

ASSOCIATION FOR DEMOCRATIC REFORMS & ANR. A

v.

UNION OF INDIA & ORS.

(Interlocutory Application No.183625 Of 2019 and 36653 of 2021)

In B

(Writ Petition (C) No.880 of 2017)

MARCH 26, 2021

S. A. BOBDE, CJI, A.S. BOPANNA AND
V. RAMASUBRAMANIAN, JJ.] C

Elections:

Electoral Bond Scheme, 2018 – Application seeking stay of the sale of electoral bonds under the Electoral Bond Scheme, 2018 – Another application seeking an interim direction to the Union of India not to open any further window for sale of Electoral Bonds which is likely to be opened on 01.04.2021 under the Scheme – Plea that Electoral Bonds Scheme allows the donors of political parties to maintain anonymity – Held: Despite the fact that the Scheme provides anonymity, the Scheme is intended to ensure that everything happens only through banking channels – While the identity of the purchaser of the bond is withheld, it is ensured that unidentified/unidentifiable persons cannot purchase the bonds and give it to the political parties – A non-KYC compliant application or an application for purchase of bonds not meeting the requirements of the scheme would be rejected – As a result the information about the purchaser would certainly be available with the SBI which alone is authorised to issue and encash the bonds as per the Scheme – Moreover, any expenditure incurred by anyone in purchasing the bonds through banking channels, would have to be accounted as an expenditure in his books of accounts – Furthermore, since the Scheme mandates political parties to file audited statement of accounts and also since the Companies Act requires financial statements of registered companies to be filed with the Registrar of Companies, the purchase as well as encashment of the bonds, happening only through banking channels, is always reflected in documents that eventually come to the public domain – Thus, since

- A *the Scheme was introduced on 2.1.2018 and the bonds are released at periodical intervals of every year, viz 2018, 2019 and 2020 without any impediment; and that certain safeguards have already been provided by this Court, no justification for the grant of stay at this stage – Furthermore, once this Court has passed an order directing some interim arrangement, thereafter applications for the same relief cannot be made, every time the window for the purchase under the Scheme is opened.*
- B *same relief cannot be made, every time the window for the purchase under the Scheme is opened.*

CIVIL ORIGINAL JURISDICTION: Interlocutory application no. 183625 of 2019 and interlocutory application no. 36653 of 2021 in writ petition(c) no.880 of 2017.

C (UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

Prashant Bhushan, Ms. Neha Rathi, Ms. Shivani Kapoor, Advs. for the Petitioners.

- D K.K. Venugopal, AG, Tushar Mehta, SG, R. Bala, Rakesh Dwivedi, Mukul Gupta, Sr. Advs., Ankur Begani, Ms. Shradha Deshmukh, Shyam Gopal, Ms. Chinamayee Chandra, Arvind Kumar Gupta, Ms. Seema Bengami, Ankur Talwar, Mrs. Anil Katiyar, Amit Sharma, Dipesh Sinha, Ms. Pallavi Barua, Prateek Kumar, Arvind Kumar Gupta, Prashant Bhardwaj, Rishi Bharadwaj, Abhiesumat Gupta, Vikram Singh Jakhar,
- E P. V. Dinesh, Ms. Rashmi Singh, Bineesh K., Ashwini Kumar Singh, B. K. Pal, Mukesh Kumar Maroria, Amit Anand Tiwari, Ms. Shakun Sharma, Ms. Mary Mitzy, Ms. Devyani Gupta, Ms. Sushma Suri, Aviral Kashyap, Advs. for the Respondents.

Applicant-in-person.

F The Order of the Court was passed:

ORDER

- G 1. The Association for Democratic Reforms and Common Cause have joined together and come up with the above Public Interest Litigation praying for the:
- G “(a) Issue a writ of declaration or any other appropriate writ declaring —
- H (i) *Section 135 of the Finance Act 2017 and the corresponding amendment carried out in Section 31 of the Reserve Bank of India Act, 1934,*

- (ii) *Section 137 of the Finance Act, 2017, and the corresponding amendment carried out in Section 29C of the Representation of the People Act, 1951* A
- (iii) *Section 11 of the Finance Act, 2017 and the corresponding amendment carried out in Section 13A, the Income Tax Act, 1961* B
- (iv) *Section 154 of the Finance Act, 2017 and the corresponding amendment carried out in Section 182 of the Companies Act, 2013 and* C
- (v) *Section 236 of Finance Act, 2016 and the corresponding amendment carried out in Section 2(1)(j)(vi) of the Foreign Regulations Contribution Act, 2010 as being unconstitutional, illegal and void.*
- (b) *Issue a writ of mandamus or any other appropriate writ directing that no political parties would accept any donation in cash.”* D

2. On 3.10.2017, notice was ordered in the writ petition and the writ petition was directed to be tagged along with Writ Petition (C) No.333 of 2015 and Special Leave Petition (C) No.18190 of 2014. Though Writ Petition (C) No.333 of 2015 was also by the Association for Democratic Reforms and another person, the reliefs sought therein were little different. The prayers made in the said writ petition were for (i) a declaration that all national and regional political parties are public authorities under the Right to Information Act, 2005; (ii) a direction to the Election Commission of India to collect all information concerning the finances of political parties; (iii) a direction to all national and regional political parties to mandatorily disclose complete details about their income, expenditure, donations and funding as well as full details of the donors. E

3. On 12.4.2019 this Court passed an interim order in common in Writ Petition (C) Nos.333 of 2015, 880 of 2017 and two other writ petitions. Paragraphs 11 to 15 of the said interim order read as follows: G

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11. We have considered the matter including the amendments in the different statutes brought in by the Finance Act, 2016 and 2017. We have closely examined the stand taken by the respective H

- A parties including what has been stated by the Election Commission of India in the affidavit filed, details of which have been set out. All that we would like to state for the present is that the rival contentions give rise to weighty issues which have a tremendous bearing on the sanctity of the electoral process in the country. Such weighty issues would require an in depth hearing which cannot be concluded and the issues answered within the limited time that is available before the process of funding through the electoral Bonds comes to a closure, as per the schedule noted earlier.
- C 12. The court, therefore, has to ensure that any interim arrangement that may be made would not tilt the balance in favour of either of the parties but that the same ensures adequate safeguards against the competing claims of the parties which are yet to be adjudicated.
- D 13. In the above perspective, according to us, the just and proper interim direction would be to require all the political parties who have received donations through electoral Bonds to submit to the Election Commission of India in sealed cover, detailed particulars of the donors as against the each Bond; the amount of each such bond and the full particulars of the credit received against each bond, namely, the particulars of the bank account to which the amount has been credited and the date of each such credit.
- E 14. The above details will be furnished forthwith in respect of Electoral Bonds received by a political party till date. The details of such other bonds that may be received by such a political party upto the date fixed for issuing such bonds as per the Note of the Ministry of finance dated 28.2.2019, i.e. 15.5.2019 will be submitted on or before 30th May, 2019. The sealed covers will remain in the custody of the Election Commission of India and will abide by such orders as may be passed by the Court.
- G 15. As per Clause 8 of the Electoral Bond Scheme, 2018, electoral bonds are to be issued for a period of 10 days in the months of January, April, July and October and additional 30 days is provided during an election year. As per the Schedule contained in the Note of the finance Ministry dated 28.2.2019, extracted above, a total period of 45 days has been fixed for issuing the bonds in the month of March, April and May. This, we are told, is in addition to the period of 10 days during which the Bonds were made available in
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the month of January, 2019. In view of Clause 8 of the electoral bond Scheme the days fixed for issuing the bonds in the month of March and May will necessary have to be related to the period of 30 days allowed for an election year. The total period, therefore, allowable for the month of January (10 days), April (10 days) and 30 days for the election year would be 50 whereas the Schedule contemplates issuance of bonds for a total period of 55 days i.e. 45 days plus 10 days of January. A period of 5 days, therefore, have to be deleted from the Schedule contained in the Note of the Ministry of Finance dated 28.2.2019. such deletion will be made by the Ministry of Finance who will be free to decide the days of deletion/exclusion.”

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4. As can be seen from the last line of paragraph 11 of the aforesaid order, this Court thought fit to make an interim arrangement as it was not possible to decide all the issues within the limited time available before the process of funding through Electoral Bonds came to a closure. At the time when the aforesaid interim order was passed, the schedule for the issuance of Electoral Bonds for the months of March, April and May, 2019 had been announced to be (i) 1.3.2019 to 15.3.2019; (ii) 1.4.2019 to 20.4.2019; and (iii) 6.5.2019 to 15.5.2019.

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5. Thereafter, the Association for Democratic Reforms filed the above application I.A. No.183625 of 2019 seeking a stay of the Electoral Bond Scheme, 2018 notified by the Central Government vide notification dated 2.1.2018. It is mentioned in paragraph 6 of this application that after this Court passed the interim order dated 12.4.2019 certain vital documents having a strong bearing on the case surfaced. However, the above application filed on 29.11.2019 could not be taken up for hearing.

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6. Therefore, the writ petitioners have come up with a fresh application in I.A. No.36653 of 2021 seeking an interim direction to the respondents not to open any further window for sale of Electoral Bonds under the Electoral Bond Scheme, 2018 and to prevent the respondents from any further sale of Electoral Bonds. This application is filed on the premise that the window for the sale of fresh bonds is likely to be opened at present on April 1, 2021.

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7. Since the reliefs sought in both the applications, though filed in a gap of two years, are one and the same, they were taken up together.

8. At the outset, learned Attorney General submitted that the copy of the latest application was received only three days ago and that

- A however he will advance arguments without seeking time for counter if no fresh material other than those found in I.A. No.183625 of 2019 is relied upon. This was agreed to.

9. We have heard Shri Prashant Bhushan, learned counsel for the applicants/writ petitioners, Shri K.K. Venugopal, learned Attorney General for the Union of India and Shri Rakesh Dwivedi, learned Senior Counsel appearing for the Election Commission of India.

10. We should point out at the threshold that there cannot be repeated applications seeking the same relief, merely because the interim reliefs sought, relates to something that is to happen at periodical intervals of time. Under Clause 8(1) of the Electoral Bonds Scheme, 2018 the bonds under the Scheme are made available for purchase, for a period of 10 days each in the months of January, April, July and October. Therefore, once this Court has passed an Order on 12.4.2019 directing some interim arrangement, thereafter applications for the same interim relief cannot be made, every time the window for the purchase under the Scheme is opened.

11. Despite the aforesaid normal rule of procedure and practice, we heard the learned counsel on both sides on the present applications, due to the seriousness of the issues raised. The main attack of Shri Prashant Bhushan, to the Electoral Bonds Scheme is that it allows the donors of political parties to maintain anonymity which is not healthy for a democracy. Though technically the Government may be in a position to find out the names of the donors, as the Scheme operates through the State Bank of India *via* banking channels, the members of the public and political parties not in power, will not be able to find out. Moreover, the amount of funds received by a party in power will normally be more, as it will be reciprocated with favours. The learned counsel also drew our attention to the various letters written by the Reserve Bank of India (for short “RBI”) as well as the Election Commission to contend that they had serious reservations about the Scheme.

12. Opposing the prayer for stay, it is contended by the learned Attorney General that this Scheme was intended to prevent unaccounted money having a sway in the elections and that under the Scheme the donors are obliged to operate only through banking channels. This, according to the learned Attorney General, curbed the menace of black money playing a huge part in the elections. Shri Rakesh Dwivedi, learned Senior Counsel for the Election Commission of India supported the Scheme.

13. It is true, as seen from the correspondence, that RBI has had some reservations. But it is not correct to say that the RBI and the Election Commission of India opposed the Electoral Bond Scheme itself. The Electoral Bond Scheme, 2018 was issued by the Central Government by a notification dated 2.1.2018 in exercise of the power conferred by Section 31(3) of the Reserve Bank of India Act, 1934. Before the issue of the said Scheme, there were discussions in which RBI participated. In their letter dated 4.8.2017 RBI recommended only certain safeguards. The relevant portion of the letter of the RBI dated 4.8.2017 reads as follows:

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We recommend, the following safeguards may be incorporated to minimize the inherent scope of misuse of such bonds for undesirable activities.

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(a) *The EBBs may have a tenor of maximum 15 days.*

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(b) *The EBBs can be purchased for any value in multiples of Rs.1,000, Rs.10,000 or Rs.100,000.*

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(c) *The purchase of EBBs would be allowed from a fully KYC compliant bank account of the purchaser.*

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(d) *The EBBs can be redeemed only by way of deposit into the designated bank account of an eligible political party.*

(e) *The sale of EBBs will be open for a limited period, may be twice in a year, for 7 days each.*

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(f) *The EBBs will be issued at RBI, Mumbai only”*

14. Even in his letter dated 14.9.2017 the then Governor of RBI stated that the major objective of the Scheme is to provide anonymity and that the same can be achieved if the bonds are issued in electronic form with RBI as the depository rather than as a physical scrip. On 27.9.2017 the matter was placed before the Committee of the Central Board of RBI and the Committee flagged serious reservations. These reservations, incorporated in the next letter of the RBI dated 27.9.2017 were read out to us by Shri Prashant Bhushan, in support of his contention that the Scheme, as proposed by the Government will not only be seen as facilitating money laundering, but also projected as intended to enable it.

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A 15. However, paragraph 5 of the same letter dated 27.9.2017 of the then Governor of RBI to the Finance Minister makes their final position clear and it reads as follows:

B *"If the government is agreeable to revisit its stance on issuing EBs in scrip form, we can discuss the modalities of issuance of EB in demat form, including the facility for multiple transfers before the proceeds are eventually credited to a political party's designated bank account, and with the Reserve Bank being the sole custodian of the information of the initial subscriber and the subsequent transferees. You would kindly appreciate that this would give us the twin advantage of providing anonymity to the contributor and at the same time ensuring that consideration for transfers between persons and entities, before the value of bond is credited to the political party, is through bank transfers and not cash or other means. This will be an enduring reform, consistent with the government's digitisation push, which can segue into an even more transparent process of electoral funding when the system is ready for it."*

C 16. Therefore, it is not correct to say that the RBI was opposed to the Scheme in principle. RBI's objection was to the issue of bonds in scrip form rather than in demat form. What RBI wanted to achieve was, in their own words, the twin advantage of *(i)* providing anonymity to the contributor; and *(ii)* ensuring that consideration for transfers is through banking channels and not cash or other means. In fact RBI called Electoral Bonds as "***an enduring reform, consistent with the Government's digitization push***". Therefore, the concerns expressed by RBI, to the form and not to the substance, cannot really advance the case of the petitioners.

D 17. As a matter of fact, most of the recommendations of the RBI have been accepted and incorporated in the Scheme. The following E features of the Scheme demonstrate this: *(i)* only political parties registered under Section 29A of the Representation of the People Act, 1951 and secured not less than 1% of the votes polled in the last general election to the House of the people or the legislative assembly shall be entitled to receive the bond; *(ii)* the bond can be encashed by an eligible political F party only through a bank account with the authorized bank; *(iii)* the G H

extant instructions issued by RBI regarding KYC norms and the bank's customer shall apply for the buyers of the bond and the authorized bank may also call for any additional KYC document; **(iv)** the bond shall be valid for 15 days from the date of issue and no payment will be made to any payee political party if the bond is deposited after the expiry of the validity period; **(v)** all payments for the issue of the bonds shall be accepted in Indian rupees, through demand draft or cheque or through electronic clearance system or direct debit of the buyers' account; **(vi)** the bond can be encashed only by depositing the same in the designated bank account of the eligible political party; **(vii)** the face value of the bonds shall be counted as income by way of voluntary contribution received by an eligible political party for the purpose of exemption from income tax under Section 13A of the Income Tax Act, 1961.

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18. Despite the fact that the Scheme provides anonymity, the Scheme is intended to ensure that everything happens only through banking channels. While the identity of the purchaser of the bond is withheld, it is ensured that unidentified/ unidentifiable persons cannot purchase the bonds and give it to the political parties. Under clause 7 of the Scheme, buyers have to apply in the prescribed form, either physically or online disclosing the particulars specified therein. Though the information furnished by the buyer shall be treated confidential by the authorised bank and shall not be disclosed to any authority for any purposes, it is subject to one exception namely when demanded by a competent court or upon registration of criminal case by any law enforcement agency. A non-KYC compliant application or an application not meeting the requirements of the scheme shall be rejected.

19. As far as the information to the Election Commission is concerned, the interim order passed by this Court on 12.4.2019 takes care of the same. In the reply filed by the Election Commission of India on 3.2.2020 to I.A. No.183625 of 2019, it is stated by them that the Election Commission of India has received sealed covers from various political parties (National, State and registered & unregistered parties). In Annexure C/1, to the reply filed by the Election Commission of India the Election Commission has provided a list of the political parties who have filed necessary details as per the order of this Court dated 12.4.2019. The dates on which the Election Commission of India received the necessary information in sealed covers is also indicated in Annexure C/1.

- A 20. In Annexure C/2 to the reply, the Election Commission has also furnished details of submission of audited annual accounts of the political parties.
- B 21. The fact that some of the parties have not yet submitted their audited annual accounts is a different matter and the same is not the subject matter of the present applications.
- C 22. We do not know at this stage as to how far the allegation that under the Scheme, there would be complete anonymity in the financing of political parties by corporate houses, both in India and abroad, is sustainable. If the purchase of the bonds as well as their encashment could happen only through banking channels and if purchase of bonds are allowed only to customers who fulfill KYC norms, the information about the purchaser will certainly be available with the SBI which alone is authorised to issue and encash the bonds as per the Scheme. Moreover, any expenditure incurred by anyone in purchasing the bonds through banking channels, will have to be accounted as an expenditure in his books of accounts. The trial balance, cash flow statement, profit and loss account and balance sheet of companies which purchase Electoral Bonds will have to necessarily reflect the amount spent by way of expenditure in the purchase of Electoral Bonds.
- E 23. Under Section 128 (1) of the Companies Act, 2013 every company shall prepare and keep books of accounts and financial statement for every financial year. ‘Financial statement’ is defined under Section 2(40) as follows:-
- “**2.** —
- F (40) “financial statement” in relation to a company, includes—
- (i) a balance sheet as at the end of the financial year;
- (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (iii) cash flow statement for the financial year;
- (iv) a statement of changes in equity, if applicable; and
- (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):
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Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;" A

24. Under Section 129(1), such financial statements should give a true and fair view of the state of affairs of the company and comply with the accounting standards notified under Section 133. These financial statements are to be placed at every Annual General Meeting of the company. Under Section 137, a copy of the financial statement, along with all the documents duly adopted at the Annual General Meeting shall be filed with the Registrar of Companies. B

25. The financial statements of companies registered under the Companies Act, 2013 which are filed with the Registrar of Companies, are accessible online on the website of the Ministry of Corporate Affairs for anyone. They can also be obtained in physical form from the Registrar of Companies upon payment of prescribed fee. Since the Scheme mandates political parties to file audited statement of accounts and also since the Companies Act requires financial statements of registered companies to be filed with the Registrar of Companies, the purchase as well as encashment of the bonds, happening only through banking channels, is always reflected in documents that eventually come to the public domain. All that is required is a little more effort to cull out such information from both sides (purchaser of bond and political party) and do some "match the following". Therefore, it is not as though the operations under the Scheme are behind iron curtains incapable of being pierced. C D E

26. One of the contentions of the petitioners is that though the first purchase may be through banking channels for a consideration paid in white money, someone may repurchase the bonds from the first buyer by using black money and hand it over to a political party. But this contention arises out of ignorance of the Scheme. Under Clause 14 of the Scheme, the bonds are not tradable. Moreover, the first buyer will not stand to gain anything out of such sale except losing white money for the black. F G

27. The apprehension that foreign corporate houses may buy the bonds and attempt to influence the electoral process in the country, is also misconceived. Under Clause 3 of the Scheme, the Bonds may be purchased only by a person, who is a citizen of India or incorporated or established in India. H

- A 28. Therefore, in the light of the fact that the Scheme was introduced on 2.1.2018; that the bonds are released at periodical intervals in January, April, July and October of every year; that they had been so released in the years 2018, 2019 and 2020 without any impediment; and that certain safeguards have already been provided by this Court in its interim order dated 12.4.2019, we do not see any justification for the grant of stay at this stage. Hence both the applications for stay are dismissed.

Nidhi Jain

Applications dismissed.