ASSOCIATION FOR DEMOCRATIC REFORMS (ELECTORAL BOND SCHEME) V. UNION OF INDIA

Citation: Writ Petition (C) No. 880 of 2017, 2024 INSC 113

Date of Order: 15th February 2024

5 Judge Bench:

CJI D.Y. Chandrachud, Justice B.R. Gavai, Justice J.B. Pardiwala, Justice Manoj Misra

Concurring views by Justice Sanjiv Khanna

TABLE OF CONTENTS

FACTS

The Electoral Bond Scheme, 2018, introduced via amendments in the Finance Act, 2017, allowed individuals and corporations to anonymously donate money to political parties through bearer bonds issued by the State Bank of India (SBI).

The 2017 Finance Act also made consequential amendments. Three changes were made to Section 182 of the Companies Act, 2013 i.e., removing the 7.5% cap on corporate funding, deleting the requirement to disclose party-wise contributions, and allowing contribution to a political party only by a cheque, bank draft, or electronic clearing system. Section 13A of the IT Act was amended to read that the political parties are not required to maintain record of contributions if made through electoral bonds and the donation of over two thousand rupees must only be done by a cheque, bank draft, electronic clearing system or through an electronic bond. Section 29C of the Representation of the People Act, 1951 was amended exempting political parties from disclosing contributions received through electoral bonds. Amendments in Section 31 of the RBI Act, 1934 allowed the Central Government to authorise scheduled banks to issue electoral bonds.

The Association for Democratic Reforms (ADR) and others filed writ petitions under Article 32 challenging these amendments and the scheme on the grounds that it enabled unlimited, anonymous corporate and individual donations, violating the principles of transparency and free and fair elections.

ISSUE

1. Whether unlimited corporate funding to political parties (via the amendment to Section 182(1) of the Companies Act) violates Article 14 (equality) and the principle of free and fair elections.
2. Whether the non-disclosure of information on contributions (under the Electoral Bond Scheme and amendments to the RPA, IT Act, and Companies Act) violates the citizens' right to information under Article 19(1)(a).

RULE

Case	Principle cited for
PUCL v. Union of India, (2003) 4 SCC 399	The right to privacy would not be infringed because information about whether a candidate is involved in a criminal

	case is a matter of public record. Similarly, the assets or income are normally required to be disclosed under the provisions of the Income Tax Act.
Union of India v, Association of Democratic Reforms (ADR), (2002) 5 SCC 294	Information that candidates are required to disclose is only limited to aiding the voters in assessing whether they could cast their vote in a candidate's favour.
Kanwar Lal Gupta v. Amar Nath Chawla, 1975 SCC (3) 646	Political disparity results in "serious discrimination between one political party or individual and another on the basis of money power and that in turn would mean that "some voters are denied an 'equal' voice, and some candidates are denied an 'equal chance'".
Vatal Nagaraj v. R. Dayanand Sagar, (1975) 4 SCC 127	Large monetary inputs are "necessary evils of modern elections", which they hoped would be eradicated sooner rather than later.
P Nalla Thampy Terah v. Union of India, 1985 Supp SCC 189	The petitioners were justified in criticising the statute for "diluting the principle of free and fair elections."
State of Punjab v. Sodhi Sukhdev Singh, (1961) 2 SCR 371	Disclosure of information aids the party to the proceedings. But beyond that, disclosure also serves the public interest in the administration of justice
State of Uttar Pradesh v. Raj Narain, (1975) 4 SCC 428	The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing.
SP Gupta v. Union of India, 1981 Supp SCC 87	The Constitution guarantees the "right to know" which is necessary to secure "true facts" about the administration of the country.

SUBMISSIONS

Petitioners' Arguments

The RBI and Election Commission had opposed the scheme due to concerns about transparency and the risk of misuse. However, these objections were disregarded by the Central Government.
The scheme violates Article 21 of the Indian Constitution, as it undermines transparency and promotes corruption and quid pro quo relationships between corporations and the ruling party as laid down in the case of ***Kanwar Lal Gupta***.
Furthermore, it infringes upon the voter's right to information, a fundamental aspect of freedom of speech under Article 19(1)(a), as established in the cases of ***ADR*** and ***PUCL***.
The scheme also violates Article 25 of the Indian Constitution, as it allows companies to make undisclosed donations to political parties, thereby infringing upon shareholders' rights.
The removal of caps on corporate donations and the anonymity of donors undermine political equality and distort the democratic process. This allows loss-making or shell companies to make substantial political donations, facilitating money laundering.
Additionally, the scheme violates Article 14 of the Indian Constitution by favouring large corporations and the ruling party, creating an uneven playing field.
The primary objective of curbing black money is not being met, as cash funding up to two thousand rupees is still permitted. Moreover, company A can purchase a bond and transfer it to company B, who can then pay via cash. Furthermore, the proportionality principle established in the case of ***Gujarat Mazdoor Sabha*** and ***Ramesh Chandra Sharma*** is also not satisfied.

Respondents' Arguments

This scheme will serve the purpose of curbing Black money as only the parties who have received at least 1% vote in last election can get funding, and that too by only a KYC compliant person. Additionally, the 15 days validity of the bond ensures that it is not treated as a parallel money. Also, the scheme promotes "clean money" by encouraging donations through banking channels instead of cash.

Donor anonymity is necessary to protect against political victimisation by rival parties and the right to information under Article 19(1)(a) is not absolute and cannot extend to compel disclosure of donors.

The scheme balances transparency and privacy by requiring parties to file audited accounts and companies to disclose total donations (though not party-wise).

The court should exercise judicial restraint, as argued in landmark judgements like ***Rustom Cavasjee Cooper***, ***R.K. Garg***, ***Premium Granites***, ***Peerless General Finance and Investment Co.***, and ***BALCO Employees Union***, because the scheme involves matters of economic and policy discretion.

ANALYSIS

Scope of Judicial Review

The Hon'ble court relied on the case of ***Swiss Ribbons*** and Pioneer ***Urban Land and Infrastructure Limited*** to lay down that in cases of economic policy; legislation must be given free play. Now the first question was whether the amendments are economic legislation and to answer that the true nature of the law has to be analysed. The court divided the amendments into two heads i.e., non-disclosure of electoral financing and unlimited corporate funding, both proving amendments to be electoral process. Additionally, the amendments are classified as "electoral reform" by Union of India.

The second question is about the scope of judicial review. The Court held that the presumption of constitutionality applies, but once a prima facie violation of fundamental rights is shown, the burden shifts to the State to justify restrictions.

The amendments pertain to electoral transparency, not merely economic policy, and hence warrant strict scrutiny.

Close Association of Politics and money

The Hon'ble Court reflected on how the law only regulates contributions to a political party and not a candidate. Additionally, while analysing on the direct link between campaigning and voters, it was mentioned that money also plays a huge factor in selecting a candidate for a party as the leaders wants candidates who can self finance their campaigns. The role of money in politics has been recognised in various judgements such as ***Kanwar Lal Gupta***, ***Vatal Nagaraj***, and ***P Nalla Thampy Terah***.

It was held that the effect of provisions of electoral finance cannot be determined without keeping in mind the link between money and politics.

Non-Disclosure of Information

The Hon'ble court analysed whether the amendments infringe voters right to information under Article 19(1)(a). Relying on the case of ***Sodhi Sukhdev Singh***, ***Raj Narain***, and ***SP Gupta***, the court mentioned that denying the disclosure of information violates persons right. Additionally, the court analysed that the right to information does not only mean information about state affairs but also has an intrinsic constitutional value. While analysing the judgements in ***ADR*** & ***PUCL***, the court reviewed that the candidates criminal background and the expenses incurred by political party has to be disclosed as they are 'essential information' for voters to cast vote.

The Hon'ble court then looked into the question of whether funding details of political party is 'essential information'. It was held that political party is relevant political unit and hence disclosing funding details of political party is essential as voters associate voting with parties as well as candidates.

Thereafter, the Hon'ble court to check the justification of violation of right to information, laid down the proportionality test i.e., legitimate goal, suitability or rational connection, necessity, and balance. Mr. Arun Jaitley mentioned that the purpose is to curb black money and protect donors' privacy. It was analysed that the scheme does not pass the proportionality test for curbing black money and protect donors' privacy as there are other better ways.

Unlimited Corporate funding

The Court observed that the cap and disclosure requirements earlier served as safeguards to prevent undue corporate influence on the political process. Their deletion allowed even loss-making or shell companies to make unlimited and anonymous contributions, thereby enabling money laundering and quid pro quo arrangements. The Bench rejected the government's claim that the amendment was an economic policy measure, holding that electoral finance directly affects the integrity of democracy and cannot be insulated from constitutional scrutiny. Since corporations are not citizens, granting them unrestricted political spending power distorts political equality and undermines free and fair elections. The Court concluded that the amendment failed the test of reasonableness and transparency and thus struck it down as unconstitutional.

CONCLUSION

Electoral Bond Scheme, 2018 declared unconstitutional and struck down in its entirety.

Amendments to the following Acts were declared void:

- Section 31(3) of the RBI Act, 1934.
- Section 29C of the Representation of the People Act, 1951 (as amended).
- Section 13A of the Income Tax Act, 1961 (as amended).
- Section 182 of the Companies Act, 2013 (as amended).

SBI directed to:

- Stop issuance of further electoral bonds.
- Submit details of all electoral bond purchasers and political parties (from 2018–2024) to the Election Commission.

Election Commission directed to publish the data on its website for public access.

CONCURRING OPINIONS

Justice Sanjiv Khanna agreed to the conclusion by CJI DY Chandrachud but gave a different reasoning.

He emphasised the proportionality standard more explicitly than just manifest arbitrariness. He held that the invalidity of the unlimited corporate funding amendment is more appropriately analysed using the proportionality test, which includes: whether the restriction (or in this case, permitting restriction on disclosure etc.) pursues a legitimate aim; whether there is a rational connection; whether there are less restrictive alternatives; and whether the restriction is necessary.

He noted that the balancing prong of proportionality was failed in this case, based on the available data, he concluded that the scheme did not properly balance the voters' right to know with the state's interest (such as curbing black money or protecting donor privacy).

Although he agreed with striking down the provision, he clarified that his application of proportionality was somewhat constrained by the limited empirical data and evidence available. He did not claim to apply it strict sense but used it as a framework for reasonableness in the constitutional review.