COMMON CAUSE UPDATES

Supreme Court Cases

Discrepancies in EVM data: The elections in India are held using the Electronic Voting Machines (EVM) with Voter Verifiable Paper Audit Trail (VVPAT) attached to each EVM, offering a verifiable record of every vote cast. Normally, the random sampling of VVPAT slips is done for five polling stations in each constituency. The elections to the 17th Lok Sabha, starting from April 11, 2019, were conducted in seven phases covering 542 constituencies. The results were announced on May 23, 2019. However, the Statutory Rules as well as the Manual issued by the Election Commission of India (ECI) in February 2019 do not contain provisions for dealing with discrepancies arising out of the counting process. The ECI has failed to not only provide the quantum of discrepancies encountered in the process, but has also abstained from disclosing the methodology adopted for their resolution.

Hence, Common Cause, along with Association for Democratic Reforms (ADR), has approached the Supreme Court to ensure that democratic process is not subverted by electoral irregularities. It also sought to ensure the enforcement of fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution. The petition seeks a direction to the ECI not to announce any provisional and estimated election results prior to actual and accurate reconciliation of data. It also seeks directives to evolve an efficient, transparent, rational and robust mechanism by creating a separate department/ grievance redressal cell for the investigation of discrepancies, etc., including those which had taken place in the 17th Lok Sabha election results.

On December 13, 2019, the petition was tagged with W.P.(C) No.1389 of 2019. A notice was issued, returnable on February 17, 2020.

On February 24, 2020, the bench consisting of the Chief Justice and Justices Bhushan Gavai and Surya Kant directed this matter to be listed after four weeks on a non-miscellaneous day. In the meantime, the counter-affidavit is to be filed. This case is likely to be listed next on March 31, 2020.

Right to clean air, adoption of electric vehicles: Common Cause, jointly with Centre for Public Interest Litigation (CPIL) and Sitaram Jindal Foundation, filed a PIL demanding implementation of the 'Faster Adoption and Manufacturing of (Hybrid &) Electric Vehicles in India' (FAME-India) scheme and Niti Aayog's recommendations. It also prayed for the adoption of internationally recognised best practices for integration of usage of electric vehicles.

The petition brings to the Court's attention the government's release of the National Electric Mobility Mission Plan, 2020 in 2012, in which several recommendations were made for the adoption of electric vehicles. Among other things, the plan had recommended that government fleets and public transportation be switched to electric vehicles; subsidies be provided to consumers for purchase of electric vehicles and the provision of tax and policy incentives. It had also recommended provisions for charging points in apartment buildings, parking lots, government offices, malls etc.

On March 3, 2019 the Court said that further orders will be passed after the government informs the Court about the steps taken so far.

On February 19, 2020, the Supreme Court noted that the electric vehicle use issue was inextricably linked to other allied matters on air pollution pending before it. Among them is the serious problem of vehicular pollution, pertaining

to the fuel used in vehicles, the Court said. This impacted not only the NCR region, but the entire country. The Court considered it appropriate that all such pending issues be considered simultaneously and with the assistance of an authority empowered to take decisions. It specifically sought assistance from the parties on the following points: Procurement of electric vehicles; Providing charging ports; Feebate system (imposing fee on vehicles with high emissions and providing a subsidy on electric vehicles); Use of hydrogen vehicles; Any other alternate means of power for vehicles; Overall impact on import and environment.

With this order the Court directed the matter to be listed on March 31, 2020 as the first item.

Miscellaneous Application (MA) in Right to Living Will: The Indian Society of Critical Care Medicine (ISCCM) has filed an MA, seeking a clarification on paragraphs 191 to 194 of the judgment in the Common Cause petition on Living Will and the right to die with dignity. These paragraphs explain the Advance Medical Directive (AMD), its functioning, execution, records, the parties involved, and the role of the Medical Board, among other things.

The petition has sought specific modifications, deemed necessary to remove the uncertainty on withholding or withdrawal of life-sustaining treatment in India. The application includes provisions for the right to refuse life-sustaining treatment. As per communication received from the petitioner advocate, the application seeks to simplify the process of executing an AMD, which requires travelling and interaction with several authorities. The matter was taken up on November 19, 2019 and was directed to be listed before the Constitution Bench headed by Justice Arun Mishra in the coming week.

On December 11, 2019, the court permitted that notice be served on the standing counsel within three days. As ordered on November 19, 2019, the Constitution Bench, consisting of Justices Arun Mishra, Indira Banerjee, Vineet Saran, M.R. Shah and S. Ravindra Bhat, heard the matter.

On January 22, 2020, the Bench asked the Union of India to file a response within 10 days. The counsel indicated that they are trying to convene a joint meeting of all the stakeholders. The Bench has allowed the joint meeting and asked for a report on the consensus arrived at, if any. Common Cause also received a notice to attend the meeting and our legal counsel for the matter, Prashant Bhushan participated in the event.

Writ for police reforms: The battle for police reforms has been going on for the last 23 years. The Supreme Court took 10 years to give a historic judgment in 2006, in the petition filed by Prakash Singh, Common Cause and N K Singh. Since then, it has been a struggle to get the Court's directions implemented. On February 28, 2020, our counsel sought urgent listing of a fresh plea seeking implementation of guidelines laid down in the 2006 judgment on police reforms. He referred to the riots which broke out in North East Delhi to highlight the pressing need for the court to issue directions for the implementation of the 2006 judgment. The bench, comprising CJI S A Bobde, Justice B R Gavai and Justice Surya Kant, agreed to list the matter after the hearing in Sabarimala reference case RP (C) No. 3358/2018 in WP (C) No. 373/2006 was concluded.

Introduction of electoral bonds challenged: Common Cause and ADR challenged the introduction of Electoral Bonds through an amendment in the Finance Act, 2017. These bonds have not only made electoral funding of political parties more opaque, but have also legitimised high-level corruption at an unprecedented scale by removing funding caps for big corporates and opening the route of electoral funding for foreign lobbyists. The PIL seeks directions from the Supreme Court to strike down the amendments brought in illegally as a "Money Bill" in order to bypass the Rajya Sabha. On October 3, 2017, a notice was issued to the respondents and on

February 2, 2018, our petition was tagged with one filed by the Communist Party of India (Marxist).

On March 14, 2019, the Centre claimed in its affidavit that electoral bonds would "promote transparency in funding and donations received by political parties." The matter was taken up on March 26, 2019, when the ECI again red-flagged the scheme, pointing out that it had expressed concerns about it even in 2017. It said on affidavit that the scheme would have "serious repercussions/impact on the transparency aspect of political finance/ funding of political parties."

In April 2019, the SC had declined to give its final ruling on the matter, saying there wasn't much time left for a detailed examination of the issue before the Lok Sabha elections. It had asked political parties to submit donor details to the ECI in a sealed cover by May 30. The Apex Court has reserved its judgment while the information lying with the ECI in sealed covers cannot be made public without the Court's direction. In December too, the Court was approached before the assembly elections, when it said it would grant a hearing in January 2020. This matter was listed on January 20, 2020, when the court granted two weeks' time to the respondents to file their response. The three-judge bench led by the CJI listed the case for hearing in two weeks, only at the insistence of our lawyer seeking an urgent stay on the sale of electoral bonds ahead of the assembly polls in Delhi. The matter is likely to be listed on March 16, 2020.

Illegal Mining in Odisha:
There has been much progress since the final judgment on August 2, 2017, when the Court imposed 100 per cent penalty on illegal mining (i.e., without forest and environmental clearances, mining outside lease/ permitted area and mining in excess of permissions). In September 2017, Common Cause filed an application for clarification of issues arising out of the judgment. The Central Empowered Committee (CEC), formed by the SC, and comprising Justices GS Singhvi and Anil R Dave, was asked to ascertain whether there had been any violation of the applicable rules and regulations.

Subsequent to the Court's judgment on the Interim Application/objections on November 12, 2018, holding Sarda Mines Pvt Ltd (SMPL) guilty of illegal mining in Odisha, the matter was taken up on January 16, 2019. On that day, the time to complete the task of reviewing the National Mineral Policy, 2008, and announce a new National Mineral Policy was further extended up to April 30, 2019. The Union of India filed its report on April 29, 2019, which was taken on record by the Court. On May 3, 2019, A D N Rao, learned Amicus Curiae, submitted that the report of the CEC would be filed on or before May 8, 2019. The matter was listed several times in the period between July and September 2019.

On January 16, 2019, the Apex Court took cognisance of the deleterious effect of mining on vegetation. The bench opined that a condition must be imposed in the mining lease, the environmental clearance and the mining plan. This should be to the effect that the mining lease holders shall undertake re-grassing the mining area and any other area which may have been disturbed due to their mining activities. The lease holders should also restore the land to a condition which is fit for growth of fodder, flora, fauna etc., after ceasing mining operations. The Union of India was directed to report the action taken within a period of three weeks and to devise appropriate methods for ensuring compliance of this condition after the mining activity is over, at the cost of the mining lease holders. This condition shall be in addition to other conditions already imposed under the mine closure plan and shall not be imposed in derogation of any other condition.

In IA No. 186810 of 2019, the Bench allowed the application filed by SMPL to continue mining after granting one month's time to deposit the dues and ordered SMPL to file an undertaking to comply with all the rules,

regulations and other mandatory provisions for carrying out mining operations. In IA No. 30915 of 2019, application filed by M/s Mideast Integrated Steels Ltd. was allowed, and Mideast was permitted to sell the iron ore already mined, under the supervision of an authority to be appointed by the state government. This would be subject to the sale proceeds being deposited with the Special Purpose Vehicle, Odisha Mineral Bearing Areas Development Corporation (OMBADC).

On January 27, 2020, the Supreme Court granted the Union of India a period of four weeks to report the compliance by the states on a previous order by the said court (08.01.2020), with respect to re-grassing by the mining lease holders.

On January 29, 2020, the Court stated that the report prepared by Justices Singhvi and Dave be placed before the Odisha state government. This was to determine whether the facts and conclusions of the committee necessitated taking appropriate action on particular mining leaseholders. In addition, the bench stated that the petitioners can bring to notice any information about the mining lease holders who may have been exonerated by the committee but have violated the law. It also stated that accused parties will have the right to be heard before action is taken by the state government, based on the report of the committee.

With respect to IA No. 157635/2019 filed by the Odisha Mining Corporation, the bench stated that the applicant was permitted to commence mining operations in the Tiringpahar Iron Ore Mines of OMC Ltd. The matter is likely to be listed on March 16, 2020.

Coal block allocation: On September 27, 2019, the Court reiterated that no investigating officer (IO) associated with the probe of coal block allocation scam cases would be transferred or repatriated to parent cadres without its permission. The bench of justices Deepak Gupta and Surya Kant, however, allowed a plea by some supervisory officers in the Enforcement Directorate (ED) and Central Bureau of Investigation (CBI) for repatriation to parent cadres. It said that IOs of the coal scam cases shall not be released in order to maintain continuity but the supervising officers, who have completed their deputation tenures, can be released. The Court said that the officers, so repatriated, shall be replaced by officers of the same rank. Senior Advocate RS Cheema, the special public prosecutor (SPP) pleaded before the Bench to relieve him from the money laundering cases arising out of the matter. He said he faced problems owing to lack of prosecutors and personnel needed to handle the cases. The Apex Court declined to pass any order on this application and said it would consider the plea in December 2019. On December 9, 2019, the Court requested Cheema and the Solicitor General to suggest names for the SPP for ED. Our advocate again raised the issue of delay in completion of investigation against the former director of CBI, Ranjit Sinha, which was ordered in 2015. The SPP committed that the report would be submitted in February. However, during the hearing on February 19, 2020 the SPP requested for more time which was granted by the Court.

On February 19, 2020, the bench, consisting of Chief Justice of India SA Bobde and Justice Deepak Gupta accepted the Status Report filed on 25.09.2019 by CBI and ordered to list the matter after four weeks along with I.A. No.35 of 2012. In the meantime, the CBI was allowed to file a further status report before the Court.