

THE UNCONSTITUTIONAL ELECTORAL BONDS SCHEME –A STORY WITHIN A STORY

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ABSTRACT

The electoral bonds scheme allows corporations and individuals to anonymously donate money to political parties by purchasing bonds from the State Bank of India (SBI). Notably, it is the SBI that has the sole access to all the details of who purchases these electoral bonds and has the sole capacity to track these bonds. It is pertinent to mention the intention behind the electoral bond scheme of 2018; the government initiated this scheme with the motive of eliminating black money from the practice of funding political parties, as the majority of these donations were done through cash under the umbrella of black money. Before the commencement of the electoral bonds scheme in 2018, any individual or corporation could donate funds to political parties without a regulator, which facilitated the circulation of black money to these political parties. Through this scheme, the SBI stands as the regulator of these electoral bonds. Any individual or corporation who wishes to donate funds to any political party must purchase electoral bonds from the SBI first, and only then can they facilitate it further for the parties. Hence, the anonymity of these donations was somewhat restricted as these bonds were traceable at the discretion of the SBI after the commencement of the scheme. According to the scheme, after the bond has been purchased and facilitated to any of the parties that the donor wishes to donate, the party to which such donation of electoral bond is made is bound to encash such donation within the timespan of fifteen days from the date of issuance of such bond. Otherwise, such bonds are to be deposited in the Prime Minister Relief Fund.

Keywords: Anti-Corruption, Prime Minister Relief Fund, Black Money, Transparency.

INTRODUCTION

On January 2, 2018, the Ministry of Finance issued a notification unveiling the Electoral Bond Scheme, 2018. This initiative permitted designated branches of the State Bank of India (SBI) to distribute electoral bonds in various denominations, including ₹ 1,000, ₹ 10,000, ₹ 1,00,000,

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₹ 10,00,000, and ₹ 1,00,00,000. These bonds were made available for sale during specified 10-day periods in January, April, July, and October each year.

A distinctive feature of the scheme was the provision for anonymity of the bond purchasers, with only the SBI being privy to the buyer's Know Your Customer (KYC) details, which were required to be recorded.

Eligibility for political parties to receive donations through electoral bonds was contingent upon their securing more than one per cent of the votes in the most recent general election to the House of the People or a Legislative Assembly, which implied that only these political parties were eligible to be purchasers of the electoral bonds which are sold by the State Bank of India. Moreover, the political parties that are registered under Section 29A of the Representation of the People Act, 1951 were eligible to receive donations. Hence establishing pre-requisites for receiving donations.

However, the scheme faced legal challenges. The Association for Democratic Reforms (ADR), Common Cause, and the Communist Party of India (Marxist) filed petitions in the Supreme Court. Their contention was that the Electoral Bond Scheme lacked transparency in political funding and potentially facilitated substantial electoral corruption on a significant scale. These concerns raised broader questions about the integrity and fairness of political financing mechanisms in democratic processes.

This case was heard by a 5-judge constitution bench of the Supreme Court led by the Chief Justice of India for three days from October 31 to November 2 last year. On 15th Feb 2024, the decision by the constitution bench struck down the electoral bond scheme; furthermore, the bench directed the SBI to disclose details of each electoral bond encashed by the political parties to the Election Commission by March 6¹; the information should include the date of encashment and the denomination of the bonds and be submitted to the poll panel by March 6, and within a week from the disclose of information to the Election Commission, the Commission shall post such details on their official website, the court had ordered. The court said that this entire practice under the electoral bond scheme cannot be permitted. The ability of companies to influence the political process through contribution is much higher than that

¹ Association for Democratic Reforms v State Bank of India (2024) Civil Appeal No. 10382 of 2024, Supreme Court of India, 11 March, 2024

https://main.sci.gov.in/supremecourt/2024/10382/10382_2024_1_301_51365_Judgement_11-Mar-2024.pdf

of individuals. Contributions made by companies are purely business transactions made with the intent of securing benefits in return, the court said.

SBI'S NON – COMPLIANCE

The SBI did not meet the deadline as ordered by the Supreme Court, i.e., 6th of March, 2024, for sharing details of the electoral bonds encashed by political parties. The SBI, on March 4, 2024, moved an application to the Supreme Court of India seeking an extension of time till June 30, 2024, to disclose details of each electoral bond encashed by the political parties, merely just days before the end of the deadline, in the hopes of leaving the court with no option than to grant the extension. The SBI application before the Supreme Court contended that retrieval of information from “each silo” and the procedure of matching the information of one silo to that of the other was a time-consuming exercise. Hence, the extension.

SBI'S CONTEMPT

The petitioner for the Association for Democratic Reforms (ADR), in the plea, challenged the validity of the electoral reforms. Furthermore, filed a contempt petition against the SBI in the Supreme Court for “disobeying” the orders of the Constitution bench of the top court in the matter. The petitioner contended that the SBI has wilfully and deliberately disobeyed the judgement passed by the Constitution Bench, and the same not only negates the right to information for the citizens but also wilfully undermines the authority of the Hon’ble Supreme Court of India.²

The term ‘Contempt of Court,’ and more specifically, Civil Contempt of Court,³ can easily be interpreted as a person being disrespectful or disobedient to the court of law. In such cases, the judge has the power to enforce penalties, such as fines, or if found guilty of a Criminal Contempt of Court, he may send the contemnor to prison for a specified period of time.

As per the ADR’s application, the SBI’s request is “mala fide” and an attempt to thwart efforts to bring transparency ahead of the Lok Sabha elections, which were scheduled to be held in April-May 2024. The ADR argues that the SBI’s IT system designed for managing electoral bonds is already in place and can easily generate reports based on unique numbers assigned to

² Electoral Bonds Case: ADR Moves Supreme Court Seeking Contempt Action Against SBI for Failing to Disclose Information <https://adrindia.org/content/electoral-bonds-case-adr-moves-supreme-court-seeking-contempt-action-against-sbi-failing>

³ Contempt of Courts Act 1971, s 2(a).

each bond. The petitioner further contends that the voters have a fundamental right to know about the substantial sums of money contributed to political parties through electoral bonds. The petitioner argues that the lack of transparency goes against the essence of participatory democracy enshrined in Article 19(1)(a) of the Constitution.⁴

SBI'S CONTENTIONS

Appearing for SBI, Senior Advocate Harish Salve said that the bank had followed a Standard Operating Procedure (SOP) to store information about the electoral bond scheme outside the core banking system. He argues, "We need a little more time to comply with the order. We are trying to collate the information, but we are having to reverse the entire process. We, as a bank, were told that this is supposed to be a secret."

CJI, D.Y. Chandrachud, noted that it was submitted that donor details were kept in a sealed cover in a Mumbai branch of the bank. Justice Sanjiv Khanna supported this, saying, "You have to just open the sealed cover, collate the details and give the information."

Mr. Salve replied, "I have full details on who purchased the bonds, and I have full details from where the money came and which political party rendered it. The names must be collated and crosschecked with the bond numbers. I cannot make a mistake, or else I will be sued by the donors. This job will take three months."

The CJI then asked what work the bank has done in the past 26 days since the verdict was passed and noted that the bank has not provided this information. In its judgement, the court held that the voter's right to information includes the right to know financial contributors to a political party because of its influence on electoral politics and on government decisions. The court noted that contributions made by companies are purely business transactions made with the intent of securing benefits in return. The court held that 94% of the electoral bonds, in value terms, were of the denominations of 1 crore, which is a clear indication of the quantum of corporate funding. The court ruled that information about sources of political party funding would enable voters to assess if there is a correlation between policymaking and financial contributions and empower people to track quid pro quo.

⁴ Constitution of India 1950, art 19(1)(a).

OBSERVATION, RATIONALITY AND VERDICT OF THE SUPREME COURT

As a response to the above matter, the Supreme Court fielded tough questions and asked what the bank had done for the past 26 days.

The court determined that the SBI was culpable for attempting to justify its failure to disclose information regarding electoral bonds, including details such as purchasers, denominations, and the parties receiving them. Turing down the State Bank of India's request for one more time to disclose the details of the electoral scheme. The Supreme Court said that all the past donors and the parties to which the funds have been given in the past as well must be disclosed.

The supreme court dismissed the extension petition and ordered the SBI to share the details with the Election Commission of India (ECI) by the close of business hours on March 12th; in accordance with the order, the poll body was asked to publish the details on its website by 15th of March, 5 pm on Friday. The court also warned that it would initiate contempt proceedings against the government-run bank if it did not provide the information within the stipulated time. The ADR said that the application had been filed at the very last moment to ensure the details were not public before the upcoming Lok Sabha polls, which further violates the entire concept of free and fair elections.⁵

PARTIAL COMPLIANCE

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In an affidavit filed before the Supreme Court, SBI stated that a total of 22,217 electoral bonds of varying denominations were purchased by donors between April 1, 2019, and February 15, 2024, out of which 22,030 bonds worth Rs. 12,769.40 crores were redeemed by political parties.

In compliance with the Hon'ble Supreme Court's directions to the SBI, contained in its order dated 15th Feb and 11th March 2024, data on electoral bonds was supplied by the State Bank of India to the Election Commission of India on March 12th⁶. The data which was published on the official website of the Election Commission was divided into two lists, namely;

⁵ Constitution of India 1950, art 324

⁶ Election Commission of India, 'Disclosure of Electoral Bonds' <https://www.eci.gov.in/disclosure-of-electoral-bonds/>

The Purchaser Details

This list contains comprehensive information regarding the purchasers of the electoral bonds, including details of the denomination purchases and whether they are individuals or companies, along with the date on which such a purchase is made.⁷

Encashment Details⁸

This list details the political parties that received electoral bonds, along with the denominations thereof, along with the date of such encashment.

However, the State Bank of India did not disclose the confidential unique numbers of the electoral bonds, which were essential for the connection between both the respective lists.

FINALITY

As a result, The Supreme Court rebuked SBI and said that the State Bank of India could not be selective in disclosing information linked to electoral bonds; the Supreme Court of India directed the bank to submit full details of the bond's numbers to the Election Commission by March 21. Seeing the downfall and justice brought to the entire electoral bond structure, six political parties themselves disclosed the electoral bonds.⁹

CONCLUSION

In conclusion, the electoral bonds scheme stands as a stark example of constitutional concerns exacerbated by the State Bank of India's non-compliance in divulging vital unique identifiers. These identifiers are pivotal for linking donors to political parties, thus ensuring transparency and accountability in electoral funding. The scheme's lack of transparency not only violates democratic principles but also poses significant threats to the integrity of the electoral process

⁷ Election Commission of India, <https://www.eci.gov.in/eci-backend/public/api/download?url=LMAhAK6sOPBp%2FNFF0iRfXbEB1EVSLT41NNLRjYNJJPIKivrUxbfqkDatmHy12e%2FzBiU51zPFZI5qMtjV1qgjFmSC%2FSz9GPIId9Zlf4WX9G9EkCvX7WNNYFQO4%2FMjBvNyKzGsKzKlbBW8rJeM%2FFyFA%3D%3D>

⁸ Election Commission of India, <https://www.eci.gov.in/eci-backend/public/api/download?url=LMAhAK6sOPBp%2FNFF0iRfXbEB1EVSLT41NNLRjYNJJPIKivrUxbfqkDatmHy12e%2FzBiU51zPFZI5qMtjV1qgjFmSC%2FSz9GPIId9Zlf4WX9G%2FyncUhH2YfOjkZLtGsyZ9B56VRYj06iIsFTelbq233Uw%3D%3D>

⁹ The Hindu Business Line, '6 parties reveal electoral bonds, including DMK, AIADMK; disclose donors: Future Gaming, Megha Engineering donate big' (19 January 2023) <https://www.thehindubusinessline.com/data-stories/data-focus/6-parties-reveal-electoral-bondsincluding-dmk-admk-disclose-donors-future-gaming-megha-engineering-donate-big/article67961076.ece>

in India. By withholding crucial information, the State Bank of India hampers efforts to track the flow of funds, potentially allowing for undisclosed and disproportionate influences on political decisions. This opacity undermines public trust and compromises the fairness of elections, which are fundamental to the democratic fabric of the nation. Addressing these issues requires comprehensive reforms that prioritise transparency and accountability in political finance. This includes revisiting the electoral bonds scheme to align it with constitutional principles of equality, fairness, and the right to information. Furthermore, there is a pressing need for robust regulatory frameworks that mandate disclosure of all pertinent details regarding electoral funding, ensuring that citizens can make informed decisions and hold elected representatives accountable. Ultimately, upholding democratic values necessitates stringent adherence to transparency norms in electoral processes. By rectifying these shortcomings, India can strengthen its democratic institutions and safeguard the integrity of its electoral system for generations to come.

