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CASE COMMENTARY: ASSOCIATION FOR DEMOCRATIC REFORMS & ANR. V. UNION OF INDIA & ORS

~Jashandeep Kaur

Citation: 2024 INSC 113, writ petition(civil) No. 880 of 2017 (Supreme Court of India, decided on 15 February 2024)

INTRODUCTION

In a democracy, free and fair elections are very important. Elections are fruitful if the voters have the required information to make informed choices. The case of Association for democratic reforms & Anr. v. UOI &Ors[1], famously known as the electoral bond case, is very significant in this regard. This case deals with the question of whether a voter has the right to know who is funding the political parties which are contesting elections. The five-judge constitutional bench struck down the electoral bond scheme of 2018 for being unconstitutional. The court held that this scheme violated the right to information of the citizens given under Article 19 (1)(a) of the Constitution. The judgment concluded that funding to political parties cannot remain unrevealed from the people in the name of the privacy of the donor.

FACTS OF THE CASE

The central government introduced the electoral bond scheme[2] 2018, through the amendments in the Finance Act 2017[3]. This scheme allowed individuals or companies to buy electoral bonds from the State Bank of India. Then these purchasers can donate these bonds to eligible political parties of their own choice, and these bonds can then be redeemed by political parties through their bank accounts. The identity of these donors is not disclosed to the public. To make this scheme operative, the parliament amended the four statutes. The Representation of the People

[1] *Association for democratic reforms v. Union of India*,2024 INSC 113 (India).
[2] Electoral Bond Scheme, 2018, Gazette of India, Extraordinary, Part II, Section 3(ii), Jan. 2, 2018.
[3] Finance Act, No. 7 of 2017, §§ 135–137 (India)

Act,1951, the Companies Act 2013, the Income Tax Act 1961 and the Reserve Bank of India were amended to remove disclosure requirements in respect of donations to political parties.

The Representation of the People Act 1951 was amended through section 29C to do away with the obligation of a political party to reveal the name of an individual or a company that purchased an electoral bond.[4] Section 182 of the Companies Act was amended, which requires a company to donate up to 7.5 per cent of the average profit of the previous three years, and it also states that the company will reveal the party to which it has donated[5]. Changes to income tax were introduced to waive the requirements regarding disclosure obligations. The Reserve Bank of India Act was amended to permit SBI only to issue such bonds.

This scheme was challenged by the Association for democratic reforms, Common Cause, and the Communist Party of India before the Supreme Court under Article 32 of the Constitution. The petitioner argued that anonymous political donations deprive voters of crucial information about who is financially supporting the political parties.

ISSUES

1. Whether the non-disclosure of the information about voluntary political contributions under the scheme is violative of the right to information of citizens given under Article 19(1)(a).
2. Whether unlimited corporate donations without proper disclosure infringes the principle of free and fair elections and violate Article 14
3. Whether the amendments to various statutes are constitutionally valid.

ARGUMENTS OF THE PARTIES

Petitioner submitted that the right to information is an integral part of freedom of speech and expression. If the citizen has information regarding the funds of the political parties, then they can evaluate whether the political party may be influenced by the donor's interests. Without finding information, voters are unable to make an informed electoral choice. Petitioner further submitted that the removal of disclosure requirements and cap on corporate donations increased the possibility of shell companies, which could be used to channel funds into politics. This scheme undermined political accountability and transparency.

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[4] Representation of the People Act, No. 43 of 1951, § 29C (as amended) (India)

[5] Companies Act, No. 18 of 2013, § 182 (as amended by the Finance Act, 2017) (India)

The Union of India argued that the confidentiality of donors is for their protection from retaliation by rival political parties. It further submitted that it reduced the use of black money because the electoral bond replaced cash-based political donations with transactions of a traceable nature. The scheme balances transparency with donor privacy.

JUDGEMENT AND REASONING

A five-judge constitutional bench decided the case. It is a bench that consists of Chief Justice D.Y. Chandrachud and Justices Sanjiv Khanna, B.R. Gavai, J.B. Pardiwala, and Manoj Misra. The court held that Electoral Bonds Scheme is unconstitutional. The court declared that the scheme is against Article 19(1)(a) because it refrains voters from receiving information which is important for making informed electoral decisions. The court referred to its earlier decisions, which were the Union of India v. Association for Democratic Reforms[6] and People's Union for Civil Liberties v. Union of India[7]. In the decisions of these cases, it was already held that voters have the right to know about the background of the candidates, and it falls within the scope of freedom of speech and expression. The court said that the scope of the right to information extends to information regarding political funding. This right is not limited to information on governmental affairs only.

The court denied the government's argument regarding the privacy of the donor. The court applied the proportionality test and held that the protection of a larger public interest is more important than protecting the privacy of the donors. The Court held that complete secrecy is not constitutionally justified.

The court also declared the relevant amendments to the Companies Act and to the Representation of the People Act unconstitutional. Because these amendments allowed unlimited donations by corporations, and this imposed a serious risk of corporate influence over the political matters of the country.

The Supreme Court gave directions to the State Bank of India regarding the stoppage of the issuance of electoral bonds. The court also gave directions to the bank to provide complete details of bonds purchased and redeemed to the Election Commission of India and directed the commission to publish this information on its official website so that people can access the information.

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[6] *Union of India v. Ass'n for Democratic Reforms*, (2002) 5 SCC 294.

[7] *People's Union for Civil Liberties (PUCL) v. Union of India*, (2003) 4 SCC 399

ANALYSIS

The court recognised the right of the voters to know the source of funds of the political parties. By making this right fall within the ambit of Article 19(1)(a) of the Constitution, the court enhanced the connection between electoral transparency and democratic participation. One of the fundamental features of this judgment is the application of the doctrine of proportionality. The union government argued that the electoral bond scheme provides donors protection from political retaliation. Here, the court accepted that the privacy of donors is a right concern, but complete non-disclosure is not the appropriate way to achieve that objective. The court held that public interest in fair elections is more important than hiding the identity of the donors and keeping the donations secret. The court applied a balanced approach instead of preferring either competing constitutional right.

The court said that lifting limits on corporate donations would give corporations influence over public policy. Hence, transparency in political financing is essential to preserve political equality and public confidence in democratic institutions.

But the judgment is subjected to certain criticism. Commentators argue that compete struck down of the scheme may reduce legitimate political contributions through the formal banking system. They argue that instead of invalidating the whole scheme, the court should have directed the parliament to introduce a strong and proper disclosure mechanism. But this criticism is limited only to policy choices. the judgement dose not totally ban political donations but only directs that the legal system governing such donations must agree with constitutional guarantees of transparency and informed voting.

CONCLUSION

The electoral bond judgment is very important in constitutional law. It provides transparency in political finding which is an important feature of free and fair elections. The rulings reaffirm that future reforms strike a balance between privacy and democratic accountability.