.2.2.2 of the Election Manual only means that the draft electoral roll put up on the Chief Electoral Officer's website shall only contain 'text' of the elector's details and not his/her 'photographs/pictures/pictorial content'. It is also explained that every PDF document, whether it is a searchable or non-searchable/Image PDF and which contains any text content in a 'Text Mode' is PDF in that sense. It is further submitted that there is nothing called a 'Text Mode' format of a PDF document. A simple 'Google search' in that regard would also clearly and conclusively establish the same.

21. We find force in the submission of the ECI. Clause 11.2.2.2 of the Election Manual uses the expression 'text mode'. The draft electoral roll in that mode, i.e. text mode, has been supplied to the petitioner. The clause nowhere says that the draft electoral roll has to be put up on the Chief Electoral Officer's website in a 'searchable PDF'. Therefore, the petitioner cannot claim, as a right, that the draft electoral roll should be placed on the website in a 'searchable mode'. It has only to be in 'text mode' and it is so provided.

22. The document from Wikipedia relied upon by the petitioner relates to 'full text search' and not 'text mode'. Obviously, when the said document explains how 'full text search' is to be undertaken, the explanation would be that it is a search engine which examines all of the words in every stored documents and would provide full text searching techniques as well. However, the absence of the words 'search' in Clause 11.2.2.2 of the Election Manual would make all the difference.

23. It is rightly explained by the ECI that PDF documents are primarily of two types/formats, namely:

(i) "Image-only" or Scanned PDFs - When scanning hard copy documents on MFPs and office scanners, or when converting a camera image, jpg, tiff or screenshot into a PDF, the content is "locked" in a snapshot-like image, without an underlying text layer. Such image-only PDF documents contain just the scanned/photographed images of pages. Image-only PDF files are not searchable, and their text usually cannot be selected, searches or copied.

(ii) Searchable PDFs - In Searchable PDFs, a text layer is added to the image layer, usually placed underneath. Such PDF files are almost indistinguishable from the original documents and are fully searchable. Text in searchable PDF documents can be selected, searched and copied.

24. Once we find that Clause 11.2.2.2 does not entitle the petitioner to get the draft electoral roll in the text mode which is searchable as well viz. in 'full text search' form, it is for the ECI to decide about the format in which the draft electoral roll is to be published. ECI has given the reasons for not adhering to the request of the petitioner in providing draft electoral roll in searchable PDF format. According to it, issues of privacy of voters are involved and the move of ECI is aimed at prevention of voter profiling and data mining. According to ECI, ensuring free and fair elections, to which it is committed, also necessitates that ECI is duty bound to protect the privacy and profiling of electors. Therefore, it is duty bound to take all precautionary measures. However, it is not necessary to go into this aspect.

25. One we read and interpret Clause 11.2.2.2 of the Election Manual in the aforesaid manner, the decision taken by the ECI which is contained in its Instructions dated January 4, 2018 becomes relevant. In those Instructions, ECI has directed its field level functionaries to put only the 'Image PDF' of electoral roll in the public domain. We are, therefore, of the opinion that the format in which the draft electoral roll is supplied to the petitioner fulfills the requirement contained in the Election Manual. It may be added that if the petitioner so wants, he can always convert it into searchable mode which, of course, would require him to put his own efforts.

26. Other relief which is claimed by the petitioner is to seek directions for conducting VVPAT verification at least 10% randomly selected polling stations in each assembly constituency/assembly segment to ensure free and fair elections. In this behalf, our attention was drawn by the respondents to Rule 56(d). It was also submitted by the respondents that this issue cannot be raised by the petitioner having regard to the orders passed on earlier occasions in few writ petitions which were filed on this aspect. The respondents referred to orders passed in *Prakash Joshi v. Election Commission of India*⁴. In that case also, where identical prayer was made, the petition was disposed of by orders dated October 30, 2017 in the following manner:

4 Decided on October 30, 2017 in W.P. (C) No. 983 of 2017 Writ Petition (Civil) No. 935 of 2018 & Anr.

“Mr. K.K. Venugopal, learned Attorney General submits that as far as Prayer (a) is concerned, the Election Commission of India has already implemented the same. The situation is accorded to by Mr. Amit Sharma, learned counsel for the Election Commission of India. As far as Prayer (b) is concerned, it is urged by Mr. K.K. Venugopal that guidelines have already been brought by the Election Commission of India. The same is disputed by Mr. Kapil Sibal and Mr. Vivek Tankha, learned senior counsel appearing for the petitioner. We leave it to the discretion of the Election Commission of India, as we are not inclined to enter into the said arena. As far as Prayer

(c) is concerned, it is submitted by Mr. K.K. Venugopal that the Election Commission of India has issued appropriate guidelines, and this Court may say that no officer/official against whom disciplinary proceedings have been initiated shall be posted in any key positions. Having heard Mr. K.K. Venugopal, we direct that the Election Commission of India shall not post any officer/official against whom the disciplinary proceedings has been initiated in any key position in any district. As far as prayer (d) concerning installation of CCTV cameras inside the polling booth to watch the mobility of persons inside the polling booth and display of such videograph alongwith the number of votes poll outside the polling booth on a display board is concerned, we are of the considered opinion that the same is not permissible and accordingly, the said prayer stands rejected. The writ petition is accordingly disposed of.”

27. Another writ petition being W.P.(C) No. 1012 of 20175 was filed before this Court in October 2017 itself, with almost identical prayer. This was dismissed in limine on November 20, 2017. In the counter affidavit, ECI has also referred to similar writ petitions filed in the High Court of Gujarat, which met the same fate. *Manubhai Chavada v. Election Commission of India & Ors.* Writ Petition (Civil) No. 935 of 2018 & Anr.

28. In view of the orders dated October 30, 2017 passed in W.P.(C) No. 983 of 2017 and on the basis of statement given by the ECI in the Court, we do not intend to entertain this relief. The writ petitions are accordingly dismissed.