IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.01.2026
DELIVERED ON: 18.02.2026

CORAM

THE HONOURABLE MR. MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

WP Nos.45322, 47781, 42811, 48593, 40291, 49895 of 2025;
WP(MD) No.32790 of 2025;
WMP Nos.55777, 53352, 53351, 45250, 47863, 50473, 54382, 50475 of 2025;
and WMP Nos.53347, 47862, 45248, 50472, 53346, 54380, 55776 of 2025; WMP(MD) No.25850 of 2025

W.P.No.45322 of 2025:

Tamizhaga Makkal Munnertra Kazhagam
Rep. by its President, John Pandian,
Office at No.50, Pettikula Towers,
Poonamallee High Road, Dasspuram,
Chetpet, Chennai-600 010.

Petitioner(s)

Vs

1. The Chief Election Commissioner,
   Election Commission of India,
   Nirvachan Sadan, Ashoka Road,
   New Delhi-110 001.

2. The Chief Electoral Officer
and Secretary to Government,
Public (Elections-III) Department,
Secretariat, Chennai-600 009.

Respondent(s)

and batch cases

CASE Nos.	Counsel for Petitioner	Counsel for Respondents
WP.No.45322/2025	MR.S.PRABAKARAN SENIOR COUNSEL FOR MR.D.VEERAKUMAR	MR.G.RAJAGOPALAN SENIOR COUNSEL FOR MR.NIRANJAN RAJAGOPALAN FOR R1 MR. E.VIJAY ANAND ADDL. GOVERNMENT PLEADER FOR R2
WP.No.49895/2025	MR.R.SRINIVAS SENIOR COUNSEL FOR M/S.MYTHILI SRINIVAS	MR.G.RAJAGOPALAN SENIOR COUNSEL FOR MR.NIRANJAN RAJAGOPALAN FOR R1 MR. E.VIJAY ANAND ADDL. GOVERNMENT PLEADER FOR R2.
WP.No.40291/2025	MR.N.L.RAJAH SENIOR COUNSEL FOR MR.K.R.ARUN SHABARI	MR.G.RAJAGOPALAN SENIOR COUNSEL FOR MR.NIRANJAN RAJAGOPALAN FOR R1 MR. E.VIJAY ANAND ADDL GOVERNMENT PLEADER FOR R2 AND R3
WP.No.42811/2025	MR.P.WILSON SENIOR COUNSEL (THROUGH VIDEO CONFERENCING) FOR MR.RICHARDSON WILSON	MR.G.RAJAGOPALAN SENIOR COUNSEL FOR MR.NIRANJAN RAJAGOPALAN FOR R1 MR. E.VIJAY ANAND ADDL GOVERNMENT PLEADER FOR R2

CASE Nos.	Counsel for Petitioner	Counsel for Respondents
WP.No.48593/2025	MS.I.ABISHA ISAAC FOR M/S.ISAAC CHAMBERS	MR.G.RAJAGOPALAN SENIOR COUNSEL FOR MR.NIRANJAN RAJAGOPALAN FOR R1 MR. E.VIJAY ANAND ADDL GOVERNMENT PLEADER FOR R2
WP. (MD).No. 32790/2025	MR.A.JOHN VINCENT (THROUGH VIDEO CONFERENCING)	MR.G.RAJAGOPALAN SENIOR COUNSEL FOR MR.NIRANJAN RAJAGOPALAN FOR R1 AND R2 MR. E.VIJAY ANAND ADDL GOVERNMENT PLEADER FOR R3
WP.No.47781/2025	MR.K.GOWTHAM KUMAR FOR MR.N.S.AMOGH SIMHA	MR.G.RAJAGOPALAN SENIOR COUNSEL FOR MR.NIRANJAN RAJAGOPALAN FOR R1 AND R2 MR. E.VIJAY ANAND ADDL GOVERNMENT PLEADER FOR R3

COMMON ORDER

THE CHIEF JUSTICE

This order shall dispose of applications, viz., WMP Nos.55777, 53352, 53351, 45250, 47863, 50473, 54382 and 50475 of 2025, whereby the petitioners/political parties have prayed for stay of the effect and operation of the impugned orders passed in the respective cases by the Election Commission of India [*ECI*] de-registering the petitioners/political parties and a consequential

direction to revoke the de-registration.

SUBMISSIONS OF LEARNED COUNSEL FOR RESPECTIVE PETITIONERS:

2. Learned counsel for the respective petitioners had made the following submissions in support of their prayer for stay/ direction:

(a) The order in respective cases passed by the ECI is stereo-typed and mechanical seeking to de-register the political parties on sole untenable ground that they have not contested elections for the last six years, meaning thereby in the last two elections – either parliamentary or legislative assembly, the petitioners have not contested in election.

(b) Though notices were issued to the petitioners, the detailed replies submitted by the respective petitioners have not been dealt with separately, but almost similar orders of de-registration have been issued in each of the cases and, therefore, the impugned

orders of de-registration are without due and proper application of mind.

(c) Though there is a provision for registration of political parties, as provided under Section 29A of the Representation of the People Act, 1951 ["the RP Act"], there is no corresponding provision for de-registration. Therefore, once the political parties are registered, the ECI does not have any power to de-register the political parties by invoking Section 21 of the General Clauses Act, 1897 ["the GC Act"].

(d) Reliance is placed on the judgment of the Apex Court in the case of *Indian National Congress (I) v. Institute of Social Welfare and others*[1], to emphasize that the limited grounds on which such power of de-registration could be invoked have been exhaustively delineated therein, viz., (i) where a political party has obtained registration by practising fraud or forgery; (ii) where a registered political party amends its nomenclature of association, rules and regulations abrogating therein conforming to the provisions of

[1]*(2002) 5 SCC 685*

Section 29-A(5) of the RP Act or intimating the Election Commission that it has ceased to have faith and allegiance to the Constitution of India or to the principles of socialism, secularism and democracy or it would not uphold the sovereignty, unity and integrity of India so as to comply with the provisions of Section 29-A(5) of the RP Act; and (iii) any like ground where no enquiry is called for on the part of the Commission.

It has also been held in the said decision that the provisions of Section 21 of the GC Act cannot be extended to quasi-judicial authority and since ECI, while exercising its power under Section 29A of the RP Act, acts quasi-judicially, the provisions of Section 21 of the GC Act have no application.

(e) In view of the following decisions: (i) A decision of the Madras High Court in the case of *P.A.Joseph v. The Election Commission of India and others*[2]; (ii) A decision of the Kerala High Court in the case of *P.J.Joseph v. Election Commission of India and others*[3]; and (iii) a decision of the Delhi High Court in the case of *Hans Raj Jain v. Election Commission of India*[4], the ECI, as is consistently

[2] *2017 SCC OnLine Mad 23576*

[3] *2021 SCC OnLine Ker 973*

[4] *W.P.(C) No.1458 of 2014, dated 19.3.2015*

held, does not have the power to order de-registration on the ground as stated in the impugned orders, except in exceptional circumstances as enumerated in the case of *Indian National Congress (I) v. Institute of Social Welfare (supra).*

(f) The Guidelines issued by the ECI is not the law, but only executive directions, as has been held by the Supreme Court in *N.P.Ponnuswami v. Returning Officer, Namakkal Constituency and others*[5]; and *Mohinder Singh Gill and another v. Chief Election Commissioner and others*[6]. The restriction imposed on the political parties to contest election regularly, by prescribing that the political parties should have contested election in a block of six years, amounts to restriction not imposed by law within the meaning of the said expression as contained in Article 19(4) of the Constitution of India.

(g) The Legislature, in exercise of the power conferred under Article 327 of the Constitution of India read with the legislative powers under the scheme of the Constitution, having made a law

[5]*(1952) 1 SCC 94*
[6]*(1978) 1 SCC 405*

providing for registration, without there being any provision for de-registration, it is constitutionally and legally impermissible for the ECI to provide for conditions of de-registration by way of its guidelines.

(h) In support of the submission that the power conferred under Article 324 of the Constitution of India cannot be used contrary to the law made by the appropriate legislature under Article 327 of the Constitution of India, reliance has been placed on the decisions in *A.C.Jose v. Sivan Pillai*[7]; *Kuldip Nayar v. Union of India*[8]; and *Mohinder Singh Gill and another v. Chief Election Commissioner and others* (supra).

(i) The power to issue guidelines conferred on the ECI under Article 324 of the Constitution of India does not invest the ECI to trench upon the legislative domain by prescribing conditions of de-registration, as de-registration is not covered as a subject of superintendence, direction and control of preparation of the electoral rolls and the conduct of the elections to Parliament and to

[7]*(1984) 2 SCC 656*
[8]*(2006) 7 SCC 1*

the Legislature of every State. Therefore, assuming that the ECI has constitutional power conferred on it under Article 324 of the Constitution of India to issue certain guidelines of binding nature applicable and binding on political parties, such a power does not include the legislative power to provide for conditions upon which de-registration could be ordered. Therefore, prescription of conditions for de-registration, as also exercise of power of de-registration, are *de hors* constitutional sanction.

(j) In view of the clear enunciation of law by the Supreme Court in *Indian National Congress (I) v. Institute of Social Welfare* (supra) that the exercise of power of registration of political parties under Section 29A of the RP Act is quasi-judicial in nature, in the absence of specific provision contained in the RP Act or found anywhere in the provisions of the Constitution of India, the ECI has no authority – constitutional or statutory – to order de-registration for any reason whatsoever.

(k) The ECI by stereo-typed orders has dealt with all the cases alike, proceeding on incorrect assumption of facts in many

cases that, while granting registration under Section 29A of the RP Act, any condition was imposed that the political parties so registered shall contest election in a block of six years, failing which its registration may be cancelled. While in some cases the parties were registered after framing of Guidelines of 2014, in many cases, the political parties were registered even prior to the promulgation of Guidelines of 2014 and, at the time of their registration, no such condition was imposed. Since these conditions are only executive in nature having no force of law, it could not be applied retrospectively to the political parties which were registered prior to framing of Guidelines, wherein no such condition was imposed.

(l) The condition laid down in the guidelines of the ECI does not have the force of law and is, therefore, not binding on the political parties which were granted registration after the Guidelines of 2014, even though there was a condition therein requiring electoral participation in a block of six years, by mentioning that the political parties have failed to contest elections continuously for six years.

(m) The orders of de-registration suffer from serious anomaly in law, in as much as the orders have been passed by the Secretary as ordered by the ECI, whereas the notices were issued by the Chief Electoral Officers. The orders have not been personally served, but only uploaded and, therefore, there is violation of principles of natural justice. The written affidavit/reply was submitted before the Chief Electoral Officers, whereas the order has been passed by the Secretary resulting in violation of the principle that a person who passes the order should give the hearing. Reliance is placed on the decision in *Rasid Javed v. State of U.P.*[9].

(n) In many cases, even though the parties have contested election, the members of the political parties have contested election of local bodies or have contested assembly elections under the symbol of the other party in the political alliance, their registrations have been rejected by unduly restricting the meaning of the expression of continuous participation in election. The condition, even if accepted, does not expressly require electoral participation in a block of six years only in the parliamentary or

[9] *(2010) 7 SCC 781*

legislative assembly elections.

(o) There is no case of constructive fraud, as failure to contest election cannot be equated with constructive fraud.

(p) The ECI has been taking contrary stand in different courts. In cases before other High Courts, they consented to passing of an order for participation in the election, though local body election. Further, the ECI has consistently been taking the stand in various fora that in the absence of there being specific provision contained in the RP Act, it does not have the power to de-register and has, therefore, recommended inclusion of appropriate provision in that regard by way of amendment in the RP Act. Even in the report of the Law Commission of India it has been clearly stated that in the absence of there being any provision to de-register, a political party cannot be de-registered except on those exceptional grounds as exhaustively enumerated by the Supreme Court in *Indian National Congress (I) v. Institute of Social Welfare* (supra).

(q) The orders impugned wrongly quotes appellate remedy, whereas under any of the laws governing the subject of registration or the guidelines, there is no provision for appeal.

(r) For reckoning the period of six years block requiring electoral participation, the period of Covid pandemic, i.e., 2020, 2021 and 2022, ought to be completely excluded.

SUBMISSIONS ON BEHALF OF LEARNED COUNSEL FOR THE ELECTION COMMISSION OF INDIA

3. Learned Senior Counsel appearing on behalf of the Election Commission of India submits that:

(i) Article 324 of the Constitution of India confers a wide power on the ECI with regard to preparation of electoral roll and conduct of elections. This wide power includes the authority with the ECI to lay down the conditions for contesting elections and its consequences in the form of de-registration, even though it may not have been expressly incorporated as a statutory provision in the RP Act.

(ii) The order of the Supreme Court in the case of *Indian National Congress (I) v. Institute of Social Welfare* (supra) cannot be pressed into service, as at the time when that order was passed there were no guidelines issued by the ECI mandating electoral participation in a block of six years. The guidelines came to be framed in 2014. Therefore, in addition to the grounds which have been mentioned by the Supreme Court in the case of *Indian National Congress (I) v. Institute of Social Welfare* (supra), non participation during a continuous period of six years renders liable a political party to be de-registered as provided in the guidelines of the ECI.

(iii) Article 327 of the Constitution of India confers power on the legislature to enact law of elections with regard to Parliament and elections of the State and though it has been held in several cases that if there is law under Article 327 of the Constitution of India, to that extent, the exercise of power under Article 324 of the Constitution of India is curtailed, in a case where there is no express provision and there is a vacuum, it is perfectly within the

four corners of the constitutional scheme of Article 324 of the Constitution of India that the ECI may issue guidelines not only having binding effect, but also the force of law.

(iv) While Article 324 of the Constitution is not subject to any provision of the Constitution as it is apparent from its language, Article 327 of the Constitution of India is subject to other provisions of the Constitution.

(v) Reliance is placed on the decision in *Sadiq Ali v. Election Commission of India*[10], to submit that there is no substance in the contention that as the power to make provisions in respect to elections is given to Parliament by Article 327 of the Constitution of India, the power cannot be delegated to the ECI. The opening words of Article 327 of the Constitution of India "*Subject to the provisions of this Constitution*" indicate that any law made by the Parliament in exercise of powers conferred under Article 327 would be subject to other provisions of the Constitution, including Article 324 of the Constitution of India. Therefore, it is not correct to say

[10]*(1972) 4 SCC 664*

that when ECI issues directions it does so not on its own behalf, but as a delegate of some other authority.

(vi) In view of the decision of the Supreme Court in the case *Mohinder Singh Gill and another v. Chief Election Commissioner and others* (supra), Article 324(1) of the Constitution of India vests in the ECI the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of elections to the Parliament and to the legislature of every State and, therefore, the provision is couched in wide terms. In the aforesaid decision, it has also been held that the framers of the Constitution took care to leave scope for exercise of residuary power by the ECI, in its own right, as a creature of the Constitution, in the infinite variety of situations that may emerge from time to time in such a large democracy as ours. Every contingency cannot be foreseen or anticipated with precision and, therefore, there is no hedging in Article 324 of the Constitutional of India. The ECI may be required to cope up with some situations which may not be provided for in the enacted laws and the rules.

Though there is no doubt that the ECI has to conform to the

existing laws and rules in exercising its power and performing manifold duties for conduct of free and fair elections, the ECI is a high-powered and independent body. When there is a legal vacuum and a situation as has arisen in the present cases has to be tackled, the ECI could always invoke its constitutional power to issue guidelines making provisions with regard to those subjects which are not specifically provided or enumerated under law framed by the legislature. Therefore, the question of lack of power does not arise.

(vii) In 2003, the RP Act was amended and Sections 29B and 29C were introduced to enable the political parties registered under Section 29A of the RP Act to accept contribution from any person. With passage of time, it came to the notice of the ECI through the Income Tax Department that political parties accepted huge donations and the ECI, on verification, found that many of them did not participate in the electoral process, but were misusing the registration to receive donations and claiming exemption from income tax. Therefore, in order to deal with such a situation, the ECI decided to add a condition in the guidelines for registration of

political parties which required that the party must declare in its constitution that it must contest an election conducted by the ECI within five years of its registration and if the party does not contest election continuously for six years, the party shall be taken off the list of registered political parties. Such condition was included in cases where the political parties were subsequently registered and such undertaking was obtained. However, in respect of those parties which were already registered, the guidelines became operative on them as it has the force in law.

(viii) The power to add condition in the guidelines is not only traceable to Article 324 of the Constitution of India, but also to Section 29A of the RP Act, filling the gap.

(ix) The guidelines clearly provide that the parties should contest in the election "conducted by the Election Commission of India". Therefore, participation in the election to local bodies does not fullfill the condition of contesting elections as required under the guidelines. Those who have contested election in the symbol of other recognized political parties showing them as members of that

party and in the local body elections conducted by the State Election Commission and not ECI, fall within the mischief of the provision contained in the guidelines mandating periodical electoral participation.

(x) Referring to a decision of a three-Judge Bench of the Suprem Court in *Janata Dal (Samajwadi) v. Election Commission of India*[11], it has been submitted that the Supreme Court has recognized the power of the ECI to de-register/de-recognize a party by invoking Section 21 of the GC Act, where there was no provision for de-registration. It was held that even in respect of quasi-judicial functions, Section 21 of the GC Act would apply. The aforesaid decision of the Supreme Court was not brought to the notice in the case of *Indian National Congress (I) v. Institute of Social Welfare* (supra).

(xi) In a Five-Judge Bench decision of the Supreme Court in the case of *Anoop Barnwal v. Union of India*[12], the earlier decisions in *Indian National Congress (I) v. Institute of Social Welfare* (supra)

[11] *(1996) 1 SCC 235*
[12] *(2023) 6 SCC 161*

and *Janata Dal (Samajwadi) v. Election Commission of India* (supra) were referred to.

In any case, the Supreme Court decision in *Indian National Congress (I) v. Institute of Social Welfare* (supra) may not apply once the power of the ECI to issue guidelines under Article 324 of the Constitution and it having the force of law is judicially recognized and declared as such, which is a subsequent event.

(xii) It has been clearly held in a Constitution Bench judgment of the Supreme Court in *T.N.Seshan v. Union of India*[13]; a decision of the Madras High Court in *Patty B.Jeganathan v. The Chief Election Commission of India and others*[14]; and another decision of this Court in *Desiya Deiveega Murpokku Kazhagam v. Election Commission of India*[15], that the guidelines issued by the ECI have statutory force and it is a well settled legal position. In the absence of a specific challenge to the guidelines as being unconstitutional, the petitions are liable to be dismissed.

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[13]*(1995) 4 SCC 611*
[14]*2011-3-L.W. 272*
[15]*WP No.35566 of 2016, dated 24.4.2023*

(xiii) Even according to the judgment of the Supreme Court in *Indian National Congress (I) v. Institute of Social Welfare* (supra), the Guidelines of the ECI, which have the force of law, providing for non-participation for a continuous period of six years as ground for disqualification constitute an exceptional circumstance and, therefore, clothe the ECI with the power to de-register political parties who are not interested in contesting the parliamentary and legislative elections for a considerable period of time, but continue to enjoy the registration for oblique purpose of receiving funds with various benefits under the law.

(xiv) The order issued by the Secretary was "as directed by the ECI", which considered the reply filed by the respective petitioners. In the absence of there being challenge to the factual position that none of the political parties has contested elections for the continuous period of six years, challenge to the order on the ground of non-consideration of reply or non-application of mind or violation of principles of natural justice does not entitle the petitioners to get any relief, much less interim relief.

(xv) If any interim relief is granted staying the effect and operation of the order of de-registration, it would amount to allowing the writ petitioners to participate in the process of election as a registered party.

PRIMA FACIE CONSIDERATIONS LIMITED FOR THE PURPOSES OF CONSIDERATION OF THE APPLICATIONS FOR INTERIM RELIEF

4. After having extensively heard learned counsel for the parties, we find that a serious issue with regard to the power of the ECI to de-register those political parties which have already been registered under Section 29A of the RP Act arises for consideration in these writ petitions.

5. The writ petitions have placed heavy reliance upon the Supreme Court decision in the case of *Indian National Congress (I) v. Institute of Social Welfare* (supra). The aforesaid decision holds that the exercise of power of registration under Section 29A of the RP Act being quasi-judicial in nature, recourse could not be had to Section 21 of the GC Act to de-register and de-registration could be ordered under certain exceptional circumstances enumerated in the

said decision.

6. However, on the other hand, the submission of learned Senior Counsel for the ECI, which requires serious consideration, is that at the time when the order was passed in the case of *Indian National Congress (I) v. Institute of Social Welfare* (supra) there were no such specific guidelines in force issued by the ECI in exercise of its constitutional power under Article 324 of the Constitution of India providing for circumstances under which a political party could be de-registered.

7. Though submission of learned counsel for the petitioners has been that the power of the ECI, as conferred on it under Article 324 of the Constitution of India, is merely executive in nature and also limited to certain subjects, learned counsel for the ECI has placed heavy reliance upon various decisions of the Supreme Court, wherein it has been held that the power of the ECI to issue guidelines and directions with the power conferred under Article 324 of the Constitution of India are having the force of law and statutory in nature. This aspect also requires a serious consideration.

8. The Supreme Court decision in the case of *Mohinder Singh Gill and another v. Chief Election Commissioner and others* (supra) recognizes the wide power vested in the ECI to issue necessary guidelines having the force of law, when no specific provisions are contained in the laws made under Article 327 of the Constitution of India.

9. There is also considerable force in the submission of learned counsel for the respondent that in earlier decision in the case of *Janata Dal (Samajwadi) v. Election Commission of India* (supra), a three-Judge Bench of the Supreme Court recognized the power of the ECI to de-register the party under the GC Act, when there was no provision for de-registration. It was held therein that even in respect of quasi-judicial functions, Section 21 of the GC Act would apply.

The earlier decisions in the cases of *Janata Dal (Samajwadi) v. Election Commission of India* (supra) and *Indian National Congress (I) v. Institute of Social Welfare* (supra) were both referred to by the Supreme Court in its subsequent Five-Judge Bench judgment in

the case of *Anoop Barnwal v. Union of India* (supra). All these aspects require deeper consideration.

10. The ECI has strongly contended that its guidelines, to the extent no express provision is made in the laws made under Article 327 of the Constitution of India, would have the force of law. This submission cannot be lightly brushed aside. The Guidelines of the ECI does provide in paragraph (3)(xxiii) that "*The party must declare in its constitution that it must contest an election conducted by the Election Commission within 5 years of its registration. (If the party does not contest election continuously for 6 years, the party shall be taken off the list of registered parties*."

Though the petitioners before us sought to contend that within a block of six years they have either participated in the local body elections or Members of their party have contested legislative assembly/parliamentary election under the election symbol of other political party, it is not in dispute that the petitioners have not contested elections within the block of six years prior to the orders impugned passed by the ECI.

11. We also find that all the petitioners were issued notices, their replies were obtained and orders have been passed by the Secretary "*By Order*", meaning thereby that the order has been passed by the ECI.

12. At this stage, we are of the view that granting an interim order staying the effect and operation of the order of the ECI would amount to allowing the writ petitions and granting a status, by interim measure, of registered political parties in forthcoming elections to the legislative assembly.

13. Learned counsel for the ECI is right in submitting that balance of convenience does not lie in favour of the petitioners as they have not contested in parliament or legislative assembly elections continuously for six years.

14. In view of the above considerations, we are not inclined to pass interim order as prayed for by the petitioners. The applications, viz., WMP Nos.55777, 53352, 53351, 45250, 47863, 50473, 54382 and 50475 of 2025, seeking interim relief are,

therefore, rejected.

15. WMP Nos.53347, 47862, 45248, 50472, 53346, 54380, 55776 of 2025 and WMP(MD) No.25850 of 2025 filed to dispense with the production of the original impugned order are allowed.

However, as serious issue of constitutional importance arises for consideration in these petitions, we are inclined to set down these petitions for final hearing in the second week of March, 2026.

(MANINDRA MOHAN SHRIVASTAVA,CJ) (G.ARUL MURUGAN,J)
18.02.2026

Note to Registry:
The Registry is directed to incorporate separate cause-titles in each case.

sasi

To:

1. The Chief Election Commissioner,
   Election Commission of India,
   Nirvachan Sadan, Ashoka Road,
   New Delhi-110 001.

2. The Chief Electoral Officer
   and Secretary to Government,
   Public (Elections-III) Department,
   Secretariat, Chennai-600 009.

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

(sasi)

WP Nos.45322 of 2025 etc.

18.02.2026