

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

W.P.(C) NO. 880/2017

IN THE MATTER OF:

ASSOCIATION FOR DEMOCRATIC

REFORMS & ANR

...PETITIONERS

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

REJOINDER TO THE COUNTER AFFIDAVIT FILED BY RESPONDENT NO. 3

I, Akhilesh Kumar Mishra, age 45 years, S/o Sh. G.P. Mishra, currently working as Director in the Department of Economic Affairs, Ministry of Finance, North Block, New Delhi do hereby solemnly affirm and state as under:

1. That I am working as Director in the Ministry of Finance and affirm that the contents of the present Affidavit are true and correct on the basis of knowledge derived from official record and as such I am competent to swear the present Affidavit on behalf of the Answering Respondent.
2. That I deny each and every allegation/submission made in the Affidavit filed by Respondent No. 3, except to the extent specifically admitted to hereinafter.
3. That the introduction of Electoral Bonds has brought in a marked shift from the old electoral system which suffered from many lacunas. Under the old system, despite the best efforts of the reforms suggested by the government or the Election Commission of India, massive amounts of political donations were being made in cash, by individuals/corporates, using illicit means of funding. This ensured that unaccounted criminal money/Black money was pumped in for financing elections.  
(Source: *Funding Elections in India, Whose Money has the Most Influence?* Jennifer

*Bussell, Carbegie, Endowment for International Peace, PUCL vs. Union of India, (2003) 4 SCC 399 and Ashok Shankarrao Chavan, (2014) 7 SCC 99).*

4. That the result of such contributions in cash would inevitably be that neither the identity of the donor nor of the recipient- the political party would ever be known or disclosed. In other words, the 'system' was wholly opaque and ensured complete anonymity.
5. That, furthermore, the unaccounted-for monies received by political parties were also spent without being accounted for, thus creating/enabling a parallel economy, as it were, through the use of unaccounted for cash.
6. That it was also observed that political parties were floated, without any serious intention of contesting elections, merely for the purpose of being utilised as vehicles for generating/handling large amounts of tainted cash:
7. That in sum, under the old system, there was unregulated flow of Black money, in 3 stages:
  - a. Stage one: Black money was paid by an unidentified Donor for an unascertainable purpose
  - b. Stage Two: Black money was received by an undisclosed Political party
  - c. Stage Three: Black money was spent by the Political party, again, without accounting for the same.
8. That furthermore, under the old system, a political party could seek exemption under the Income tax Act, 1961 only if such a political party:
  - a. kept and maintained books of account and other documents,
  - b. maintained a record of voluntary contribution in excess of twenty thousand rupees,

- c. got its accounts audited by an accountant as defined in the Explanation below sub-section (2) of section 288 of the Act and
- d. furnished a report under sub-section (3) of section 29C of Representation of the People's Act 1951.

Thus, under the earlier provision of the Act, there was no limit on the amount of contribution or donation was made in cash to the political parties. Since, the major proportion of the amount of political funding was in the form of cash, the existing provision allowed the source of funding to remain unaccounted/unexplained. At the same time, there was a concern among the donors that, with their identity revealed, there would be competitive pressure from different political parties receiving the donation.

9. That in these circumstances and considering the need to impart greater accountability in funding of political parties as well as to maintain the anonymity of the donor, a mechanism of political funding by way of electoral bonds was introduced.
10. That it is relevant to rely on the explanatory memorandum to the Finance Act, 2017, which provides the following explanation with regards to the amendment made in section 13A of the Act:

*"The existing provisions of Section 13A of the Act, inter-alia provides that political parties that are registered with the Election Commission of India, are exempt from paying income-tax. To avail the exemption, the political parties are required to submit a report to the Election Commission of India as mandated under sub-section (3) of section 29C of the Representation of the People Act, 1961 (43 of 1951) furnishing the details of contributions received by a political party in excess of Rs. 20000 from any person. However, under existing provision of the Act, there is no restriction of receipt of any amount of donation in cash by a political party.*

Secondly, a political party is also required to file its return of income under section 139(4B) of the Act, if its income exceeds the maximum amount not chargeable to tax (without considering the exemption under section 13A). However, filing of the return is not a condition precedent for availing exemption under the said section.

In order to discourage the cash transactions and to bring transparency in the source of funding to political parties, it is proposed to amend the provisions of section 13A to provide for additional conditions for availing the benefit of the said section which are as under:

(i) No donations of Rs. 2000- or more is received otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use electronic clearing system through a bank account or through electoral bonds.

(ii) Political party furnishes a return of income for the previous year in accordance with the provisions of sub section (4B) of section 139 on or before the due date under section 139.

Further, in order to address the concern of anonymity of donors, it is proposed to amend the said section to provide that the political parties shall not be required to furnish the name and address of the donors who contribute by way of electoral bond".

11. That, however, under the present system, electoral bonds can be issued only by an authorized bank, being the State Bank of India. All payments made for the issuance of the electoral bonds are accepted only by means of a demand draft, cheque or through the Electronic Clearing System or direct debit to the buyers' account. No Black money can, therefore, be used for the purchase of these bonds.
12. That the Election Commission of India has raised an issue (@ Para 8.2 of its Counter affidavit) that many political parties were reporting a major portion of the donations received as being less than the prescribed limit of Rs. 20,000 for which details regarding name, address & PAN of the donors were not being maintained. In order to curb the menace of cash transactions and to address the said problem, the limit on cash donation was reduced from Rs. 20,000 to Rs. 2000. Accordingly, under the new electoral reforms, no donations exceeding Rs. 2000 can be received by a political party other than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through Electoral Bond. Therefore, any donation exceeding Rs. 2000 has to be made using the formal banking system and only after duly complying with the requisite KYC norms.
13. That, furthermore, the identity of the buyer is known to the authorized bank as the Reserve Bank of India's instructions regarding KYC norms are applicable to the buyers of the bond and the authorized bank may call for any additional KYC documents, if it deems necessary. Further, for purchasing an electoral bond, a physical/ online application in the format specified has to be made, which shall contain all the particulars, which includes, PAN No., Applicant details, details of identity, address in full, and the Application must be attested by two witnesses with a declaration of the truthfulness of the contents of the Application.
14. That the beneficiary of such a donation is only a political party, which is registered under Section 29A of the Representation of People's Act, 1951 and which has

secured not less than 1 % of the votes polled in the last general election to the House of People or the Legislative Assembly. This ensures that no bogus party is being floated for taking the benefit of tainted money in the name of receiving political donations.

15. That the amounts received under the bonds can be credited only to a single registered bank account belonging to a Political party. In other words, the political party must now disclose the receipt of this money and must account for the same. It is also obliged to declare the total amount of money it has received in electoral bonds.
16. That, further, the bonds will be available only for a period of 10 days each in the month of January, April, July and October as may be specified by the Central Government. An additional period of thirty days shall be specified by the Central Government in the year of general elections to the House of People. The bond shall be valid for 15 days from the date of issue and no payment shall be made to any payee political party if the bond is deposited after expiry of the validity period. This ensures that the bonds do not become a parallel currency.
17. That, to protect the identity, privacy and personal details of the buyer, the information furnished by the buyer is treated as confidential by the authorized bank and shall not be disclosed to any authority for any purposes, except when demanded by a competent court or upon registration of criminal case by any law enforcement agency.
18. That, therefore, as is evident from the above, the Electoral Bonds is a positive step in the right direction to ensure accountability and transparency in conducting elections. The need to bring about such a change was felt as the measures that existed on the books were either not enough or were proving to be ineffective/insufficient in dealing with the menace of corruption in Elections.

19. That it is also worth mentioning that as per the Corruption Perception Index, 2018 published annually by Transparency International, out of 180 countries from the world, India's rank is currently at 78, which was a huge improvement from its position in the year 2012 where it stood at Rank 94. These electoral reforms are also a reflection of the reduced corrupt practices in electoral funding. A copy of the comparative rankings for the two years is attached herewith as ANNEXURE A-1 (Colly)
20. That it is also relevant to state that Non-disclosure of the identity of the donor is the core objectives of the scheme of Electoral Bonds in order to safeguard the donor from political victimization. Therefore, any donation received by the 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 the People Act, 1951. However, the records of the purchaser are always available in the banking channel and may be retrieved as and when required by enforcement agencies. That, as stated hereinabove, the Electoral Bonds can be encashed only by an eligible political party by depositing the same in their designated bank account which means that a political party can open only one PAN India single Bank account for crediting proceeds of Electoral Bonds. The amount of Electoral Bonds credited to that account can be ascertained through the account statement. That, in any event, non-maintenance of identity of donor of electoral bond by the political parties was driven by well thought out policy considerations.
21. That, furthermore, donations received through electoral bonds by the domestic company having a majority stake is permitted, subject to its compliance of the KYC norms (which require disclosing source of funds to buy bonds and accounting thereof in the book of accounts). Therefore, the Electoral bonds attempt at bringing greater transparency, ensuring KYC compliance and keeping an audit trail in comparison to the earlier opaque system of cash donations. Accordingly, the concern of the

Election Commission of India that electoral bonds will enable foreign companies to influence Indian policies is without any legal or factual merit.

22. That, furthermore with an intent of reducing the volume of cash transactions and to move towards a cashless economy, the Government has taken several measures under the Income-tax Act, 1961, from time to time, which includes disallowance of business expenditure incurred in cash exceeding a certain threshold under section 40A(3) of the Act, levy of penalty under section 271D and 271E of the Act, penalty in case of any loan or deposit received or repaid in cash as per section 269SS and 269T of the Act, respectively, mandatory quoting of PAN in respect of various cash transactions as specified in rule 114B, etc.

23. That further the Government of India notified the Electoral Bonds scheme after due consultations with concerned stakeholders. That it is pertinent to state that the Election Commission of India was briefed on Electoral Bonds by the Secretary, Department of Economic Affairs in September of 2017. The suggestions of the Election Commission of India, contained in their letter dated 15<sup>th</sup> March 2017, pertaining to amendment of the Income-tax Act, were duly examined through the Finance Act 2017 and carried out, as is evident from the contents of Para 10 hereinabove.

24. Tax reforms are an on-going process and various suggestions received from various stakeholders are examined from time to time every year and necessary reform, as deemed fit at that point of time, are carried out to address the concerns of stakeholders.

25. That further the Government of India notified the Electoral Bonds scheme after due consultations with concerned stakeholders. That it is pertinent to state that the Election Commission of India was briefed on Electoral Bonds by the Secretary, Department of Economic Affairs in September of 2017.



26. That the following table represents the Phase-wise performance of Electoral bonds in the country:

Electoral Bonds (EB) Scheme - Phase Wise Report										
Phase	Sale of EBs Start Date	Sale of EBs End Date	Redemption of EBs End Date	EBs Sold		EBs Redeemed		Funds Transferred to PMNRF*		Redeemed %
				No of Bonds	Amount in Rs.	No of Bonds	Amount in Rs.	No of Bonds	Amount in Rs.	
I	01-03-2018	10-03-2018	24-03-2018	520	22200,10,000	511	22100,02,000	9	100,08,000	99.55
II	01-04-2018	10-04-2018	24-04-2018	256	11490,07,000	250	11490,01,000	6	6,000	100.00
III	01-05-2018	10-05-2018	24-05-2018	204	10,40,00,000	194	9140,00,000	10	1000,00,000	90.14
IV	02-07-2018	11-07-2018	25-07-2018	82	3250,00,000	82	3250,00,000	0	0	100.00
V	01-10-2018	10-10-2018	24-10-2018	733	40173,25,000	731	40153,25,000	2	20,00,000	99.95
VI	01-11-2018	10-11-2018	24-11-2018	339	18420,00,000	339	18420,00,000	0	0	100.00
VII	01-01-2019	10-01-2019	24-01-2019	937	35036,02,000	936	35036,01,000	1	1,000	100.00
VIII	01-03-2019	15-03-2019	29-03-2019	2742	136569,12,000	2,738	136469,00,000	4	100,12,000	99.93
Total				5411	27,278,56,000	5,781	27,60,87,90,000	27	1,22,12,000	99.56

\* Amount of non-encashed/expired Electoral Bond(s) is transferred to PMNRF

27. That therefore, in view of what has been stated hereinabove, it is submitted that contrary to the concerns raised by the Election Commission of India, the amendments in the respective legislatures have been made and the Electoral Bond Scheme has been introduced, as a pioneer step in bringing electoral reforms, to ensure that the spirit of transparency and accountability in political funding is maintained.

अधिकांश के लिए / AKHILESH KUMAR MISHRA  
 Director / Director  
 Government of India  
 Ministry of Finance  
 Office and Headquarters of India  
 New Delhi

*Akhil*

DEPONENT

**VERIFICATION:**

I, the DEPONENT above-named, verify at New Delhi on this 01<sup>st</sup> day of April, 2019 that the contents of the above Counter Affidavit are true, correct and in accordance with the records maintained in the office of the answering Respondents and the submissions made therein are based on legal advice which I received and believed to be true.

*Akhil*

अधिकांश के लिए / AKHILESH KUMAR MISHRA  
 Director / Director