

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

IA No. of 2019

IN

WRIT PETITION (CIVIL) NO. OF 2017

PUBLIC INTEREST LITIGATION

In the matter of:

ASSOCIATION FOR DEMOCRATIC REFORMS & ANR. ...PETITIONER

VERSUS

UNION OF INDIA & ORS ...RESPONDENT

APPLICATION FOR STAY

To,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION
JUDGES OF THE HON'BLE SUPREME COURT OF INDIA

The Humble Application of the

Petitioner above-named

MOST RESPECTFULLY SHOWETH:-

1. The Petitioner had filed the aforementioned Public Interest Litigation under Article 32 of the Constitution of India on the issue of corruption and subversion of democracy through illicit & foreign funding of political parties and opaqueness in the accounts of all political

parties. The petitioners are seeking directions from this Hon'ble Court to strike down certain amendments made through Finance Act, 2017 and earlier Finance Act, 2016, both passed as money bills, and which have opened doors to unlimited political donations, even from foreign companies and thereby legitimizing electoral corruption at a huge scale, while at the same time ensuring complete non-transparency in political funding.

2. The petitioner is filing the instant application for grant of stay on the implementation of the Electoral Bond Scheme, 2018 notified by the Central Government on 02.01.2018, Section 135 of the Finance Act 2017 and the corresponding amendment carried out in Section 31 of the Reserve Bank of India Act, 1934, Section 137 of the Finance Act, 2017, and the corresponding amendment carried out in Section 29C of the Representation of the People Act, 1951 (iii) Section 11 of the Finance Act, 2017 and the corresponding amendment carried out in Section 13A, the Income Tax Act, 1961 (iv) Section 154 of the Finance Act, 2017 and the corresponding amendment carried out in Section 182 of the Companies Act, 2013, during the pendency of the aforementioned writ petition.
3. That Finance Act, 2017 was introduced in Lok Sabha as Bill No. 12 of 2017 on February 1, 2017 to give effect to the financial proposals of the Union Government for the Financial Year 2017-18. The said amendments in question have opened the floodgates to unlimited corporate donations to political parties and anonymous financing by Indian as well as foreign companies which can have serious repercussions on the Indian democracy. The Finance Act of 2017

has introduced the use of electoral bonds which is exempt from disclosure under the Representation of Peoples Act, 1951, opening doors to unchecked, unknown funding to political parties. The said amendments have removed the existing cap of 7.5% of net profit in the last 3 years on campaign donations by companies and have legalised anonymous donations.

4. Use of Electoral Bonds for political donations is a cause of concern because:

- a. These bonds are in the nature of bearer bonds. The identity of the donor is kept anonymous. Political Parties are not required to disclose the name of the person/entity donating to a party through electoral bonds. Since the bonds are bearer instruments and have to be physically given to the political parties for them to encash, parties will know who is donating to them. It is only the general citizens who will not know who is donating to which party. Thus, electoral bonds increase the anonymity of political donations.
- b. The requirement to disclose in the profit & loss account the name of the political party to which a donation has been made is also removed. Only the total amount of donations to political parties has to be disclosed without the name of the political party.
- c. With the removal of the 7.5% cap on the net profits of the last 3 years of a company, now corporate funding has increase manifold as there is no limit to how much a company can donate. Even loss-making companies now qualify to make

donations of any amount to political parties out of their capital or reserves. Further, it opens up the possibility of companies being brought into existence by unscrupulous elements primarily for routing funds to political parties through anonymous and opaque instruments like electoral bonds. This has increased the opacity of funding of political parties, and the danger of quid pro quo and opacity of any benefits are passed on to such companies or their group companies by the elected government. This has a major negative implication on transparency in political funding and are in violation of citizens' right to information, a fundamental right.

d. Moreover, the contribution received by any eligible political party in the form of electoral bonds will be exempt from income tax as per Section 13A of the Income Tax Act.

5. The petitioner therefore filed the aforementioned writ petition in public interest challenging the following provisions as being unconstitutional:

(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

(iii) Section 11 of the Finance Act, 2017 and the corresponding amendment carried out in Section 13A, the Income Tax Act, 1961

(iv) Section 154 of the Finance Act, 2017 and the corresponding amendment carried out in Section 182 of the Companies Act, 2013 and

(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

6. This Hon'ble Court vide order dated 03.10.2017 had issued notice in the aforesaid Writ Petition. A copy of the order dated 03.10.2017 is annexed herewith as **Annexure A** (page_____).

7. That during the pendency of the aforesaid writ petition the Ministry of Finance *vide* Notification dated 02.01.2018 notified the Electoral Bond Scheme, 2018. As per the said scheme an electoral bond is a bond issued in the nature of promissory note, it may be purchased by a person who is a citizen of India or entities incorporated or established in India. The bonds are issued in multiples of ₹1,000, ₹10,000, ₹1 lakh, ₹10 lakhs and ₹1 crore. These are available at specified branches of State Bank of India and any KYC-compliant account holder can buy these bonds. Donors can donate the bonds to their party of choice which can then be encashed by the party's verified account within 15 days. The bond does not carry the name of the buyer or the payee. The political party does not have to disclose who it has received the

bond from in its account. Neither does the donor entity have to state to which party it has donated.

A copy of the Electoral Bond Scheme, 2018 notification dated 02.01.2018 issued by the Ministry of Finance is annexed herewith as **Annexure B**.

8. That as per clause 8 of the scheme Electoral Bonds are to be made available for purchase for a period of 10 days in January, April July and October. Sub clause 2 of clause 8 states that in an year of general elections the central government can specify 30 additional days when the bonds can be available for purchase. The scheme states as follows:

8. Periodicity of issue of bonds.- (1) The bonds under this Scheme shall be available for purchase by any person for a period of ten days each in the months of January, April, July and October as may be specified by the Central Government. (2) An additional period of thirty days shall be specified by the Central Government in the year of general elections to the House of People.

9. That pursuant to the Scheme, the Ministry of Finance issued a statement dated 28.02.2019 with regard to the issue of electoral bonds:

“State Bank of India (SBI) has been authorized to issue and encash Electoral Bonds through its 29 Authorized Branches

(as per list enclosed) in the months of March, April and May 2019 as per below mentioned schedule.

- i) 01.03.2019 to 15.03.2019*
- ii) 01.04.2019 to 20.04.2019*
- iii) 06.05.2019 to 15.05.2019”*

A copy of the press statement issued by the Ministry of Finance dated 28.02.2019 is annexed herewith as **Annexure C** (page_____to_____). A copy of news report dated 28.02.2019 by the Press Trust of India is annexed herewith as **Annexure D** (page_____to_____).

10. The above shows that electoral bonds are being made available for a large number of days in three months leading to general elections in the country scheduled to be held in the country in the coming two months i.e. in April-May 2019 to constitute the 17th Lok Sabha. It is expected that enormous amount of corporate funding would be received by political parties in April and May and this would play a critical role in the elections. It is known that corporate financiers use their clout to get lucrative contracts and get laws passed for their profits often at the cost of public interest. That is why many corporates are keen to fund political parties.
11. That as per research done and data compiled by Factly.com and the petitioner association close to 97% of all the bonds purchased so far are in denomination of Rs 10 lakh and Rs 1 crore

with no demand for bonds of smaller denominations. “Data obtained from SBI reveals that there is hardly any demand for electoral bonds of smaller denomination while 99.9% of bonds sold in terms of amount are of Rs 10 lakh & Rs 1 crore denomination.” This anomaly implies that common citizens are not buying these bonds and these are being bought only by big corporates to protect their interests. A copy of the report published on Factly.com along with the RTI filed by Factly showing details of electoral bonds sold between March and April 2018 is annexed herewith as **Annexure E** (page____to____). A similar RTI dated 27.05.2018 was filed by the petitioner organization seeking details about the electoral bonds sold in May 2018 showing similar results. A copy of an article published by ADR on the sale of electoral bonds along with an RTI response for May 2018 is annexed herewith as **Annexure F**(page____to____). Another similar RTI information dated 02.06.2018 showing similar results has been attached herewith. **Annexure G** (page____to____)

12. The fear with regard to electoral bonds has been proven right in light of the ruling Bhartiya Janta Party’s annual audit report for 2017-18 according to which the ruling party received the largest chunk of the funds received through electoral bonds. The ruling Bharatiya Janata Party (BJP) has earned more than ₹1,000 crore in 2017-18 and is all set to be the maximum gainer of political funding in the last financial year, according to its annual returns submitted to the Election Commission A copy of detailed report on the same published by *The Caravan* dated 17.01.2019 is annexed herewith as **Annexure H** (page____to____). A news report dated

29.11.2018 titled “Electoral Bonds: Ruling BJP bags 95% of funds” published in The Economic Times in this regard is annexed herewith as **Annexure I** (page____to____).

13. That the Supreme Court of Brazil in its judgment dated 17.09.2015 has ruled that all corporate donations to political parties and to candidates are unconstitutional. In an 8-3 verdict, the Supreme Court said that such donations were “unconstitutional” because “it is for citizens to elect their government, not the companies” It was held: “The influence of economic power has ended up transforming the electoral process into a rigged political game, a despicable pantomime which makes the voter a puppet, simultaneously undermining citizenship, democracy and popular sovereignty.” A copy of report dated 21.09.2015 with details on the said judgment by the Supreme Court of Brazil published in *The Wire* is annexed herewith as **Annexure J** (page____to____).

14. That one of the rationale behind the judgment was that “all power emanates from the people, who exercise it through elected representatives or directly” as enshrined in the first article of Brazil’s Constitution. It also stated that from now on, the mandates of politicians will actually belong to their voters, and companies will be able to fully dedicate themselves to that which they know how to do best which is to create jobs for the population. The status and influence of economic power has ended up transforming the electoral process into a rigged political game, which is unfortunate

for a democracy, making the voter a puppet whose citizenship and power is undermined.

15. That the Election Commission itself in a letter dated 26 May, 2017 brought the attention of Ministry of Law and Justice to the amendments introduced through Finance Act 2017 stating that these amendments *“will have a serious impact on Transparency aspect of political finance/funding of political parties”*. The Election Commission stated that it is evident from the Amendment in Section 29C of the Representation of People Act, 1951 *“that any donation received by a political party through an electoral bond has been taken out of the ambit of reporting under the Contribution Report as prescribed under Section 29C of the Representation of Peoples Act, 1951, and therefore, this is a retrograde step as far as transparency of donations is concerned and this proviso needs to be withdrawn”*.

A copy of the letter dated 26.05.2017 is annexed herewith as **Annexure K** (page ____ to ____).

16. Election Commission further stated that *“in a situation where contributions received through Electoral Bonds are not reported, on perusal of the Contribution reports of the political parties, it cannot be ascertained whether the political party has taken any donation in violation of provisions under Section 29B of the Representation of the People Act, 1951, which prohibits the political parties from taking donations from Government Companies and Foreign sources.”*

17. EC also stated that the amendments proposed in Section 182 of the Companies Act open up the possibility of the shell companies being set up for the sole purpose of making donations to political parties and that the second amendment in Section 182(3), which abolishes the provision that firms must declare their political contributions in their net profit and loss statements would compromise transparency.
18. The central government lied in the Rajya Sabha concerning the question pertaining to the concerns of the Election Commission which was dated to be answered on 18th December 2018 (copy of the question and answer to be attached). The question specifically asked whether the Election Commission has raised concerns on the issue of electoral bonds, if so, the details thereof as well as reasons therefor. Further the question asked about the steps taken by the Government to address the concerns.
19. That in the answer provided by Shri P. Radhakrishnan, Minister of State in the Ministry of Finance, it was specifically stated that the Government has not received any concerns from Election Commission on the issue of Electoral Bearer Bonds. Whereas, Election Commission had already sent the aforementioned letter dated 26.05.2017 to the Ministry of Law and Justice stating its serious concerns. A copy of the question and answer dated 18.12.2018 is annexed herewith as **Annexure L** (page____to_____).

PRAYER

In view of the facts & circumstances stated above, it is most respectfully prayed that this Hon'ble Court may be pleased to: -

- a) Grant a stay on the implementation of (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 (iii) Section 11 of the Finance Act, 2017 and the corresponding amendment carried out in Section 13A, the Income Tax Act, 1961 (iv) Section 154 of the Finance Act, 2017 and the corresponding amendment carried out in Section 182 of the Companies Act, 2013, during the pendency of the aforementioned writ petition.
- b) Grant a stay of the Electoral Bond Scheme, 2018 notified by the Central Government vide notification dated 02.01.2018.
- c) Any other and further orders or directions that this Hon'ble Court may deems fit, just and proper in the facts of circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE APPLICANT BE FOREVER BOUND

PETITIONER THROUGH

PRASHANT BHUSHAN

DATED: 05 MARCH 2019

COUNSEL FOR THE PETITIONER

DRAWN BY: NEHA RATHI

NEW DELHI

