2026:MHC:3908

WEB COPY

Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.09.2026
DELIVERED ON: 24.09.2026

CORAM :

THE HONOURABLE MR. SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.37274 of 2026
CNR:{HCMA012200102026}
and W.M.P.Nos.41864, 41854,
41861, and 41856 of 2026

Case QR

K.Suthan
S/o Kasi,
Advocate, No.5/29, B-Block,
Flat No.B2, Brahmin Street,
Saidapet, Chennai - 600015.

Petitioner(s)

Vs

1. The Union of India,
   rep by the Secretary,
   Ministry of Law and Justice,
   Kartavya Bhawan II, New Delhi - 110001.

2. The Election Commission of India
   rep by its Secretary, Nirvachan Sadan,
   Ashoka Road, New Delhi - 110001.

3. The Chief Electoral Officer
   Office of the Chief Electoral Officer Tamil Nadu,
   Secretariat, Fort St. George, Chennai - 600 009.

https://www.mhc.tn.gov.in/judis

WEB COPY

4. The Secretary,
Tamil Nadu Legislative Assembly, Secretariat,
Fort St. George, Chennai - 600 009.

5. The Principal Secretary,
Government of Tamil Nadu,
Secretariat, Fort St. George, Chennai - 600 009.

6. C.Vijayabaskar,
Son of Chinnathambi,
No.14/28, Sowndaraiya Street, Illupur,
Illupur Taluk, Puthukottai District-622001.

7. M.R.Vijayabaskar,
Son of Ramasamy,
No.3/325, NSK Nagar, LNS Post,
Anandankoil East, Karur-639002.

8. Dr.E.Subbaiya @ Esakki Subbaiya
Son of Esakki Pandiyan,
No.31-70, Utchi Makaliyamman Koil Street,
Pranacheri, Gopalasamudram, Cheranmahadevi,
Thirunelveli District-627401.

9. P.Sathyabama,
W/o.Ponnusamy No.31/6, Anna Nagar,
Dharapuram Taluk, Pincode-638054.

10. Maragatham Kumaravel,
W/o.Kumaravel, Secretariat, Fort St. George,
Chennai - 600 009.

11. S.Jayakumar,
S/o.Subramani, Perundurai, MLA Office,
Perundurai Municipality Complex, Erode Road,
Erode District-638052.

Respondent(s)

https://www.mhc.tn.gov.in/judis

WEB COPY

Order QR

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing respondents 2 and 3 to examine and initiate necessary legislative and/or regulatory measures to create a mechanism for ensuring financial accountability of elected representatives who voluntarily and prematurely resign from their seats without legally recognized compelling circumstances, including by considering the introduction of an "Election Expenditure Security" to recover the cost of the resultant bye-elections and to examine and initiate necessary legislative and/or regulatory measures to introduce a statutory disqualification or a reasonable cooling-off period to prevent elected representatives who voluntarily and prematurely resign from contesting subsequent elections for a prescribed period.

For Petitioner(s): Mr.R.Singgaravelan,
Senior Counsel
for M/s.R.Jayaprakash

For Respondent(s): Mr.K.Thirukkumaran,
CGSC for R1

Mr.Niranjan Rajagopalan,
for R2 and R3

Mr.Vijay Narayan, Advocate General,
Asst by Mr.J.Lenin,
Special Government Pleader
for R4 and R5

Mr.P.J.Rishikesh
for R8

Mr.G.Murugendran
for R9 and R10

https://www.mhc.tn.gov.in/judis

WEB COPY

ORDER

THE CHIEF JUSTICE

The petitioner, a practising advocate, has filed this public interest writ petition seeking, in substance, two reliefs, viz., (i) a mandamus directing the Election Commission of India and the Chief Electoral Officer, Tamil Nadu, to frame a mechanism called an "*Election Expenditure Security*", under which a sitting MLA who resigns voluntarily and later wants to contest the bye-election caused by that resignation must first deposit an amount equal to the public money spent on holding that bye-election; and (ii) a mandamus directing the same authorities to introduce a five-year disqualification for any MLA who resigns voluntarily, without a compelling reason, from contesting any election to Parliament or a State Legislature during that period.

2.1. The case of the petitioner is that following the 2026 General Elections to the Tamil Nadu Legislative Assembly, six elected members resigned their seats within a short span of the results being declared, the details of which are as under:

https://www.mhc.tn.gov.in/judis

WEB COPY

(i) S.Jayakumar (Perunthurai, Erode – resigned 25.05.2026)
(ii) Maragatham Kumaravel (Maduranthakam (SC), Chengalpet – resigned 25.05.2026);
(iii) P.Sathyabama (Dharapuram (SC), Tiruppur – resigned 25.05.2026);
(iv) Dr.Esakki Subbaya (Ambasamudram, Tenkasi – resigned 26.05.2026);
(v) C.Vijaya Bhaskar (Viralimalai, Pudukkottai – resigned 16.06.2026); and
(vi) M.R.Vijayabhaskar (Karur, Karur – resigned 29.06.2026)

2.2. According to the petitioner, none of these resignations was on account of death, permanent incapacity, disqualification, or any other compelling circumstance and they were voluntary and political and each has necessitated a bye-election under Section 151A of the Representation of the People Act, 1951, funded entirely from the public exchequer. He asserts that the public should not be made to pay twice for the same seat because of an individual's personal or political choice to give it up.

https://www.mhc.tn.gov.in/judis

WEB COPY

2.3. The petitioner had earlier addressed representations dated 07.09.2026 and 08.09.2026 to the respondents, urging them to consider the two measures referred to above. Having received no response, he has approached this Court under Article 226 of the Constitution of India.

2.4. He also states that this Court had earlier granted an interim stay restraining the Election Commission from announcing bye-elections to five constituencies (*Tiruchirappalli East, Karur, Viralimalai, Perundurai and Ambasamudram*) in W.P.No.27064 of 2026, and that the Commission has since announced bye-elections to Madurantakam and Dharapuram, which are not covered by that stay. He apprehends that unless this petition is also protected by an interim order, its purpose will be defeated. He further states that a political party has announced respondents 9 and 10 as its candidates for the coming bye-elections, and contends that having caused these elections by their own resignations, they ought not to be permitted to contest them.

2.5. The petitioner fairly and candidly admits, in paragraph 6

https://www.mhc.tn.gov.in/judis

WEB COPY

of his affidavit, that the mechanism he proposes "*is presently not incorporated into Indian electoral law*". He draws support from comparable provisions in other democracies, viz., the recall procedure available to voters in the United Kingdom, and the express recognition of recall for persistent desertion of the electorate under the Constitution of Uganda, to aver that holding elected representatives accountable between elections is not unknown to democratic governance.

3.1. Learned Senior Counsel appearing for the petitioner, placed heavy reliance on a decision of the Supreme Court in *Union of India v. Association for Democratic Reforms*[1], and in particular paragraphs 19, 20 and 26 to 28 thereof. Learned Senior Counsel drew our attention to the observation that while this Court cannot direct amendment of an Act or Rules, it is equally well settled that where the Act or the Rules are silent on a subject and the authority implementing them has constitutional or statutory power to act, the Court can issue directions to fill that vacuum until suitable legislation is enacted. He also relied on the discussion of Article 324

[1] *(2002) 5 SCC 294*

https://www.mhc.tn.gov.in/judis

WEB COPY

of the Constitution of India as a "*reservoir of power*", wide enough to include all powers necessary for the free and fair conduct of elections, and on the observation that the word "*elections*" takes in the entire process, embracing many steps. He submitted that just as the Supreme Court in that case upheld directions requiring disclosure of a candidate's criminal antecedents, assets and educational qualifications so that voters could make an informed choice, this Court can, in the same way, direct the Election Commission to devise a mechanism addressing the misuse of voluntary resignation.

3.2. He also relied upon a decision of the Supreme Court in *Association for Democratic Reforms v. Union of India*[2], which is the judgment striking down the Electoral Bond Scheme, and, in particular, paragraphs 69, 70, 71 and 98 thereof, which deal with the citizen's right to information as a facet of the freedom of speech and expression under Article 19(1)(a) of the Constitution of India, the purity of the electoral process, and the need for transparency in matters touching elections. Learned Senior Counsel submitted that

[2] *(2024) 5 SCC 1*

https://www.mhc.tn.gov.in/judis

WEB COPY

the same reasoning on transparency and accountability in the electoral process would justify the reliefs sought in the present petition.

4. We have considered the submissions and two questions crop up for our consideration:

(i) Whether this Court, exercising its writ jurisdiction, can direct the Election Commission or the Legislature to create an entirely new species of financial security and a five-year disqualification for resigning legislators? and

(ii) Whether the two decisions relied upon by learned Senior Counsel actually support such a course?

5. On the first question, the law is well settled and was recently reiterated by this Bench in *R.Thambaiyah alias Seetharaman v. Union of India*[3]. The petitioner therein sought a mandamus directing the Union and the State to enact a "*Road Safety Act*", along with several other directions of a similar

[3] *W.P.No.34400 of 2023, decided on 05.08.2026*

https://www.mhc.tn.gov.in/judis

WEB COPY

legislative character. This Court, after an extensive review of the law, held that under our constitutional scheme, making laws is the task of the Legislature, and not of the Courts. Courts interpret and enforce laws once they exist, and in appropriate cases fill an interstitial gap by laying down guidelines until the Legislature steps in and what a Court cannot do is instruct the Legislature that it must pass a particular law, on a particular subject, containing particular provisions. In the said decision, this court extracted paragraphs 33 to 36 of the decision of the Supreme Court in *Ashwini Kumar Upadhyay v. Union of India*[4], wherein it was held thus:

> *"33. ...* ***From the foregoing discussion, it emerges that the constitutional role of the judiciary is primarily to interpret and apply the law, and not to legislate.*** *In appropriate cases, particularly where a legislative vacuum exists, this Court may issue directions or evolve principles while interpreting statutory provisions or enforcing fundamental rights. Such directions, however, are inherently interim in nature and are intended to operate only until the Legislature enacts an appropriate law governing the field.*

[4] *Order dated 29.01.2026 in W.P.(C) No.943 of 2021*

https://www.mhc.tn.gov.in/judis

WEB COPY

34. ***The authority to enact binding and general norms of conduct, which necessarily involve broader political, social and moral considerations, lies exclusively within the legislative domain. Any attempt by Courts to prescribe detailed statutory schemes or to frame provisions akin to legislation would amount to judicial law-making and would impermissibly trench upon the functions assigned to the Legislature. Thus, while Courts may fill interstitial gaps in order to safeguard constitutional rights, they cannot supplant the legislative function or create enduring legal frameworks that properly fall within the province of Parliament or the State Legislatures.***

35. Very recently, this Court in Union of India v. K. Pushpavanam, (2023) 20 SCC 736, was called upon to consider the correctness of directions issued by the High Court requiring the Union Government to introduce a Bill in relation to liability in tort. ***This Court expressed its disapproval of the directions so issued, observing that the High Court had transgressed the permissible limits***

https://www.mhc.tn.gov.in/judis

WEB COPY

of judicial review by effectively directing the introduction of legislation. *The Court observed as follows: -*

> *"7. As far as the law of torts and liability thereunder of the State is concerned, the law regarding the liability of the State and individuals has been gradually evolved by courts. Some aspects of it find place in statutes already in force. It is a debatable issue whether the law of torts and especially liabilities under the law of torts should be codified by a legislation.* ***A writ court cannot direct the Government to consider introducing a particular bill before the House of Legislature within a time frame.*** *Therefore, the first direction issued under the impugned judgment [K. Pushpavanam v. Union of India, 2021 SCC OnLine Mad 17062] was unwarranted. ...*
>
> *13. The law regarding power of the writ court to issue a mandate to the legislature to legislate is well settled.* ***No constitutional court can issue a writ of mandamus to a legislature to enact a law on a particular subject in a particular manner. The Court may, at the highest, record its***

https://www.mhc.tn.gov.in/judis

2026:MHC:3908

WEB COPY

Order QR

> ***opinion or recommendation on the necessity of either amending the existing law or coming out with a new law****. ... The only exception is where the Court finds that unless a rule-making power is exercised, the legislation cannot be effectively implemented."*
>
> *(emphasis supplied)*

> *36. It is thus well settled that while exercising its writ jurisdiction, this Court may interpret and develop the law and may also indicate the necessity for legislative reform where the circumstances so warrant. However,* ***the Court cannot issue a writ of mandamus directing the Legislature or the Government to enact a particular law or to introduce a Bill before the Legislature within a stipulated time frame. While the Court may draw attention to the need for legislative action, it cannot compel the Legislature to undertake the law-making function****."*
>
> *[emphasis supplied]*

6. The reliefs sought before us fall squarely within this prohibition. What is sought is not the enforcement of an existing

https://www.mhc.tn.gov.in/judis

WEB COPY

right through an interim measure, but the creation of two new and substantive features of electoral law that do not presently exist anywhere in the Constitution or in the Representation of the People Act, 1951, viz., a security deposit calculated with reference to actual public expenditure on a bye-election, and a five-year bar on contesting future elections. The petitioner himself does not dispute this. He states, in his own affidavit, that the mechanism he proposes "*is presently not incorporated into Indian electoral law*".

7. We are, therefore, not being asked to fill a gap in the machinery for implementing an existing right. We are being asked to design a punitive and financial regime that would operate as a fresh disqualification under the Constitution of India and would curtail the statutory right to contest an election. In our considered opinion, the same is a matter of legislative policy, not of judicial direction.

8. The second question pertains to the two decisions relied upon by learned Senior Counsel, which, in our view, are distinguishable on facts.

https://www.mhc.tn.gov.in/judis

WEB COPY

Union of India v. Association for Democratic Reforms (2002)

9.1. In *Union of India v. Association for Democratic Reforms* (supra), the Supreme Court was concerned with a voter's right to know the antecedents of a candidate, viz., whether he faced criminal charges, what assets he held, and what his educational qualifications were, before casting a vote. Such right was found to flow directly from the existing freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India, of which the right to receive information is a recognized facet.

9.2. In the said decision, the Supreme Court did not create any new disqualification for candidates, nor did it impose any financial condition on the right to contest. It required disclosure of facts that already existed, through an affidavit accompanying the nomination paper, so that the voter's existing right to make an informed choice was not rendered illusory. The Supreme Court in paragraphs 19 and 20 recorded that a direction of this kind is permissible only where the Act or the Rules are silent and the

https://www.mhc.tn.gov.in/judis

WEB COPY

authority in question, viz., the Election Commission, already possesses constitutional or statutory power to implement it. The power of "*superintendence, direction and control*" over the "*conduct of elections*" under Article 324 of the Constitution of India was held wide enough to cover disclosure of this kind. It is seemly to refer to paragraphs 19 and 20 of the said judgment hereunder:

> *"19.* ***At the outset, we would say that it is not possible for this Court to give any directions for amending the Act or the statutory Rules. It is for Parliament to amend the Act and the Rules. It is also established law that no direction can be given, which would be contrary to the Act and the Rules****.*
>
> *20. However,* ***it is equally settled that in case when the Act or Rules are silent on a particular subject and the authority implementing the same has constitutional or statutory power to implement it, the Court can necessarily issue directions or orders on the said subject to fill the vacuum or void till the suitable law is enacted****."*
>
> *[emphasis supplied]*

9.3. In the case at hand, what is sought is not disclosure of an

https://www.mhc.tn.gov.in/judis

WEB COPY

existing fact, but the creation of an entirely new disqualification, viz., a bar on contesting elections for five years, and a forfeitable financial deposit calculated on a case-by-case basis with reference to public expenditure. Neither of these finds any anchor in the Constitution of India or in the Representation of the People Act, 1951. Qualifications and disqualifications for membership of Parliament and State Legislatures are exhaustively dealt with under the Constitution of India and Representation of the People Act, 1951. The Election Commission has no free-standing power, either under Article 324 of the Constitution of India or otherwise, to add the conditions/bar to the list of disqualifications on its own; and if the Commission itself has no such power, this Court cannot, through a writ of mandamus, confer that power upon it. This, precisely, is the second and equally important limitation recognised in paragraphs 19 and 20 of the said judgment itself. The vacuum-filling power exists only where the implementing authority already possesses the underlying constitutional or statutory power. However, the Election Commission of India has no such power.

9.4.1. This very point was considered, and answered against a

https://www.mhc.tn.gov.in/judis

WEB COPY

petitioner urging an almost identical relief, by a Division Bench of this Court in *K.Mani v. The Chief Election Commissioner and others*[5]. The petitioner therein sought a mandamus directing the Election Commission to obtain affidavits from candidates contesting from more than one constituency, undertaking that if they resigned from one seat after winning both, they would bear the election expenses of the constituency they gave up.

9.4.2. The Division Bench noted that Section 33(7) of the Representation of the People Act, 1951 permits a candidate to contest from up to two constituencies, but there is no statutory mandate requiring such a candidate to bear the expenses of the resulting bye-election. It referred to the Election Commission's own 2004 Proposals for Electoral Reforms, which had recommended exactly such a deposit requirement, and noted that despite these recommendations, "*the legislative amendments required to implement these reforms have not yet been enacted*."

9.4.3. The Division Bench further referred to the decision of

[5] *W.P.(MD) No.12161 of 2026, decided on 28.04.2026*

https://www.mhc.tn.gov.in/judis

WEB COPY

the Supreme Court in *Ashwini Kumar Upadhyay* (supra) that permitting a candidate to contest from more than one seat, and the consequences that follow from the choice a candidate makes thereafter, is "*a matter of legislative policy*" resting with Parliament, and that in the absence of manifest arbitrariness, a Court cannot substitute its own view for that of the Legislature.

9.4.4. The Division Bench accordingly held that, as on date, there is no provision empowering the Election Commission to direct a candidate to deposit election expenses on resignation, or to require a separate affidavit to that effect, and dismissed the writ petition. If even the Election Commission's own considered recommendation for such a deposit has not translated into law after two decades, and this Court has already declined to compel its implementation, we see no principled basis on which the somewhat wider and more onerous scheme proposed in the present petition, viz., a security deposit coupled with a five-year disqualification, applicable even to single-constituency candidates who resign, could be ordered instead.

https://www.mhc.tn.gov.in/judis

WEB COPY

9.5.1. The same conclusion was reached on closely related facts by a Division Bench of this Court in *M.Baskaran and others v. The Election Commissioner of India and others*[6]. In that case, the petitioners sought appointment of a statutory auditor to quantify the expenditure incurred by the State on account of the deferment and eventual cancellation of elections to two Assembly constituencies, following reports of corrupt practices, and sought recovery of that expenditure from the errant candidates.

9.5.2. The Division Bench held, after an exhaustive review of the constitutional and statutory scheme, including Articles 324 to 328 of the Constitution of India and Sections 76 to 78 of the Representation of the People Act, 1951, that there is no specific provision of law which enables the Election Commission to recover the expenditure incurred by the State from contesting candidates responsible for a deferment or cancellation of elections. It further held that non-recovery of such costs does not infringe any legal or fundamental right, and that "*it is for the legislature to enact a law to provide for recovery of waste of public money caused by*

[6] *W.P.Nos.21149 of 2016 etc, decided on 14.06.2018*

https://www.mhc.tn.gov.in/judis

WEB COPY

wrongful acts of contesting candidates." The Division Bench added a caution that is equally apposite here: a public interest litigation, however well-intentioned, "*cannot be stretched to take over all acts of governance*," and a Court exercising writ jurisdiction cannot fashion what amounts to a retrospective penalty without the authority of law.

Association for Democratic Reforms v. Union of India (2024):

9.6. We turn next to the decision in *Association for Democratic Reforms v. Union of India*, (supra), striking down the Electoral Bond Scheme. The said judgment proceeds on a different plane altogether. It concerns the citizen's and voter's right to know the source of funding received by political parties, as an incident of the right to make a free and informed electoral choice under Article 19(1)(a) of the Constitution of India, and it examines whether an existing statutory scheme permitting anonymous political donations could withstand that right. It is, in essence, a case about striking down an existing legislative scheme found to be constitutionally infirm for want of transparency in political funding. It does not deal

https://www.mhc.tn.gov.in/judis

WEB COPY

with, and cannot be read as authority for, the creation of a fresh disqualification attaching to a candidate's own decision to resign and re-contest, nor does it deal with any security deposit payable by such a candidate. The transparency it speaks of concerns the source of a party's funds, not the personal conduct of an individual legislator in relinquishing and later seeking to reclaim a mandate. The reasoning of that judgment does not extend to the wholly different question raised in this petition.

9.7. It is also necessary to notice that, in the case at hand, the reliefs sought are directed against six named individuals by name, based on the timing of their resignations. *Assuming arguendo* that some mechanism was desirable as a matter of policy, a court-ordered scheme confined to these six persons would run athwart Article 14 of the Constitution of India. The right to resign a legislative seat is itself a facet of the constitutional scheme governing membership of a House, and cannot be burdened with extra-statutory conditions by judicial order, however sound the underlying concern may be.

https://www.mhc.tn.gov.in/judis

WEB COPY

10. For the aforegiven reasons, the prayer for a mandamus directing the framing of an "*Election Expenditure Security*" mechanism and a five-year disqualification for voluntarily resigning legislators cannot be granted, as this Court cannot convert an executive or legislative option into a judicial command.

In fine, this writ petition fails and is accordingly dismissed. Consequently, connected miscellaneous petitions stand closed. There shall be no order as to costs.

(SUSHRUT ARVIND DHARMADHIKARI, CJ) (G.ARUL MURUGAN,J)
24.09.2026

Index : Yes
Neutral Citation : Yes
sasi

https://www.mhc.tn.gov.in/judis

WEB COPY

Order QR

To:

1. The Secretary, Union of India,
   Ministry of Law and Justice,
   Kartavya Bhawan II, New Delhi - 110001.

2. The Secretary, Election Commission of India
   Nirvachan Sadan,
   Ashoka Road, New Delhi - 110001.

3. The Chief Electoral Officer
   Office of the Chief Electoral Officer Tamil Nadu,
   Secretariat, Fort St. George, Chennai - 600 009.

4. The Secretary,
   Tamil Nadu Legislative Assembly, Secretariat,
   Fort St. George, Chennai - 600 009.

5. The Principal Secretary,
   Government of Tamil Nadu,
   Secretariat, Fort St. George, Chennai - 600 009.

https://www.mhc.tn.gov.in/judis

2026:MHC:3908

WEB COPY

Order QR

THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

(sasi)

W.P.No.37274 of 2026

24.09.2026

https://www.mhc.tn.gov.in/judis