



***A 5-page summary of the 232-page judgment of a 5-Judge Bench:*

*For Delhi Law Academy students:***

Association for Democratic Reforms v. Union of India

February 15, 2024

Supreme Court of India

Judgment

1. The petitioners have instituted proceedings under Article 32 of the Constitution challenging the constitutional validity of the Electoral Bond Scheme which introduced anonymous financial contributions to political parties. The petitioners have also challenged the provisions of the Finance Act 2017 which, among other things, amended the provisions of the Reserve Bank of India Act 1934, the Representation of the People Act 1951, the Income Tax Act 1961, and the Companies Act 2013.

16. The effect of the amendments introduced by the Finance Act to the above legislations is that:

- a. A new scheme for financial contribution to political parties is introduced in the form of electoral bonds;
- b. The political parties need not disclose the contributions received through electoral bonds;
- c. Companies are not required to disclose the details of contributions made in any form; and
- d. Unlimited corporate funding is permissible.

Issues

29. The present batch of petitions gives rise to the following issues:



a. Whether unlimited corporate funding to political parties, as envisaged by the amendment to Section 182(1) of the Companies Act infringes the principle of free and fair elections and violates Article 14 of the Constitution; and

b. Whether the non-disclosure of information on voluntary contributions to political parties under the Electoral Bond Scheme and the amendments to Section 29C of the RPA, Section 182(3) of the Companies Act and Section 13A(b) of the IT Act are violative of the right to information of citizens under Article 19(1)(a) of the Constitution.

104. In view of the above discussion, we are of the opinion that the information about funding to a political party is essential for a voter to exercise their freedom to vote in an effective manner. The Electoral Bond Scheme and the impugned provisions to the extent that they infringe upon the right to information of the voter by anonymizing contributions through electoral bonds are violative of Article 19(1)(a).

106. The legitimate goal stage requires this Court to analyze if the objective of introducing the law is a legitimate purpose for the infringement of rights. At this stage, the State is required to discharge two burdens. First, the State must demonstrate that the objective is legitimate. Second, the State must establish that the law is indeed in furtherance of the legitimate aim that is contended to be served.

116. From the above discussion, it is clear that the right to information under Article 19(1)(a) can only be restricted based on the grounds stipulated in Article 19(2). It could be argued that curbing black money can be traced to the ground of “public order”. However, a Constitution Bench of this Court has interpreted the ground “public order” to mean “public safety and tranquility” and “disorder involving breaches of local significance in contradistinction to national upheavals, such as civil strife, war, affecting the security of the State.”¹³⁷ Thus, the purpose of curbing black money is not traceable to any of the grounds in Article 19(2).



130. Based on the above discussion, we conclude that Electoral Bond Scheme does not fulfill the least restrictive means test. The Electoral Bond Scheme is not the only means for curbing black money in Electoral Finance. There are other alternatives which substantially fulfill the purpose and impact the right to information minimally when compared to the impact of electoral bonds on the right to information.

158. To recall, Section 13A of the IT Act before the amendment mandated that the political party must maintain a record of contributions in excess of rupees twenty thousand. Section 11 of the Finance Act 2017 amended Section 13A creating an exception for contributions made through Electoral Bonds. Upon the amendment, political parties are not required to maintain a record of any contribution received through electoral bonds.

Section 29C of the RPA mandated the political party to prepare a report with respect to contributions received in excess of twenty thousand rupees from a person or company in a financial year. Section 137 of the Finance Act amended Section 29C of the RPA by which a political party is now not required to include contributions received by electoral bonds in its report.

167. It must be recalled that we have held above that the right to information of the voter includes the right to information of financial contributions to a political party because of the influence of money in electoral politics (through electoral outcomes) and governmental decisions (through a seat at the table and quid pro quo arrangements between the contributor and the political party).

The underlying rationale of Section 29C(1) is that contributions below the threshold do not have the ability to influence decisions, and the right to information of financial contributions does not extend to contributions which do not have the ability to influence decisions. Similarly, the right to privacy of political affiliations does not extend to contributions which may be made to influence policies. It only extends to contributions made as a genuine form of political support that the disclosure of such



information would indicate their political affiliation and curb various forms of political expression and association.

169. The Union of India has been unable to establish that the measure employed in Clause 7(4) of the Electoral Bond Scheme is the least restrictive means to balance the rights of informational privacy to political contributions and the right to information of political contributions. Thus, the amendment to Section 13A(b) of the IT Act introduced by the Finance Act 2017, and the amendment to Section 29C(1) of the RPA are unconstitutional.

The question is whether this Court should only strike down the non-disclosure provision in the Electoral Bond Scheme, that is Clause 7(4). However, as explained above, the anonymity of the contributor is intrinsic to the Electoral Bond Scheme. The Electoral Bond is not distinguishable from other modes of contributions through the banking channels such as cheque transfer, transfer through the Electronic Clearing System or direct debit if the anonymity component of the Scheme is struck down. Thus, the Electoral Bond Scheme 2018 will also consequentially have to be struck down as unconstitutional.

Conclusions

216. In view of the discussion above, the following are our conclusions:

- a. The Electoral Bond Scheme, the proviso to Section 29C(1) of the Representation of the People Act 1951 (as amended by Finance Act 2017), Section 182(3) of the Companies Act (as amended by Finance Act 2017), and Section 13A(b) (as amended by Finance Act 2017) **are violative of Article 19(1)(a)** and unconstitutional; and
- b. The deletion of the proviso to Section 182(1) of the Companies Act permitting unlimited corporate contributions to political parties is arbitrary and **violative of Article 14**.



217. We direct the disclosure of information on contributions received by political parties under the Electoral Bond Scheme to give logical and complete effect to our ruling.

On 12 April 2019, this Court issued an interim order directing that the information of donations received and donations which will be received must be submitted by political parties to the ECI in a sealed cover.

This Court directed that political parties submit detailed particulars of the donors as against each Bond, the amount of each 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 on which each such credit was made.

Directions

219. In view of our discussion above, the following directions are issued:

- a. The issuing bank shall herewith stop the issuance of Electoral Bonds;
- b. SBI shall submit details of the Electoral Bonds purchased since the interim order of this Court dated 12 April 2019 till date to the ECI. The details shall include the date of purchase of each Electoral Bond, the name of the purchaser of the bond and the denomination of the Electoral Bond purchased;
- c. SBI shall submit the details of political parties which have received contributions through Electoral Bonds since the interim order of this Court dated 12 April 2019 till date to the ECI. SBI must disclose details of each Electoral Bond encashed by political parties which shall include the date of encashment and the denomination of the Electoral Bond;
- d. SBI shall submit the above information to the ECI within three weeks from the date of this judgment, that is, by 6 March 2024;



e. The ECI shall publish the information shared by the SBI on its official website within one week of the receipt of the information, that is, by 13 March 2024; and

f. Electoral Bonds which are within the validity period of fifteen days but that which have not been encashed by the political party yet shall be returned by the political party or the purchaser depending on who is in possession of the bond to the issuing bank. The issuing bank, upon the return of the valid bond, shall refund the amount to the purchaser's account.

