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W.P. (MD) No.12161 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2026

CORAM :

THE HONOURABLE MR. SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

WP(MD) No.12161 of 2026

K.Mani
S/o.Kannan,
No.3/205, S. Kallamatti,
Melur Taluk, Madurai District.

Petitioner(s)

Vs

1. The Chief Election Commissioner
Office of The Election Commission
of India, Nirvachan Sadan,
Ashoka Road, New Delhi.
2. The State Election Commissioner
Tamilnadu, Arumpakkam, Chennai.
3. The Chief Electoral Officer (CEO)
Tamilnadu, Secretariat, Chennai.

Respondent(s)

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the 1st respondent herein to obtain a separate affidavit, who are willing to file



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nomination / who filed nomination for more than one constituency, a separate affidavit containing and assuring that if he / she resign voluntarily any one of the constituency after election, is liable to pay all the election expenses incurred for the particular constituency before resigning.

For Petitioner(s): No Appearance

For Respondent(s): Mr. Niranjan Rajagopalan
Standing Counsel

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

There is no representation on behalf of the petitioner.

2. The petitioner has come up with this *pro bono publico* petition seeking issuance of a mandamus directing the first respondent to obtain separate affidavits from candidates who are willing to file nomination, or who filed nomination for more than one constituency, assuring that if he/she resigns voluntarily from any one of the constituency after election, he/she will be liable to pay all the election expenses incurred for the particular constituency before resigning.



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3. Section 33(7) of the Representation of the People Act, 1951

reads thus:

"33. Presentation of nomination paper and requirements for a valid nomination.—

(1) to (6) ...

(7) Notwithstanding anything contained in sub-section (6) or in any other provisions of this Act, a person shall not be nominated as a candidate for election,—

(a) in the case of a general election to the House of the People (whether or not held simultaneously from all Parliamentary constituencies), from more than two Parliamentary constituencies;

(b) in the case of a general election to the Legislative Assembly of a State (whether or not held simultaneously from all Assembly constituencies), from more than two Assembly constituencies in that State;

(c) in the case of a biennial election to the Legislative Council of a State having such Council, from more than two Council constituencies in the State;

(d) in the case of a biennial election to the Council of States for filling two or more seats allotted to a State, for filling more than two such seats;

(e) in the case of bye-elections to the House of the People from two or more Parliamentary constituencies



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which are held simultaneously, from more than two such Parliamentary constituencies;

(f) in the case of bye-elections to the Legislative Assembly of a State from two or more Assembly constituencies which are held simultaneously, from more than two such Assembly constituencies;

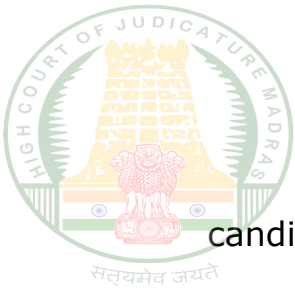
(g) in the case of bye-elections to the Council of States for filling two or more seats allotted to a State, which are held simultaneously, for filling more than two such seats;

(h) in the case of bye-elections to the Legislative Council of a State having such Council from two or more Council constituencies which are held simultaneously, from more than two such Council constituencies.

Explanation.—For the purposes of this sub-section, two or more bye-elections shall be deemed to be held simultaneously where the notification calling such bye-elections are issued by the Election Commission under sections 147, 149, 150 or, as the case may be, 151 on the same date.”

[emphasis supplied]

4. Under the provisions of Section 33(7) of the Act, specifically Clauses (a) and (b), a legal restriction is placed on electoral



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candidates prohibiting them from being nominated for more than two constituencies simultaneously during a general election, whether for the House of the People or a State Legislative Assembly. However, there is no statutory mandate requiring such candidate to bear the election expenses incurred when they resign from a constituency after winning in both the constituencies.

5. It needs to be accentuated at this juncture that when the constitutional validity of Section 33(7) of the Act was challenged before the Supreme Court in *Ashwini Kumar Upadhyay v. Union of India*¹, it was observed thus:

11. A statutory provision can be challenged before the Court either on the ground that it has been made by a legislature which lacks legislative competence to enact a law or on the ground that there is a violation of a Fundamental Right in Part III of the Constitution. The former is not in issue.

12. Permitting a candidate to contest from more than one seat in a Parliamentary election or at an election to the State Legislative Assembly is a matter of legislative policy. It is a matter pertaining

¹ (2023) 5 SCC 668



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to legislative policy since, ultimately, Parliament determines whether political democracy in the country is furthered by granting a choice such as is made available by Section 33(7) of the 1951 Act. A candidate who contests from more than one seat may do so for a variety of reasons not just bearing on the uncertainty which the candidate perceives of an election result. There are other considerations which weigh in the balance in determining whether this would restrict the course of electoral democracy in the country. **This is a matter where Parliament is legitimately entitled to make legislative choices and enact or amend legislation.** The Law Commission and the Election Commission may at the material time have expressed certain viewpoints. Whether they should be converted into a mandate of the law depends on the exercise of Parliamentary sovereignty in enacting legislation. **Absent any manifest arbitrariness of the provision so as to implicate the provisions of Article 14 or a violation of Article 19, it would not be possible for this Court to strike down the provision as unconstitutional.**

13. This will not restrain Parliament from taking an appropriate view if it decides to do so at any point of time in pursuance of its legislative authority. Parliament has intervened in the past in the form of Act



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21 of 1996 which restricts the choice of a candidate for electoral contest to two seats in one and the same election."

[emphasis supplied]

6. In its 2004 Proposals for Electoral Reforms, the Election Commission of India recommended a statutory amendment to restrict candidates to contest from only a single constituency at a time, effectively seeking to abolish the practice of multi-seat candidacy. Alternatively, the Commission proposed that if dual-constituency candidacy is maintained, the law should be amended to require candidates to deposit a specific sum with the Government to cover the administrative costs of conducting the inevitable bye-election triggered by their resignation. The observations in the report of the Election Commission of India are of significance and read as follows:

"Restriction on the Number Of Seats From Which One May Contest:

As per the law as it stands at present [sub-section (7) of section 33 of the Representation of the People Act, 1951], a person can contest a general election or a group of bye-elections or biennial elections from a maximum of two constituencies.



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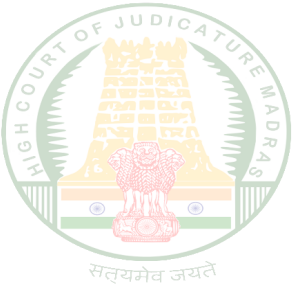


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There have been several cases where a person contests election from two constituencies, and wins from both. In such a situation he vacates the seat in one of the two constituencies. The consequence is that a bye-election would be required from one constituency involving avoidable labour and expenditure on the conduct of that bye-election.

The Commission is of the view that the law should be amended to provide that a person cannot contest from more than one constituency at a time.

*The Commission will also add that in case the legislature is of the view that the provision facilitating contesting from two constituencies as existing at present is to be retained, **then there should be an express provision in the law requiring a person who contests and wins election from two seats, resulting in a bye-election from one of the two constituencies, to deposit in the Government account an appropriate amount of money being the expenditure for holding the bye-election. The amount could be Rs. 5,00,000/- for State Assembly and Council election and Rs.***



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10,00,000/- for election to the House of the People.”

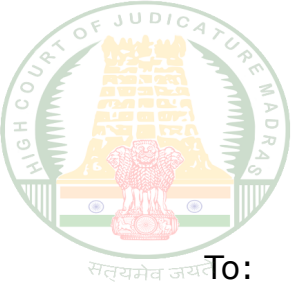
[emphasis supplied]

7. Despite the Election Commission’s recommendations, the legislative amendments required to implement these reforms have not yet been enacted. Therefore, as on date, there is no provision empowering the Election Commission of India to direct the candidate contesting in two constituencies to deposit the election expenses in case he resigns from one constituency, after winning from both the constituencies, or to direct the candidates to file separate affidavits to bear the expenses in the event of resigning.

We are, therefore, not inclined to entertain this writ petition and the same is dismissed. There shall be no order as to costs.

(SUSHRUT ARVIND DHARMADHIKARI,CJ) (G.ARUL MURUGAN,J)
28.04.2026

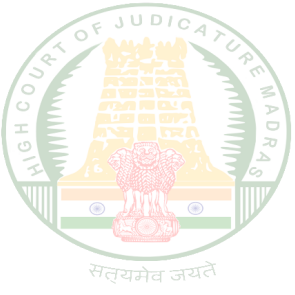
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