

SC allows Sharad faction to continue use of new name

Court permits faction to apply for party symbol, asks EC to allot one within a week of application; indicates it will resolve Sharad Pawar's plea against EC order on 'real NCP' before LS election

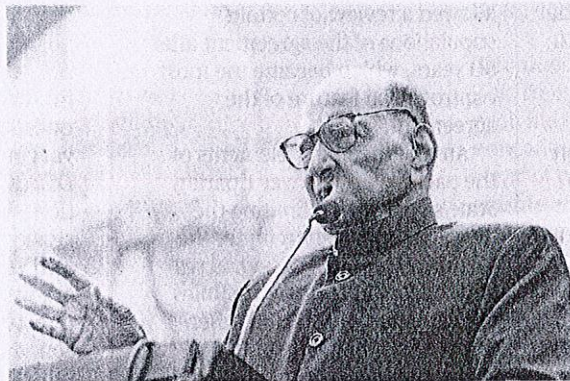
Krishnadas Rajagopal
NEW DELHI

The Supreme Court on Monday allowed Nationalist Congress Party (NCP) founder Sharad Pawar and his faction to operate under the name "Nationalist Congress Party-Sharad Chandra Pawar" apparently beyond the Rajya Sabha elections scheduled on February 27.

The Election Commission had allocated the new name to the Sharad Pawar faction in an order on February 7 as a one-time measure to participate in the Rajya Sabha elections.

In a further interim relief for Mr. Sharad Pawar, a Bench of Justices Surya Kant and K.V. Viswanathan permitted his faction to apply for a party symbol and directed the EC to allot one within a week of their application.

"At some stage, let the voter have some say. He originally had a say... the little man, the voter, I mean. Otherwise, there would be chaos. The 'clock' symbol [the original symbol of the NCP] is with you now. They are only asking for a name allotted by the EC," Justice Viswanathan addressed Maharashtra Deputy Chief Minister Ajit Pawar's counsel,



The top court directed the EC to allot the faction a party symbol within a week of their application. ANI

senior advocate Mukul Rohatgi and advocate Abhikalp Pratap Singh.

Mr. Rohatgi raised objections against the interim order, saying the new name was valid only till the Rajya Sabha polls and cannot be used beyond that point.

Senior advocate A.M. Singhvi, for Mr. Sharad Pawar, said the objections were aimed to "hurt" his client. "They want me to be left without a symbol or a name," he said.

Justice Kant said the Indian voter was very intelligent. "Ultimately, the voter is going to vote for either Ajit Pawar or Sharad Pawar," Justice Kant observed. Mr. Ajit Pawar had broken away from Mr. Sharad Pawar to join the BJP coalition in power in the State.

Justice Viswanathan pointed out that Mr. Ajit Pawar had not challenged the February 7 order till date.

The Bench issued notice on a petition filed by the elder Pawar challenging the EC decision on February 6 that Mr. Ajit Pawar's camp was the "real" NCP.

The court gave Mr. Ajit Pawar two weeks to file a counter-affidavit to the petition. Mr. Sharad Pawar was directed to file his rejoinder in a week thereafter. The case was posted for hearing after three weeks.

"We will resolve this issue by the time of the Parliament election," Justice Kant indicated.

During the hearing, senior advocate Mr. Singhvi said his client would be left "nameless and symbol-

less" after the Rajya Sabha polls. He said the Maharashtra Legislative Assembly was due to convene on Tuesday in a special sitting. The State Budget was due by the end of February. The printing and publication of pamphlets for the Lok Sabha election have to start. The Sharad Pawar camp should not be left handicapped without a name or symbol after the Rajya Sabha elections. "As an interim order, let me continue with the very name the EC allotted me," he submitted.

Otherwise, he said, an "absurd" situation would arise by which the Sharad Pawar loyalists would be subject to the whip issued by Mr. Ajit Pawar. "That cannot be... Such a situation would be absurd, astonishing," Mr. Singhvi said.

He said the faction led by Mr. Sharad Pawar had presence in States like Kerala, Nagaland, Jharkhand and Maharashtra.

Justice Viswanathan observed that the EC order of February 6 had found that both factions had violated the party constitution and its aims and objectives. Mr. Singhvi said the EC had decided that Mr. Ajit Pawar's faction was the "real" party even as the defection petitions were pending.

Elections Need Money But Also Protection From Money

Transparency in political finance is a tricky issue in all democracies. Now that electoral bonds are outlawed, what can India learn from German and American models?

Nandita.Sengupta@timesgroup.com



Transparency and minimising illicit funds in electoral finance – party income, campaign funds and expenditure – is hands-down the biggest challenge for democracies world over. Vital to the idea of free and fair elections is for voters to know where a party or candidate's money is coming from and how they're spending it.

How do parties raise funds? | From members, individuals, private donors. From unions, trusts and companies. The last, income from companies, has been the most contentious worldwide including in India, which decades ago had fleetingly banned corporate donations. The concern is companies that fill party coffers and politicians' pockets exert unfair influence on policy. But bans on company donations tend to drive such transactions underground. Two, regulations and caps have failed to bring in transparency in such transactions of large amounts.

State funding of elections is followed in several countries, mostly in Europe, and in some states of US. Most European nations earmark their funds to parties – especially as incentives to promote women's representation and voter education. Scotland incentivises, tags funds to political participation of persons with disabilities.

US model | Funds from political action committees (PACs), Super-PACs, social welfare groups, national, state, and local party committees and lobbyists add to individual donations to election campaigns. A 2010 landmark and controversial case, Citizens United vs Federal Election Commission, swerved political finance towards deregulation by prohibiting government from imposing any restrictions on corporations engaging in electioneering.

On state funding, Federal Election Commission sets out matching funds for presidential candidates of major and minor parties who meet given criteria.

Payments are made from the '\$3 tax checkoff'. A federal income tax form asks taxpayers if they wish to give \$3 of their taxes to Presidential Election Campaign Fund. When taxpayers say 'yes', \$3 goes into the fund. This is the sole source of funds for the public funding programme – reportedly, barely 4% taxpayers tick 'yes'. Nominees too are barely interested in tapping this given other sources of Big Money.

German model | State funding as followed in Germany is currently considered the most equitable practice. In



this model of 'matching grants', up to 50% of a party's income, and no more, comes from the state. The amount to a party is decided basis a party's vote share in the latest election (European, national, regional) at a flat rate per vote; the rate graded with increasing vote shares. There is a disbursement ceiling to the state kitty.

• There is no limit on raising private and corporate donations. In no case, however, can the amount of public funds exceed the sum of private funds that a party raises by itself. High-value funds must be reported immediately. State financing is used for both party management and elections, and can be received in a staggered manner from after the election to the next one.

• Matching grants ensure that smaller parties too,

who crossed the threshold of 5% vote share in the last election, receive assured income from the state.

• In January, Germany's top court cut funding to a minor far-right party it found to be 'explicitly undermining' German democracy. So, state funds can also be used to penalise.

Why public funding of elections is a challenge in India | Per various studies, the problem is the nature of our political parties and our political system.

• With intra-party democracy not quite the norm, state funds will remain in the control of party leadership. Rather than flow to candidate level.

• In a first-past-the-post system, Lok Sabha elections especially are highly centralised. Funds allocation basis vote shares will then be unfairly skewed towards the largest national parties. Voters, to 'make their vote count', vote for party perceived to be winning even though their actual support may be for a smaller regional party.

• Independents stand to lose, unlikely to have vote-share thresholds at state or national levels to qualify for state funds.

• State funds also cannot solve the problem of illicit donations from companies.

Why it is a good idea | What state funds can do is reduce parties' dependence on corporate donors and networks at the local level, the patron-client election-time economy. One idea is for matching grants to donations of small denominations from supporters. If the electorate puts its money where their vote is, parties will be that much more strengthened. But in India, as goes the joke, the reverse is more often true – voters seek quick returns from candidates against promise of their vote.

Matching grants works well in Germany also because its electoral system is a mixed one where half its seats are directly elected and half elected on party lists. Seats for the latter are then allocated basis vote shares. How parties are funded can hardly be viewed in a silo. It has as much to do with the electoral system as it has to do with the nature of parties.

Dated: 20.02.2024

Aakar Patel



SC bonds ruling a reminder how weak India's key institutions are

India's electoral bonds scheme has been declared illegal, a rare win in court for those resisting authoritarianism. But many elections, including the last general election, have been fought on these unlawful funds.

It would have been appropriate to have heard and adjudicated on the issue earlier but the court just got to do so. Former Chief Justice Ranjan Gogoi, rewarded with a Rayya Sabha seal, when asked why he had delayed adjudicating on the issue said he did not remember the issue coming up before the court. Many will not know how the political bonds scheme was, and it is perhaps better that this is being written.

The scheme was announced by the Narendra Modi government through the 2017 Union Budget. The bonds would be a way for political parties to receive money through anonymous donors. The donor would have to reveal their identity to the bank while making the bond purchase, but the identity would not be revealed on the bond itself. Political parties could accept the money without being required to reveal who gave it. Voters would therefore not know who was funding and influencing political parties. The change would allow foreign companies and even shell companies to donate to India's parties without having to inform anyone of the contribution or having their names revealed. It also undid that part of the Companies Act, under which corporates had to disclose

details of their political donations in their annual statement of accounts. Now they were no longer required to do so. The corporates had earlier also been limited to donating a maximum of 7.5 per cent of their average three-year net profits to political parties. No longer, because they could now just go through the electoral bond route as that cap had been lifted legally. The process to find a party anonymously was made easy. Bonds would be available in multiples of up to Rs. 1 crore at State Bank of India branches in 29 cities. A donor could purchase them over to the party or individual of their choice, who could then encash them. They would be valid for 15 days.

Four days before the 2017 Budget, a hurraycraft spotted it in finance minister Arun Jaitley's speech, and noted that the RBI's assent was required for such a large shift. This was because the introduction of bonds required changes to the RBI Act, something that apparently the government did not know. The officer drafted a proposed amendment to align the RBI Act with the change and sent the file up the ranks for the finance minister to see. The same day, January 28, 2017, a Saturday, the RBI was sent a five-line email seeking its comments. The reply came the next working day, Monday, January 30. The RBI said it was a bad idea because it went against the RBI's authority as the sole issuer of bearer instruments,

meaning cash. These bonds, because they were anonymous, could become currency and undermine the faith in India's cash. On this point, the RBI was "unabrogously" amending the law to facilitate this "would seriously undermine a core principle of central banking legislation and doing so would set a bad precedent." The RBI's second objection was that even the intended purpose of the transparency might not be achievable as the original bond instrument (the bond) would not be the actual instrument to the party. If someone purchased the bond and then sold it, at face value or more, to any entity, including a foreign government, that entity could gift it to a party. The government that entity could gift it to a party. The bonds are bearer bonds and transferable by delivery. The RBI said "these are virtually and actually counter to the bond, which is not actually known." This will affect the money laundering law as well, the RBI said. The last point it made was that what was being proposed through the electoral bond scheme — the transfer of money from bank accounts of entities to political parties — could be done through a cheque, bank transfer or demand draft. There is no special need for or advantage by, the creation of an Electoral Bearer Bond, that too by constituting an established international practice. The next body to say that the electoral bonds scheme was dangerous was the Election Commission. In an affidavit to the

Supreme Court, it said that to exclude the reporting of donations received by political parties through electoral bonds would have "serious repercussions on the transparency aspect of political funding of political parties".

The EC remained opposed to the law even after it was enacted and continued to resist through the Supreme Court gave the government a pass.

The two most important institutions related to the bonds tried to do their work and resisted the scheme. They were unable to.

Though the RBI had responded immediately one reason the government gave to dismiss its concern was that "this advice has come quite late at a time when the Finance Bill is already printed". The electoral bonds episode reveals the limits of institutional checks in our democracy. When a strong executive decides it wants something, even something that is dangerous and unconstitutional, there is little resistance from within to stop it.

The Supreme Court has now held that the scheme unconstitutional, something that was obvious to anyone familiar with the most basic details of what the bonds were for. But this should also alert us to how weak our institutions are and how, when they mean well for the country, they can just be ignored.

The writer is the chair of Amnesty International India. Twitter: @aakar_patel

D. T. NEXT

Dated: 20.02.2024

Use name given by EC till our orders: SC to Pawar senior

NEW DELHI: The Supreme Court on Monday directed that Election Commission's order of February 7 allotting 'Nationalist Congress Party-Sharadchandra Pawar' as the party name for the Sharad Pawar faction will continue till further orders.

A bench of Justices Surya Kant and KV Viswanathan sought response of Ajit Pawar-led faction on a plea of Sharad Pawar against the February 6 order of Election Commis-

sion recognising the Maharashtra deputy chief minister-led group as the real Nationalist Congress Party (NCP). "We would like to examine the matter," the bench said as it issued notice to the Ajit Pawar led-faction.

The bench gave liberty to Sharad Pawar to move the Election Commission for allocation of the party symbol and directed the poll panel to allot it in one

week of the application.

The bench, which appeared critical of the EC's February 6 order on recognising the real NCP, said, "The order says both factions violated the party constitution, both of you went against the 'aims and objective' and yet no one is disqualified. Just imagine what would happen to the

voters, who voted for you." Senior advocate Abhishek Singhi, appearing for Sharad Pawar, said the order passed by the Election Commission on February 7 is an interim arrangement made by the poll panel

for Rajya Sabha elections till February 27.

The bench said that no one challenged the concession given by EC for one-time option in view of the Rajya Sabha elections and the relief was given by the poll panel on its own.

The bench gave one week to Ajit Pawar faction to file its reply to the plea of Sharad Pawar, who will file a rejoinder in further two weeks.

