

IN THE SUPREME COURT OF INDIA
CIVIL/CRIMINAL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO 266 OF 2024

Common Cause & Anr

... Petitioners

Versus

Union of India

... Respondent

WITH

WRIT PETITION (CIVIL) NO 421 OF 2024

WRIT PETITION (CRIMINAL) NO 293 OF 2024

AND

WRIT PETITION (CIVIL) NO 450 OF 2024

O R D E R

1 A batch of four petitions has been instituted before this Court invoking its jurisdiction under Article 32 of the Constitution.

2 In ***Association for Democratic Reforms & Anr Vs. Union of India & Ors¹***, a Constitution Bench of this Court struck down the Electoral Bond Scheme and provisions in cognate legislation including those Representation of the People Act 1951, the Companies Act 2017 and the Income Tax Act, 1961 as being ultra vires and unconstitutional. The conclusions of this Court were in the following terms:

“216. In view of the discussion above, the following are our conclusions:

- a. The Electoral Bond Scheme, the proviso to Section 29C(1) of the Representation of the People Act 1951 (as amended by Section 137 of

Finance Act 2017), Section 182(3) of the Companies Act (as amended by Section 154 of the Finance Act 2017), and Section 13A(b) (as amended by Section 11 of Finance Act 2017) are violative of Article 19(1)(a) and unconstitutional; and

- b. The deletion of the proviso to Section 182(1) of the Companies Act permitting unlimited corporate contributions to political parties is arbitrary and violative of Article 14.”

3 Consequential to the above conclusions, the directions that were issued by the Constitution Bench read thus :

“219. In view of our discussion above, the following directions are issued:

- a. The issuing bank shall herewith stop the issuance of Electoral Bonds;
- b. SBI shall submit details of the Electoral Bonds purchased since the interim order of this Court dated 12 April 2019 till date to the ECI. The details shall include the date of purchase of each Electoral Bond, the name of the purchaser of the bond and the denomination of the Electoral Bond purchased;
- c. SBI shall submit the details of political parties which have received contributions through Electoral Bonds since the interim order of this Court dated 12 April 2019 till date to the ECI. SBI must disclose details of each Electoral Bond encashed by political parties which shall include the date of encashment and the denomination of the Electoral Bond;
- d. SBI shall submit the above information to the ECI within three weeks from the date of this judgment, that is, by 6 March 2024;
- e. The ECI shall publish the information shared by the SBI on its official website within one week of the receipt of the information, that is, by 13 March 2024; and
- f. Electoral Bonds which are within the validity period of fifteen days but that which have not been encashed by the political party yet shall be

returned by the political party or the purchaser depending on who is in possession of the bond to the issuing bank. The issuing bank, upon the return of the valid bond, shall refund the amount to the purchaser's account."

4 Thereafter, orders were passed by this Court on 11 March 2024 and 18 March 2024 to give effect to the directions for disclosure.

5 The four petitions, invoking the jurisdiction under Article 32 of the Constitution, have been instituted by (i) Common Cause and Centre for Public Interest Litigation; (ii) Jai Prakash Sharma, a petitioner-in-person; (iii) Sudip Narayan Tamankar; and (iv) Khem Singh Bhati.

6 The reliefs which have been sought in these petitions are briefly summarised below :

(i) **Writ Petition (Civil) No 266 of 2024**

- (a) A court monitored investigation by a Special Investigating Team (SIT) into the quid pro quo arrangements between public servants, political parties, company official and officials of the investigative agencies, as disclosed by the electoral bond data (Prayer (a));
- (b) A direction to the authorities to investigate the source of funding of shell companies/loss-making companies to various political parties (Prayer (b));
- (c) A direction to the authorities to recover the amounts from political parties where they are found to be proceeds of crime (Prayer (c)); and
- (d) A direction for an investigation into the violation of Section 182(1) of the Companies Act 2013 by companies which donated through electoral bonds within three years of their incorporation and the imposition of

penalties (prayer (d)).

(ii) **Writ Petition (Civil) No 421 of 2024**

- (a) A direction to the Governor of the Reserve Bank of India and Chairperson, State Bank of India to collect information from banks for disclosing the entities which had taken loans to purchase electoral bonds and to make these details public on the website of the Election Commission of India.

(iii) **Writ Petition (Criminal) No 293 of 2024**

- (a) A court monitored investigation by an SIT or by the Central Bureau of Investigation into the misuse of the Electoral Bond Scheme under the Prevention of Corruption Act, 1988 (prayer (a)); and
- (b) An investigation into the complaint lodged by the petitioner on 18 April 2024 and the instances of corruption disclosed by the electoral bond data of the Election Commission of India (prayer (b)).

(iv) **Writ Petition (Civil) No 450 of 2024**

- (a) A direction to the Union of India to confiscate the amount received by the political parties under the Electoral Bond Scheme 2018 (Prayer (a));
- (b) Constitution of a Committee headed by a former Judge of the Supreme Court of India to investigate into the illegal benefits conferred on donors by the public authorities by way of quid pro quo (Prayer (b));
- (c) Directing income tax authorities to reopen the assessment of political parties from financial year 2018-2019 to financial year 2023-2024 and disallow income tax exemptions claimed by way of electoral bonds

(prayer(c)).

- 7 We have heard Mr Vijay Hansaria, senior counsel, Mr Prashant Bhushan and Mr Pranav Sachdeva counsel appearing on behalf of the petitioners.
- 8 In support of the petitions, it has been urged that the disclosure of data which followed upon the judgment of the Constitution Bench has revealed arrangements in the nature of quid pro quo between the donors of electoral bonds and the recipients, who are political parties, in regard to the award of contracts and other benefits.
- 9 On this basis, it has been submitted that this needs to be probed by the constitution of an SIT since no investigation under normal legal processes will reach to any conclusion or carry credibility. It has been urged that there is a likelihood that some officials of the investigative agencies were involved in the underlying arrangements and hence an independent investigation outside the purview of the normal process of law should be ordered by this Court. Hence, it has been urged that the appropriate course of action would be for this Court to constitute an SIT for a court monitored investigation.
- 10 While evaluating whether these petitions invoking the jurisdiction of this Court under Article 32 of the Constitution should be entertained, it is necessary to preface this consideration with the observation that on the date of the purchase of the electoral bonds, there was a statutory enactment of Parliament permitting the purchase of electoral bonds and envisaging donations to political parties through the instrument of electoral bonds. The purchase of electoral bonds and the donations which were made to political parties were on the basis of a law enacted by Parliament. The provisions of the statute have since been held to be

unconstitutional.

- 11 The issue to be decided is whether the underlying reasons for the donations to political parties should be subjected to a court monitored investigation under an SIT.
- 12 The petitions are founded on two assumptions :
- (i) An assumption that there would *prima facie* be an element of quid pro quo where the date of the purchase of the electoral bonds and the donation to a political party is in proximity to the award of a contract or a change in policy; and
 - (ii) An assumption that there is an involvement of certain officials of the investigative agencies, as a consequence of which, an investigation under the normal processes of the law would not be fair or independent.
- 13 We have highlighted above the underlying premise of the submissions. This indicates that these are assumptions at the present stage and require the court to embark upon a roving enquiry into the purchase of the electoral bonds, the donations which were made to political parties and the arrangements in the nature of quid pro quo.
- 14 The submissions which have been urged on behalf of the petitioners highlight that even according to them, an element of criminality may be involved where there is a proximate relationship between the purchase and the contribution of the bond and the award of a contract or change in policy, as the case may be, or commission or omission, as the case may be, by the authorities.
- 15 Individual grievances of this nature in regard to the presence or absence of *quid*

pro quo would have to be pursued on the basis of the remedies available under the law. Likewise, where there is a refusal to investigate or a closure report has been filed, recourse can be taken to appropriate remedies under the law governing criminal procedure or, as the case may be, Article 226 of the Constitution.

- 16 At the present stage, absent a recourse to the remedies which are available under the law to pursue such grievances, it would both be premature and inappropriate for this Court; premature because the intervention of this Court under Article 32 of the Constitution must be preceded by the invocation of normal remedies under the law and contingent upon the failure of those remedies; and inappropriate because the intervention of this Court, at the present stage, would postulate that the normal remedies which are available under the law would not be efficacious.
- 17 This Court entertained a batch of petitions challenging the constitutional validity of statutory provisions embodying the Electoral Bond Scheme and the consequential amendments which were made to diverse statutes. The only remedy for challenging such legislative changes lies in the invocation of the power of judicial review. Allegations involving criminal wrong doing, on the other hand, are of a distinct nature where recourse to the jurisdiction of this Court under Article 32 of the Constitution should not be taken as a matter of course particularly, in view of the remedies available in law.
- 18 The other reliefs which have been sought in the batch of petitions, including a direction to the authorities to make recoveries from political parties on the basis that they are proceeds of crime or for the reopening of income tax assessments impinge upon the statutory functions of authorities constituted under the law to

make enquiries in that regard. For instance, before an assessment is reopened, the Assessing Officer under the Income Tax Act, 1961 has to form a subjective opinion on the basis of tangible material that income subject to tax has escaped assessment. There are statutory functions to be exercised on a case to case basis by the Assessing Officer.

19 For the above reasons, we are of the considered view that the constitution of an SIT headed by a former Judge of this Court or otherwise should not be ordered in the face of remedies which are available under the law governing the criminal procedure. Likewise, matters, such as the reopening of assessments pertain to the specific statutory jurisdiction conferred upon assessing authorities under the Income Tax Act 1961 and other statutes.

20 For all these reasons, we decline to exercise the jurisdiction under Article 32 of the Constitution.

21 The Writ Petitions are accordingly dismissed.

22 Pending applications, if any, stand disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[J B Pardiwala]

.....J.
[Manoj Misra]

**New Delhi;
August 02, 2024**

GKA

ITEM NO.30+32+34+36

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s).266/2024

COMMON CAUSE & ANR.

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

(FOR ADMISSION)

WITH

W.P. (Civil) No(s). 421/2024 (PIL-W)
(FOR ADMISSION and IA No.140863/2024-PERMISSION TO APPEAR AND ARGUE
IN PERSON)W.P. (Criminal) No(s). 293/2024
(FOR ADMISSION)W.P. (Civil) No(s). 450/2024 (PIL-W)
(FOR ADMISSION)

Date : 02-08-2024 This petition was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRAFor Petitioner(s) Mr. Prashant Bhushan, AOR
Ms. Neha Rathi, Adv.
Mr. Kamal Kishore, Adv.
Ms. Kajal Giri, Adv.

Petitioner-in-person

Mr. Pranav Sachdeva, AOR
Mr. Abhay Nair, Adv.
Mr. Jatin Bhardwaj, Adv.

For Respondent(s)

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 The Writ Petitions are dismissed in terms of the signed order.
- 2 Pending applications, if any, stand disposed of.

**(GULSHAN KUMAR ARORA)
AR-CUM-PS**

**(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR**

(Signed order is placed on the file)