

SECTION:PIL

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL WRIT JURISDICTION)

I.A. NO. _____ OF 2021
IN
WRIT PETITION (CIVIL) NO. 880 OF 2021

IN THE MATTER OF:

ASSOCIATION FOR PRECETION OF DEMOCRATIC
REFORMS & ANR.

PETITIONERS

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

FILING INDEX

S.NO.	PARTICULARS	COPIES	C.FEE
1.	APPLICATION FOR DIRECTION ON BEHALF OF THE PETITIONERS WITH AFFIDAVIT	1	120/-
2.	PROOF OF SERVICE	1	NIL

Prashant Bhushan

(PRASHANT BHUSHAN)
COUNSEL FOR THE PETITIONER

NEW DEHI:
DATED: 09.03.2021

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. The petitioner is filing the instant application seeking a direction restraining the respondents from opening any further sale windows for issuance of electoral bonds during the pendency of the instant writ petition.

2. It is submitted that the petitioner has earlier filed two applications of stay seeking a stay on the Electoral Bond Scheme, 2018 notified by the Central Government by notification dated 02.01.2018. The petitioner filed I.A No. 40115 of 2019 in March 2019 and I.A. No. 183625 in November 2019. The petitioner thereafter filed an Application for Early Hearing on 27.10.2020 in light of the then upcoming Bihar Elections. However, the matter has not been listed for more than a year now.
3. That the Electoral Bonds Scheme has 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. That 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.

6. That on 12.04.2019 this Hon'ble Court taking note of petitioner's submissions regarding the lack of transparency in the electoral bonds scheme passed the following directions: -

"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.

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."

7. The petitioner craves liberty from this Hon'ble Court to rely on the documents as filed by the petitioner in IA Nos. 18365 of 2019 and IA No. 40115 of 2019 as well as in the main Writ Petition paperbook.

8. The petitioner is filing the instant application for direction in light of the following facts the details of which the petitioner has already put on record:

- a. That the Election Commission vide letter dated 26.05.2017 and the RBI *inter alia* vide letters dated 31.01.2017, 14.09.2017, 27.09.2017 had objected to Electoral Bonds and had advised against the issuance of Electoral Bonds as a mode for donation to political parties.
- b. That the PMO ordered special and illegal sale of EBs just before State Polls in Karnataka in May 2018 in violation of the EB Scheme.
- c. Another special sale window of EBs was opened between November 1-10 right before the assembly elections scheduled in Chhattisgarh, Madhya Pradesh, Mizoram, Rajasthan and Telangana.
- d. That as per data on Electoral Bonds declared by political parties in their audit reports for the FY 2017-18 and FY 2018-19, the ruling party had received more than 60% of the total electoral bonds issued till date. That so far more than

Rs. 6500 crores worth of EBs have been sold with the majority of donations going to the ruling party. That almost 99% of the EBs purchased are of value 1 crore and 10 lakh denominations which shows that it is not individual citizens but large corporations which are purchasing these bonds with a view to receive kickbacks from the government. Clearly, these corporations are being allowed to do make unlimited anonymous donations to the ruling political party because of impugned amendments brought about but the Finance Act, 2017 and Finance Act, 2016.

9. That in light of the above, there is a serious apprehension that any further sale of Electoral Bonds before the upcoming state elections in West Bengal, Tamil Nadu, Kerala and Assam, would further increase illegal and illicit funding of political parties through shell companies. Thus, the petitioner seeks a direction that no further opening of window for the sale of EBs be allowed during the pendency of the instant writ petition.

PRAYER

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

- a) Direct the respondents not to open any further window for sale of Electoral Bonds under the Electoral Bond Scheme, 2018, during the pendency of the instant writ petition;
- b) Direct the respondents not to allow any further sale of electoral bonds during the pendency of the instant writ petition;
- 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

THROUGH:

Prashant Bhushan

PRASHANT BHUSHAN
COUNSEL FOR THE PETITIONER

DATED: 08 MARCH 2021
NEW DELHI
DRAWN BY: NEHA RATHI