



भारत निर्वाचन आयोग
Election Commission of India

निर्वाचन सदन
NIRVACHAN SADAN
अशोक रोड, नई दिल्ली - 110 001
ASHOKA ROAD, NEW DELHI - 110 001

BEFORE THE ELECTION COMMISSION OF INDIA

CORAM:

HON'BLE SHRI SUNIL ARORA
ELECTION COMMISSIONER

HON'BLE SHRI A.K. JOTI
CHIEF ELECTION COMMISSIONER

HON'BLE SHRI O.P. RAWAT
ELECTION COMMISSIONER

Dispute Case No.5 of 2017

In re: Dispute Case No. 5 of 2017 - Dispute in Janata Dal (United) – application under paragraph 15 of the Election Symbols (Reservation & Allotment) Order, 1968.

Shri Chhotubhai Amarsang Vasava

..... Petitioner

Vs.

Shri Nitish Kumar and Others

..... Respondents

PRESENT

For Petitioner:-

1. Shri Kapil Sibal, Senior Advocate
2. Shri Devadatt Kamat, Advocate
3. Shri Md. Nizamuddin Pasha, Advocate
4. Shri Rajesh Inamdar, Advocate
5. Shri Aditya Bhatt, Advocate
6. Shri Pathak Rakesh Kaushik, Advocate
7. Shri Pathak Pratyush Kaushik, Advocate
8. Shri Javed-Ur-Rahman, Advocate

For Respondent:-

1. Shri Rakesh Dwivedi, Senior Advocate
2. Shri Gopal Singh, Advocate

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C.T.C.
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PRAMOD KUMAR SHARMA
सचिव/Secretary
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3. Shri Manish Kumar, Advocate
4. Ms Sansriti Pathak, Advocate
5. Ms. Shreya Tyagi, Advocate

ORDER

The Janata Dal (United) ['JD(U)' for short] is a recognised State Party in the State of Bihar with the symbol 'Arrow' allotted to it as its reserved symbol in the said State of Bihar under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 ('Symbols Order' for short).

2. A dispute arose between two groups of the party led by (i) Shri Chotubhai Amarsang Vasava and supported by Shri Sharad Yadav and Shri Javed Raza, among others, on the one side and (ii) Shri Nitish Kumar, Chief Minister of Bihar, supported by Shri Chandra Prasad Singh and Shri K.C. Tyagi, among others, on the other side, each claiming to be the party [Janata Dal (United)]. The matter was formally brought before the Commission for its determination under para 15 of the Symbols Order by the petition dated 16th October, 2017 filed by Shri Chotubhai Amarsang Vasava.

3. In view of the fact that both the rival groups of the party had sent communications to the Commission on 18th October, 2017 and 30th October, 2017 that they intend to contest elections to the Gujarat Legislative Assembly which were announced on 25th October, 2017, the Commission heard the matter on 7th

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[Signature] 25/11/17
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November, 2017, 13th November, 2017, 14th November, 2017 and 15th November, 2017.

4. After hearing both the parties at length and considering the documents brought on record by them, the Commission passed a short order on 17th November, 2017 deciding the dispute in terms of said para 15 of the Symbols Order. For convenience of reference, the said order dated 17th November, 2017 is reproduced below in full:-

“1. *This order pertains to an application filed by Sh. Chhotubhai Amarsang Vasava, (hereinafter referred to as 'Petitioner') under Paragraph-15 of the Election Symbols (Reservation & Allotment) Order, 1968 (referred to as 'Symbols Order') seeking a direction that the group of Janata Dal (United) led by him may be recognised as the said Party under the said Paragraph 15. The Janata Dal (United) [hereinafter 'the Party'] is a recognised State Party in the State of Bihar with the election symbol 'Arrow' allotted to it as its reserved symbol in Bihar. As per the Commission's record, Sh. Nitish Kumar is the President of the Party, elected in 2016, as per the information furnished by the Party under Sub-section(9) of Section 29A of the Representation of the People Act, 1951.*

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2. *In the present application, the petitioner has claimed that he has been elected as the Acting President of the Janata Dal (United) on 17-09-2017 in a meeting of the National Executive of the Party held at New Delhi until the election of a new President in accordance with the Constitution of the Party. The petitioner has alleged that there has been dispute in the party following the decision taken in July, 2017 by the group led by Sh. Nitish Kumar to end the 'Mahagathbandhan', the alliance with non-BJP parties formed in 2015, and to align with the BJP, which according to the petitioner was against the principles of the Party and the earlier decision taken by the Party.*
3. *Both the groups submitted their written submissions and individual affidavits from the members of the Legislature Wing of the Party and from the Members of the National Council, which is the Apex level representative Body of the Party as per the Party Constitution. The learned senior counsel for the petitioner group, Shri Kapil Sibal, contended that the Commission should look into the numerical strength of the National Council of the Party, as constituted in 2013, and which consisted of 1098 members, and who attended the National Convention of the Party on 23-04-2016. He stated that the Petitioner has submitted affidavits of about 450 persons who are claimed to be*

members from out of the said 1098 members. On the Legislature side, the documents submitted by the petitioner show that, apart from the petitioner who is himself an MLA in Gujarat Legislative Assembly, his group has the support of two(2) out of ten Rajya Sabha MPs and one MLC of Maharashtra. However, as regards the said MLC of Maharashtra, viz., Sh. Kapil Harischandra Patil, it is seen that there is an affidavit of support from him to the other group as well.

4. On the other hand, the learned senior counsel for the Respondent's group, Shri Rakesh Dwivedi, contended that the present strength the National Council of the Party consists of 195 members as reconstituted on the basis of the organizational elections held in October, 2016. The organizational elections of the Party culminated in the election of the President of the Party on 16-10-2016 at the meeting of the reconstituted National Council in Rajgir, Nalanda. The list of 195 members of the National Council was submitted to the Commission on 10th November, 2016 by Shri Aneel Hegde, Returning Officer for the Party elections, in response to the letter sent to the Party by the Commission on 24-10-2016, asking the Party to furnish information about its organizational elections. The information furnished on 10-11-2016 regarding the organizational elections

including the list of National Council consisting of 195 members was taken on record and put on the Commission's website as per the standard practice. There was no objection from the Petitioner against the said list prior to the present application. There was a representation dated 04-10-2016, submitted by Shri Govind Yadav and three others alleging irregularities in the membership campaign and the process of the party elections. The said representation was disposed of by the Commission with intimation to the representationists that the Commission does not go into disputed questions regarding membership issues and validity of internal elections of the Party, and that it would be open to them to approach the appropriate Party forum or competent Courts for the purpose. The Respondent's group has submitted individual affidavits of support from 138 persons out of the said 195 members of the National Council. In addition, the Respondent's group has also filed affidavits from both the two(2) MPs of Lok Sabha elected on the Party's ticket, seven(7) out of ten Rajya Sabha Members of the Party, all seventy-one(71) MLAs of the Party in Bihar Legislative Assembly and all thirty(30) MLCs of the Party in Bihar Legislative Council. The affidavits so submitted also include the affidavit of Shri Kapil

Harischandra Patil, MLC of Maharashtra, who has also submitted affidavit of support in favour of the Petitioner's group.

5. *The Commission also heard elaborate oral submissions of Sh. Kapil Sibal, Learned Senior Counsel for the petitioner, and of Sh. Rakesh Dwivedi, Learned Senior Counsel on behalf of Respondents, on 7th, 13th, 14th and 15th November, 2017 and also considered the written submissions of both the counsels.*
6. *The Commission had announced general election to the Legislative Assembly of Gujarat on 25-10-2017. The Notification for the first phase of election from 89 Assembly Constituencies has already been issued on 14-11-17, and the Notification for the second phase from the remaining 93 Constituencies is scheduled to be issued on 20-11-17. The last date for filing of nominations in the first phase of election as per the schedule notified under Section 30 of the Representation of the People Act, 1951, is 21-11-17. The Commission has received communications from both the groups stating their intention to contest the general election in Gujarat and seeking the Commission's approval for allotment of the symbol 'Arrow' for their candidates at these elections under Paragraph 10 of the Symbols Order. Therefore,*

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there is an urgency for the Commission to pronounce the decision as to which of the two groups is the Janata Dal (United).

7. *In view of the above urgency in the matter on account of the current general election to the Legislative Assembly of Gujarat which is already in progress since 14-11-17, the Commission passes the following orders in the matter:-*

- (i) *Having considered the submissions, both written and oral, and the documents submitted in support of their respective claims by the two groups, the Commission holds that the principle of test of majority support in the organisational and legislative wings as upheld by the Hon'ble Supreme Court in Sadiq Ali Vs. Election Commission of India & others (AIR 1972 SC 187), and consistently applied by the Commission in all such cases in the past, would apply in the instant case in the facts and circumstances of the case.*
- (ii) *The respondent group led by Sh. Nitish Kumar has demonstrated overwhelming majority support in the legislature wing as well as the majority in the National Council of the Party which is the Apex level organisational Body of the Party.*
- (iii) *Accordingly, the group led by Sh. Nitish Kumar is hereby recognised as the Janata Dal (United) in terms of Paragraph-15 of the Symbols*

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Prashant Kumar Sharma
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Order. Consequently, the group led by Sh. Nitish Kumar is entitled to use the reserved symbol 'Arrow' of the Party as a recognised State Party in Bihar.

8. *Detailed Order in this regard will follow shortly."*

5. As was indicated in para 8 of the above order, the detailed order in this regard is being given as hereunder:-

Factual Matrix

6. As per the Commission's record, Shri Nitish Kumar is the President of the Party, elected on 16th October, 2016, at the meeting of the National Council held in Rajgir, Bihar as per the information furnished by the Party in November, 2016. Report and details of the election and the list of office bearers as well as a list of Members of the National Council of the Party stated to have been elected from the States of Bihar, Jharkhand, Jammu & Kashmir, Kerala and UT of Dadra and Nagar Haveli, was submitted to the Commission on 10th November, 2016.

7. As per the provisions in the party constitution, the National Council is the highest organisational Body of the party. The office bearers and Committees have a term of two years.

8. On 25th August, 2017, Shri Javed Raza, who was one of the General Secretaries of the Party as per the list of office bearers submitted on 10th

November, 2016 after the organisational elections, submitted an application under Paragraph-15 of the Symbols Order, claiming that there was a separate group in the party headed by Shri Sharad Yadav and seeking a direction that the group led by Shri Sharad Yadav be recognised as the Janata Dal(United). It was stated in the application that Shri Sharad Yadav enjoyed support of the majority in the organisation side of the party. There was no document of support enjoyed by Shri Sharad Yadav attached with the application. The Commission disposed of the said application intimating Shri Javed Raza on 12th September, 2017 that no documentary evidence was provided to show that Shri Sharad Yadav enjoyed support so as to claim to be a splinter group for the purposes of paragraph-15 of the Symbols Order.

9. Shri Javed Raza filed a subsequent application (dated 14th September, 2017) in which he, inter alia, sought permission to file a fresh Petition under Paragraph 15, alongwith documentary evidence of support for the Group of Shri Sharad Yadav. Shri Raza was informed on 27th September, 2017 that it would be open to them to file application along with supporting documents.

10. The present application dated 16th October, 2017, however, is filed by Shri Chhotubhai Amarsang Vasava on 17th October, 2017.

11. In the petition, the Petitioner claims to be the Acting President of the Party elected on 17th Sep 2017 by the National Executive in the meeting held in New

Delhi, in accordance with the provisions of the Constitution of the party. He has stated that a dispute arose in the party after July 2017, when the group led by Shri Nitish Kumar broke the '*Mahagatbandhan*' (Grand Alliance) formed by the Party with the parties opposed to the Bharatiya Janata Party [“*BJP*” hereafter] in 2015, and aligned with BJP, which was in contravention of the principles of the party and the earlier decision of alliance taken by the party. He submitted that the faction led by Shri Nitish Kumar abandoned and tarnished the founding principles of the Party and has for the purposes of pure political opportunism aligned with the BJP betraying the faith and trust of people of Bihar who voted in favour of the Party as a part of the Grand Alliance. He further submitted that the faction led by him has an overwhelming majority of the National Council of 1098 members elected in 2013. It was stated that internal elections of the Party including elections to the National Council held in 2016 were totally in violation of the provisions of the party constitution and therefore the National Council of 2013 with 1098 members would prevail. He also stated that more than 400 members of the National Council (of 2013) have given supporting affidavits in support of him and his group should be granted recognition by the Commission as the Party in terms of Paragraph-15 of the Symbols Order.

12. The Respondent group filed their reply on 30-10-2017, refuting the allegations in the petition. The Respondent group submitted that the election to the

National Council held in 2016 was totally in accordance with the provisions of the party constitution and that their group has the support of overwhelming majority of members in the National Council as well as in the legislature wing of the Party. This group had earlier filed individual affidavits of support to them from two (2) Lok Sabha MPs elected on the Party's ticket, seven (7) out of ten (10) Rajya Sabha Members of the Party, all seventy-one (71) MLAs of the Party in Bihar Legislative Assembly and all thirty (30) MLCs of the Party in Bihar Legislative Council.

13. The Commission heard the two groups at length on 7th, 13th, 14th and 15th November, 2017.

14. Shri Kapil Sibal, learned Senior Counsel, appearing on behalf of the Petitioner, opened his arguments briefly recapitulating the history of the Janata Dal (United), starting with its registration under Section 29A of the Representation of the People Act, 1951, on 24th October, 2000, and its recognition as a State Political Party, the merger of a faction of the Samata Party under the leadership of Shri George Fernandes and Shri Nitish Kumar with the Party, in 2003. Then he made the following submissions:

- (i) Shri Sharad Yadav was one of the founding fathers of the Party. As per the organizational structure of the Party, the National Council is the highest

representative body of the Party. The National Council as constituted in the year 2013 consisted of 1098 members. In July, 2017, Shri Nitish Kumar decided to break away from the *mahagatbandhan*, the alliance with other Parties such as Indian National Congress, Rashtriya Janata Dal, etc. and decided to join hands with the Bharatiya Janata Party.

- (ii) The Party had contested the general election to the Bihar Legislative Assembly in 2015 as part of the *mahagatbandhan*. The mandate given by the electors to the Party which returned 71 members to the Legislative Assembly was based on the said alliance and the principles on which the alliance contested the election. The mandate was not merely for Shri Nitish Kumar. The decision to align with the Bharatiya Janata Party was betrayal of the mandate given to the Party by the electors.
- (iii) The issue that arises for decision is which faction should be considered to be representing the Party. After the insertion of Section 29A in the Representation of the People Act, 1951 by way of amendment in 1989, the test laid down in the landmark case of "*Sadiq Ali v. Election Commission of India*" (AIR 1972 SC 187) had lesser relevance as the party constitution has acquired a statutory position now, in view of the provisions in sub-section (5) of Section 29A.

- (iv) The organisational structure of a Party comes from the Party's constitution. Legislature wing is constituted by the members of the Party who are set up by the Party for contesting elections to the Legislative Bodies and who are elected to such Bodies. Also, the members of the legislative bodies of ex-officio members of the National Council. Therefore, the Legislature wing would be subsumed in the organisational wing of the Party. In the present case, the National Council which is the apex level organisational body of the Party would subsume the legislature wing comprising Members of Parliament and Legislature. He also submitted that only on the basis of the number of MPs and MLAs, the representation of a party cannot be decided as these MPs and MLAs are subsumed in the National Council.
- (v) Shri Sibal pointed out that on the 23rd of April, 2016 Shri Nitish Kumar was authorized and entrusted by the party to form alliances with all forces opposed to the BJP and RSS and to take steps to arrest the BJP trend. He contended that Shri Nitish Kumar betrayed the principles the Party stood for by aligning with the BJP.
- (vi) The internal party elections held in 2016 were not in accordance with the provisions in the Party constitution. Article XIX (Election of the President) of the Party constitution provides for appointment of a Returning Officer by the National Executive for conducting the election to the post of Party

President. This provision was not followed in the election of Shri Nitish Kumar as President of the Party in 2016. Shri Nitish Kumar was an acting party president within the meaning of Article XIX (6) of the party constitution, only for the purpose of conducting free organizational elections.

- (vii) Article XX was violated by the faction of Shri Nitish Kumar as it provided for the appointment of a single Secretary General whereas as per the affidavits submitted by the Respondents, it is seen that three persons have submitted affidavits claiming to be Secretary General of the Party, namely, Shri K.C. Tyagi, Shri Pawan Kumar Verma and Shri Akhilesh Katiyar.
- (viii) Article XXV dealing with Election Machinery provides for appointment of a separate Returning Officer for the State and separate Returning Officers for Districts for conducting the election at the State and District level. This provision was flouted by the appointment of Shri Aneel Hegde as the National Returning Officer on 2nd June, 2016. His appointment would be considered inconsistent with the constitution of the party.
- (ix) Moreover, the faction of the Applicant had submitted 450 affidavits for supporting their claim, from amongst those who had been members of the previous undisputed National Council of 1098 members. In comparison, the

faction of Shri Nitish Kumar had filed only affidavits from 138 members out of 195 members of the disputed National Council of 2016. When there is a dispute in the Party, the Commission should look into the list of organisational bodies that were in existence prior to the dispute. In the present case, the dispute started on 04-10-2016 with the complaint filed before the Commission by Shri Govind Yadav and three others challenging the election process. Therefore, the Commission should take into account the list of National Council members of 2013 which was the last undisputed list.

- (x) Shri Sibal also contended that there was no application from the faction of Shri Nitish Kumar claiming to be the Party and thus the question of them seeking the symbol did not arise.
- (xi) The learned Senior Counsel challenged the validity of the elections conducted for the purpose of electing the National Council in four States and one Union Territory in 2016. The National Council constituted after the internal elections in 2013 consisted of 1098 members. However, the number has come down drastically to 195 in 2016 because of the faulty and illegal manner of conducting the elections so as to accommodate only favourable people in the National Council. The National Council had representation only from the States of Bihar, Jharkand, Kerala, Jammu & Kashmir and the UT of Dadra & Nagar Haveli. Shri Nitish Kumar was deceitfully elected the

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Party President by the National Council so constituted, which had merely 15% strength of the previous National Council.

- (xii) He relied upon the representation dated 04-10-2016 of Shri GovindYadav and three others, all stated to be State Presidents of the Party, against alleged irregularities in the elections for National Council held in 2016. Therefore, the dispute in the Party should be treated to have originated on that date.
- (xiii) As regards the States from which election to the National Council was conducted, Shri Sibal mentioned that there were situations which cast serious doubt about the claim of elections and support claimed by the Respondent group in the said States. Jammu & Kashmir had been under civil unrest a large part of Kashmir region was under curfew for long period in 2016. It is highly unlikely that proper elections could have been conducted there. Large parts of Bihar were affected by floods during the relevant period of the elections. As regards the elections from Jharkand, Shri Ram Swaroop Yadav, the sole National Council member from Jharkhand shown in the list, has stated that he never contested the elections. Regarding the list of members from the State of Kerala, out of the 35 members from the State, the Respondent group has the support of only one member. In view of these facts, the claim of elections and the support of members of National Council

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from these four States claimed by the Respondent group is liable to be rejected.

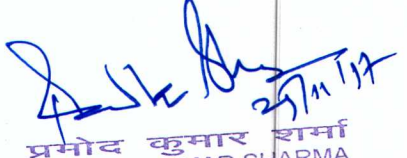
- (xiv) Learned Counsel also raised the issue of the existence of multiple anomalies in the affidavits filed by the Respondents, such as variation in the dates on which the deponent has signed and the date of notarization and cases where the deponent's signature is prior to the date of purchase of the stamp paper as per the date printed on the stamp paper.
- (xv) On 13-11-17, the Respondents filed affidavits from 30 persons in respect of whom, Shri Sibal pointed out discrepancies in the said affidavits. Shri Sibal stated that these affidavits raise suspicion as the signature on several of these fresh affidavits are not matching with those in the earlier affidavits.
- (xvi) Shri Sibal also submitted that for the purposes of the Tenth Schedule of the Constitution of India, a merger of a political party with another party would be deemed to have taken place only if two thirds of the legislature wing of the political party supported the merger. This provision represents the intention of the Parliament that one person or a group of a few persons cannot take away the party ignoring the views of the majority.
- (xvii) There are cases of dispute in political parties decided by the Commission based on the majority support in organisational wing. Shri Sibal cited the

order dated 27-11-2012 of the Commission in the dispute case of Uttarakhand Kranti Dal.

(xviii) Shri Sibal concluded by stating that the Commission has the authority and responsibility to ensure purity not only in the election process but also in the actions of a political party, consistent with the norms and parameters of democracy which need to be followed. He added that in a democracy, principles should not be thrown to the wind and pleaded that the symbol be allotted to the Applicant's side which has acted in accordance with the principles, aims and objects of the Party and in accordance with the provisions of the Party constitution.

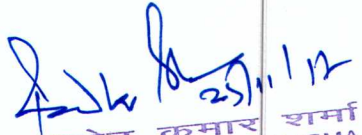
15. Shri Rakesh Dwivedi, the learned senior counsel for Respondents made the following submissions:

- (i) It is admitted fact that in April 2016, the National Executive of the Party as it then existed, had unanimously appointed Shri Nitish Kumar as the President temporarily. The contemplation was to appoint him for the next term. The proposal to appoint Shri Nitish Kumar as Party President on that occasion was moved by Shri Sharad Yadav. The election of Shri Nitish Kumar by the National Executive was ratified by the National Council in its meeting on 23-04-2016.

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- (ii) The term of office of the office bearers and committees of the Party is two years as per the provisions in the Party constitution. Thus, the term of the National Council constituted in 2013 expired in 2015. Thereafter, a new National Council was duly constituted in 2016 through the party elections as per the provisions of the Party constitution.
- (iii) The normal term of the office bearers and committees elected in 2013 had expired in 2015, and the party had sought more time for completing the next elections. The Election Commission had directed the party to complete its election by 15-07-2016. The earlier Committees were continuing then only because new elections could not be held in time. The State Units did not appoint State Returning Officers for the elections which necessitated the appointment of a National Returning Officer as the Party had to complete the organizational elections within the time limit as directed by the Commission.
- (iv) The General Council meeting of 16-10-2016 was attended by the petitioner, Shri Sharad Yadav, whom the petitioner refers to as the founding father of the Party and by Shri Javed Raza who had filed the earlier petition on 25-08-2017, along with all other leaders of the party. All of them participated with the full knowledge of the elections to constitute the new National

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Council and there was no issue raised by any of them about the elections either at that point of time or at any time before August, 2017.

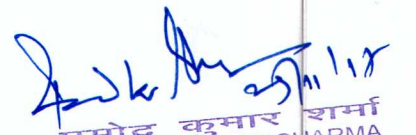
- (v) The petitioner is relying on the representation of 4th Oct 2016 by Shri Govind Yadav and three others before the Commission in support of their case that the dispute started on 4th October, 2016 whereas the petitioner and the other leaders participated in the meeting on 16th Oct 2016 where they proposed, voted and elected Nitish Kumar as the President of their party in the convention of the National Council for regular election of the Party President held on 16th October, 2016 at Rajgir in Bihar. At the convention, the name of Shri Nitish Kumar to the post of Party President was formally proposed by Shri Sharad Yadav. Information about the elections was duly provided to the Commission.
- (vi) Until the end of July, 2017, there was no dispute in the Party. A separate faction came into existence only in August, 2017. This would be evident from the application dated 25-08-2017 of Shri Javed Raza wherein he has stated that the faction led by Shri Sharad Yadav emerged in August, 2017. Till the time the Party discontinued the alliance with the Rashtriya Janata Dal on 26th July 2017, all the leaders including Shri Sharad Yadav and the petitioner were all with the National Council of 195 members headed by Shri Nitish Kumar and there was no faction at that point of time. Therefore,

there is no merit in the contention that the dispute should be deemed to have started on 4th October, 2016.

- (vii) It is important to note that the allegations in the representation of Shri Govind Yadav were identical to those raised by the Petitioner in the present petition. The contentions in the representation of Shri Govind Yadav and others have been already considered by the Commission and rejected on two occasions, i.e., on 07-02-2017 and 24-05-2017. The Commission, in the said letter, clearly explained the position that the Commission would not go into issues of membership or validity of internal elections of the party, and that remedy, if any, lay in civil suit before Civil Court. They have not challenged the orders of the Commission before the Court and thus the orders have attained finality. Therefore, the claim in the present petition on identical grounds should be rejected for the same reasons as communicated by the Commission earlier.
- (viii) In fact, Shri Govind Yadav and the three others who submitted the representation on 4th October, 2016, were suspended from the Party on 30th September, 2016 and later expelled on 4th October, 2016. The communication from the Party in this regard was issued by Shri Javed Raza.
- (ix) As regards the allegations by the petitioners about not conducting elections to National Council from many States, the provisions in Sections XI (2),

XII(2) and XIII(2) of the party constitution are relevant. These provisions make it clear that the lower level Units at Block/Tehsil, District and State level shall not be set up unless 50% of the respective Units are constituted. Since the large majority of States did not fulfil the requirements of these Sections of the constitution, elections could not be held in such States. Any election in such States would have been contrary to the provisions of the party constitution and hence invalid elections. The 1098 members talked about by the Petitioner was based on the bogus membership shown at that time in violation of Sections XI(2), XII(2), XIII(2) of the party constitution. Even in the present petition the Petitioner does not claim that the excluded States were in compliance with Sections XI (2), XII(2), XIII(2) of the party constitution. It is also to be noted that apart from the other four States of Delhi, Uttarakhand, Madhya Pradesh and West Bengal, no other State Unit or its leader objected to elections of the National Council and they are conscious of their inability to comply with Sections. XI, XII and XIII. None of the excluded States have set up any claim nor is it the claim of the Petitioner that the other States have completed their elections after appointing their State Returning Officers/Districts Returning Officers. Thus, the National Council constituted in 2016 is undisputed and this is the reason

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PRAMOD KUMAR SHARMA
सचिव/Secretary
भारत निर्वाचन आयोग
Election Commission of India
नई दिल्ली-110001/New Delhi-110001

why Shri Sharad Yadav, Shri Raza and Shri Vasava had all participated in the New National Council meeting on 16-10-2016.

(x) As regards observing the provisions of the constitution of the Party, the petitioners are guilty of violation of the constitutional provisions as evident from the action of convening illegal meeting of a dead National Council. The manner of calling of the meeting was also a violation inasmuch as it was called by Shri Javed Raza who claims to be the General Secretary. Under the constitution of the Party, General Council meeting can only be convened by the Secretary General. In its Order dated 25-09-2000, in the case of dispute in Himachal Vikas Congress, the Commission has held that in disputes in political parties, the experience is that neither of the rival factions act wholly in accordance with the party constitution, and the test of majority in the organisational and legislature wings of the Party is the appropriate test to decide the dispute.

(xi) As regards the allegation that the Respondents have not staked claim for being recognised as the Party and for allotment of its symbol, the Party led by Shri Nitish Kumar is the Party on the records of the Commission since Oct 2016, with due information to the Commission under Section 29A (9) of the R P Act, 1951 therefore there is no need for it to stake any claim. It is for the petitioner to establish their claim that they are a faction of Party with

majority of Legislators/Parliamentarians and National Council of 195 members constituted in 2016..

- (xii) As regards the argument that Section 29A of the RP Act, 1951 provides a statutory flavour to the constitution of the Party after 1989, when Section 29A was introduced in the Act, Section 2(1)(f) read with Section 29A is merely a provision for the registration of the party. The registration is not compulsory. It is optional and citing case of *Jeevan Chandrabhan V. Divisional Commissioner [2012 2 SCC 794]*, *Babji Kondaji Garad V. Nasik Merchants Co-op. Bank Ltd [1984 2 SCC 50]* and *Coop. Central Bank Ltd. V. Additional Industrial Tribunal [1969 2 SCC 43]*, the learned senior counsel submitted that filing of the constitution of the party and its rules while obtaining the registration does not confer any statutory status to the constitution. This issue was considered by the Commission in the case of Samajwadi Party dispute in *Ram Gopal Yadav V. Mulayam Singh Yadav* vide order dated 16th Jan 2017. The Commission rejected the said submission in the said order.
- (xiii) On the other hand, Symbols Order makes a provision for recognition of a political party vide Clause 6A and 6B. Recognition is based on the number of MPs/ MLAs and the percentage of votes and not based on the organisational bodies.

- (xiv) Regarding the allegation that Shri Aneel Hegde, Returning Officer, could not be a member of the Council in the view of the Bar imposed under Section IX(1) of the party constitution, it is to be noted that Section XI (1) only debars the Returning Officer from holding any post of an office bearer. It does not prevent him from being co-opted as a member. Section XIV permits for co-option and nomination. Thus, appointment of Shri Aneel Hegde was legal and proper.
- (xv) The Petitioner casts a burden of proof on the Respondent to demonstrate how organisational elections were held by invoking Section 106 of Indian Evidence Act, 1872. Before invoking Section 106 of Indian Evidence Act, 1872, the Petitioner must produce cogent evidence with respect to imposition and duration of curfew imposed in Kashmir Valley and floods in Bihar as alleged and must establish prima facie that the organisational elections could not be held. It is also submitted that jurisdiction under Para 15 of the Symbols Order is not available for raising such disputes. For such grievances, the Petitioner must approach a civil court.
- (xvi) As regards alleged discrepancies in the affidavits, the fresh affidavits of all 30 members whose cases were raised by the Senior Counsel for the petitioner have been filed and they are clearly supporting the Respondents.

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(xvii) Even in the individual affidavits filed by the petitioners, there are discrepancies such as verification clause being blank, variation in dates, and so on in many cases.

16. In his rejoinder Shri Sibal submitted that what is to be decided is whether the National Council with 1098 members or the National Council with 195 members is to be accepted. Merely because Shri Nitish Kumar is the President and he intimated the list of 195 members to the Commission, that list does not attain finality as he has not placed an iota of the evidence to prove that any election was actually held. The Commission has to go by undisputed list. On the 04th Oct 2016, the four State Presidents challenged the appointment of Shri Aneel Hegde and contended that the elections were sham. Shri Ram Swaroop Yadav, who is a nominee has filed an affidavit that he never filed a nomination for election to National Council. They have not produced the nomination paper filed by him. He submitted that with regard to the issues raised about the impossible situations for holding of elections in the States of J&K and Bihar, there is no documents produced by the Respondents to prove that elections were held. He contended that the Commission always goes by a list which is admitted and not disputed, and the only list available to the Commission is the list of 1098 members elected in 2013. The provisions regarding term of 2 years given under the constitution of the party

uses the word “ordinarily” which would mean that the term can even exceed two years. Shri Sibal further submitted that the question as to which is the organisational Body, how is it constituted, etc. is in-built in the party constitution which is required to be submitted to the Commission under Section 29A which was not the situation in *Sadiq Ali's* case. In terms of Section 29A, the Commission can direct the Party to conduct its organisational elections as per the provisions in the party constitution. Shri Sibal also submitted that the discrepancies in the affidavit are only of hyper-technical nature. Except in a few cases there is no serious defect in the affidavits filed by the petitioner.

Analysis of submissions and counter submissions of rival groups

17. The Commission has perused the Application dated 16th October, 2017 (submitted on 17th October, 2017) of the petitioner, reply dated 30th October, 2017, thereto of the respondent and all other relevant documents submitted by both the rival groups in support of their respective claims of being the Janata Dal (United). The Commission has also carefully examined and analyzed the written and oral submissions made by the learned counsels of both the parties at the hearings held on 7th November, 2017, 13th November, 2017, 14th November, 2017 and 15th November, 2017.

18. The main plank of the submissions made by the Shri Kapil Sibal, learned senior counsel for the petitioner, is that the Commission should primarily apply the test of the party constitution of the Janata Dal (United) and that the applicability of the test of majority in the organizational and legislature wings of the party, as applied by the Commission and upheld by the Supreme Court in the case of *Sadiq Ali Vs. Election Commission of India & others* [AIR 1972 SC 187, 1972 (4) SCC 664], should be considered by the Commission on the touchstone of the party constitution. Shri Sibal contended that the test based on applicability of the party constitution in the matter of disputes under para 15 of the Symbols Order has presently assumed a different contour from the one that was applied by the Commission in the case of *Sadiq Ali* (supra) in 1971. According to him, the constitution of a party has acquired a statutory status after the incorporation of section 29A in the Representation of the People Act, 1951 in 1989, inasmuch as every political party seeking registration with the Election Commission under the said section 29A after 1989 has to submit its constitution as a mandatory requirement and the Commission registers a political party only after approving the party constitution. He submitted that at the time of determination of the dispute in *Sadiq Ali's* case in 1971, the party constitution had no such statutory status and, therefore, the Commission should now give primacy to the provisions of the party constitution to determine which of the rival groups is following and functioning in

accordance with the provisions of the party constitution for the purposes of para 15 of the Symbols Order.

19. Before dealing with the main submissions and contentions of Shri Kapil Sibal, learned senior counsels for the petitioner, the Commission will like to deal with his submission and claim that Shri Nitish Kumar and the group supporting him could not validly claim to be the Janata Dal (United) as Shri Nitish Kumar was chosen as the Chief Minister of Bihar to lead the '*Mahagathbandhan*' with certain political parties to fight elections in the State of Bihar against the Bharatiya Janata Party, recognized National party. Shri Sibal further stated that Shri Nitish Kumar and the group of his supporters betrayed the electorate of the State of Bihar by breaking the said '*Mahagathbandhan*' and by joining the hands of Bharatiya Janata Party, the very party against whom the party [Janata Dal (United)] had contested elections as part of '*Mahagathbandhan*', and by becoming again the Chief Minister of Bihar with the support of the Bharatiya Janata Party. According to Shri Sibal, such moves of Shri Nitish Kumar and his group were opposed to the policies and programmes of the party and that a group of the party which functions against its aims and objects cannot claim to be that party under para 15 of the Symbols Order. Shri Sibal further added that such breaking of the '*Mahagathbandhan*' was the genesis for the split in the party and the petitioner's group which continues to

adhere to the basic policies and programmes of the party should be recognized by the Commission as the Janata Dal (United).

20. With regard to the above submissions of Shri Sibal, the Commission would like to observe that the Commission is not concerned with the policies and programmes of political parties or any changes therein so long as those policies and programmes are not violative of the provisions of the Constitution of India or do not amount to any offences under the law. The alliances which the political parties might make to contest elections or the coalitions of which they might become partners after the elections to form governments at the Centre or in the States are beyond the scope of the Representation of the People Act, 1951 and the Symbols Order. These are political issues which have to be fought politically elsewhere and not before the Commission under para 15 of the Symbols Order. Relevant to point out that if a political party does not act in accordance with the undertaking given by it in terms of section 29A (5) of the Representation of the People Act, 1951, at the time of its registration with the Commission, the Supreme Court has held in *Indian National Congress Vs. Institute of Social Welfare and Others* (AIR 2002 SC 2158) that the Commission has no power to deregister such a party. The principle underlying such view is that the Commission is not the monitoring body for the policies and programmes of political parties. Even the Supreme Court in the case of *State of Rajasthan and Others Vs. Union of India*

(AIR 1977 SC 1361) has observed that the courts should not ‘enter the “political thicket” which it must avoid if it is to retain its legitimacy with the people.’. This observation equally applies to the Commission, as it cannot sit in judgment over the policies and programmes that the parties may evolve and implement, so long as they are not violative of the Constitution of India or any specific law as aforesaid.

21. In so far as the above submissions and contentions of Shri Kapil Sibal relating to applicability of the party constitution under section 29A of the Representation of the People Act, 1951, in the proceedings under para 15 of the Symbols Order is concerned, the answer thereto has been best given by Shri Kapil Sibal himself in an earlier case before the Commission under para 15 of the Symbols Order. While arguing in the case of split in the Samajwadi Party (Dispute case No. 1 of 2017 decided by the Commission on 16th January, 2017), Shri Sibal then contended on behalf of the petitioner’s group led by Shri Akhilesh Yadav that the party constitution was not relevant for the purpose of determination of dispute under para 15 of the Symbols Order. With regard to applicability of section 29A of the Representation of the People Act, 1951, vis-à-vis para 15 of the Symbols Order, he had contended:

“(xiii) Section 29A of the Representation of the People Act, 1951 has nothing to do with adjudication of dispute under paragraph 15 of the Symbols Order. Section 29A deals with registration of a party, and in Indian

National Congress vs. Institute for Social Welfare & others (AIR 2002 SC 2158) the Supreme Court has held that any violation of the provisions of the Act can have no legal consequences against the party.

(xiv) In Sadiq Ali Vs. Election Commission of India & others [1972 (4) SCC 664, AIR 1972 SC 187], it has been held that in matters of disputes among splinter groups of a party, the test of majority support among the members of the organisational and legislature wing of the party is the critical test to decide the dispute."

22. In fact, what Shri Kapil Sibal is now contending in the present matter that dispute under para 15 of the Symbols Order should be decided by applying the provisions of the party constitution [totally opposed to what he had earlier contended in the case of Samajwadi Party (supra)], it was his rival learned senior counsel, Shri Mohan Parasaran, in that case, who argued on behalf of the rival group led by Shri Mulayam Singh Yadav, that the Commission should look into the provisions of the party constitution while adjudicating a dispute under para 15 of the Symbols Order. The Commission has fully dealt with this issue of applicability of the party constitution in the matter of disputes under para 15 of the Symbols Order, at length, in its aforesaid order dated 16th January, 2017 in the case of Samajwadi Party (supra) and observed and held as follows:-

“24. Shri Parasaran further contended that the test of majority as approved by the Supreme Court in Sadiq Ali’s case was applicable only in relation to the cases of split which arose before the enactment of section 29A in the Representation of the People Act, 1951 in 1989 and that the matters relating to splits in political parties after their registration under the said section 29A have to be decided by the Commission in accordance with the constitutions of the parties concerned. He, therefore, submitted that any dispute relating to the Samajwadi Party has to be decided by the Commission in accordance with the constitution of the party as registered by the Commission in 1992 under section 29A of the Representation of the People Act, 1951.

25. Before proceeding further and deciding as to which test to be applied for determining the dispute between the two rival groups of the Samajwadi Party, it would be appropriate to deal with the question raised by Shri Parasaran that the enactment of section 29A of the Representation of the People Act in 1989 has brought about a material change in relation to the determination of disputes between rival groups of a political party registered under the said section 29A. It would be relevant to take note of the fact that before the enactment of Section 29A, the political parties were registered by the Election Commission under the erstwhile para 3 of the

Symbols Order. Now, after 15th June, 1989, i.e., the date of enforcement of the said section 29A, political parties continue to be registered by the Election Commission under the said section 29A instead of para 3 of the Symbols Order. A comparative look at the provisions of the said para 3 of the Symbols Order and the said 29A of the Representation of the People Act, 1951, would show that the provisions of para 3 of the Symbols Order have been bodily lifted and wholly incorporated in section 29A with the only addition that the parties have been asked to give an undertaking in terms of sub-section (5) of the said section 29A at the time of their registration. Even before the enforcement of section 29A, all political parties were registered by the Commission on the submission of their party constitutions, apart from other material information asked for in the above referred para 3 of the Symbols Order. Thus, the incorporation of section 29A in the Representation of the People Act, 1951 has not made any material change in the procedure of registration of political parties, as the furnishing of the party constitutions by the applicant parties was and is a pre-requisite both under para 3 of the Symbols Order and section 29A of the Representation of the People Act, 1951. It is, therefore, futile to contend that the test of majority as approved by the Supreme Court in the case of Sadiq Ali (supra) is no longer applicable in relation to determination of disputes under para

15 of the Symbols Order. Further, the said section 29A of the Representation of the People Act, 1951, deals only with the registration of the political parties by the Commission and not with the recognition of such registered political parties which matters continue to be governed by the provisions of the Symbols Order. Para 15 of the Symbols Order is thus applicable in relation to determination of the splits in all recognized political parties whether registered before 1989 or thereafter. In this context, it may also be pertinent to point out that all disputes in recognized political parties which arose for determination by the Commission after the enactment of the said section 29A have been decided by the Commission by applying the test of majority as approved by the Supreme Court in the case of Sadiq Ali (supra). See, for example, order dated 12th March, 1996 of the Election Commission in the matter of split in Telugu Desam Party, orders dated 19th December, 1997 in the disputes relating to Rashtriya Janata Dal and All India Rashtriya Janata Party, orders dated 7th August, 1999 and 17th January, 2000 in the matter of split in the Janata Dal, resulting in the formation of Janata Dal (United Dal) and Janata Dal (Secular), order dated 8th March, 2004 in the matter of split in Nationalist Congress Party, etc. etc.

26. It is thus evident from the above that the test of majority in determining disputes between rival sections or groups of recognized

political party has not become otiose, irrelevant or inapplicable even after coming into force of the said section 29A in the statute book in 1989."

23. In fairness to Shri Kapil Sibal, it may be stated that he did not take the extreme position that the test of majority as applied by the Commission and upheld in the case of *Sadiq Ali* (supra) was not applicable now in the matter of disputes arising under para 15 of the Symbols Order in view of the incorporation of section 29A in the Representation of the People Act, 1951. He straightaway conceded that the rival group led by Shri Nitish Kumar was commanding majority in the Legislature Wing of the party because of their superior numerical strength in that wing. He, however, contended that while applying the test of majority, it is the organizational wing of the party which should now be given primacy and regarded as the determining factor for applying the test of majority, because the legislature wing is a part of the party organization and is elected by virtue of the efforts and support of the organizational wing. He submitted that the issue whether the organizational wing or legislature wing should have primacy in the application of test of majority was not decided by the Supreme Court in the case of *Sadiq Ali* (supra) as that issue did not arise for consideration in the facts and circumstances of that case, because the Congress (J) enjoyed majority support both in the organizational wing and legislature wing of the party. He, thus, contended that the above issue has to be decided by the Commission now in the present case, as he

claimed majority in the organizational wing of the Janata Dal (United) based on the provisions of the party constitution.

24. Before going into the merits of the above submissions of Shri Sibal, it may be appropriate to reproduced below the relevant observations and the decision of the Supreme Court in the case of *Sadiq Ali* (supra) that:

“23. The figures found by the Commission of the members of the two Houses of Parliament and of the State Legislatures as well as those of AICC members and delegates who supported Congress 'J' have not been shown to us to be incorrect. In view of those figures, it can hardly, be disputed that substantial majority of the members of the Congress in both its legislative wing as well as the organisational wing supported Congress 'J'. As Congress is democratic organisation the test of majority and numerical strength, in our opinion, was a very valuable and relevant test. Whatever might be the position in another system of Government or organisation, numbers have a relevance and importance in a democratic system of Government or political set up and it is neither possible nor permissible to lose sight of them. Indeed it is the view of the majority which in the final analysis proves decisive in a democratic set up.

24. *It may be mentioned that according to Paragraph 6 of the Symbols Order, one of the factors which may be taken into account in treating a political party as a recognised political party is the number of seats secured by that party in the House of People or the State Legislative Assembly or the number of votes polled by the contesting candidates set up by such party. If the number of seats secured by a political party or the number of votes cast in favour of the candidates of a political party can be a relevant consideration for the recognition of a political party, one is at a loss to understand as to how the number of seats in the Parliament and State Legislatures held by the supporters of a group of the political party can be considered to be irrelevant. We can consequently discover no error in the approach of the Commission in applying the rule of majority and numerical strength for determining as to which of the two groups, Congress 'J' and Congress 'O' was the Congress party for the purpose of paragraph 15 of Symbols order."*

25. Shri Sibal submitted that the National Council of the Janata Dal (United) is the highest deliberative body of the party and that it is fairly representative of the primary members of the party and that the Commission should apply the test of the majority on the organizational side in the National Council of the party. He

pointed out that in the case of *Sadiq Ali* (supra), the Commission had seen the relative strength of the two rival groups among the members of the All India Congress Committee and the delegates at the party's convention, taking those bodies as fairly representative of the rank and file of that party. He submitted that the composition of the National Council of the Janata Dal (U) is governed by the provisions of Article XIV of the party constitution. According to Shri Sibal, the total strength of the National Council when it met on 23rd April, 2016, at Patna, was 1098 members. He submitted that the Commission has been deciding the question of majority in the organizational wings of the parties with reference to a date on which there was no dispute in the party and the rival groups stood united. According to Shri Sibal, such date in this case should be 23rd April, 2016, for determining the relative strength of the two rival groups in the organizational wing of the party. He claimed that out of the said 1098 members of the National Council as on 23rd April, 2016, about 450 members of the National Council are supporting the group represented by him and that all the aforesaid members have submitted their individual affidavits declaring their support to the petitioner's group. He vehemently disputed the claim of the rival group led by Shri Nitish Kumar that the present strength of National Council is 195 and that the Commission has to ascertain the majority support of the two rival groups out of the said 195 members. He alleged that the election of Shri Nitish Kumar as President

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of the party at the organizational elections said to have been held and concluded on 16th October, 2016 at Rajgir, was a sham election and manipulated by Shri Nitish Kumar by appointing a National Returning Officer for elections in all party units and managing to keep out from the electoral process all those states units of the party which were opposed to him. The National Council of the party said to have been constituted by Shri Nitish Kumar after the said elections on 16th October, 2016, should not be given any credence as the election of Shri Nitish Kumar itself was a rigged election, Shri Sibal contended. His further contention is that the composition of the National Council as prescribed under Article XIV of the party constitution will show that, among others, the elected Members of Parliament and State Legislatures belonging to the party are also members of the National Council and, thus, they are subsumed in the National Council and, therefore, the majority test should be confined to the organizational wing alone which includes the legislature wing of the party as well. He vehemently contended that in the present matter, the Commission should determine the relative strength of two rival groups in the organizational wing of the party as per the list of 1098 members of the National Council as on 23rd April, 2016 and he claimed that, among those members, the petitioner's group enjoyed overwhelming majority support vis-à-vis the other group.

26. As regards the allegation of Shri Sibal that the election of Shri Nitish Kumar in October, 2016, was a sham election, it may be mentioned that it is well established and recognized principle of democratic elections that elections once held attain finality, if not called in question before the competent authority or forum, within the prescribed time limit or within a reasonable time where no such prescription is provided for in the law. The fundamental logic behind such principle is that those who have been elected to perform important duties of public nature should be able to devote their undivided attention to the task assigned to them and that they should not be under fear or having a feeling that the Sword of Damocles is perpetually hanging over their heads at all times. This principle is equally applicable in relation to elections of organizational structures of political parties. This principle applies with more force in the case of those elections where the leaders of the political party and holding high ranks in the hierarchical structure of the party and other important stakeholders duly participate, willingly and without demur and play leading role in the conduct of such elections. If a leader of a party proposes or seconds the nomination of another leader for any of the top posts in the organizational structure, and plays a vital role in bringing the electoral process to its logical end, he should not be permitted to question the validity of the electoral process and assail the election result, more so where such leader himself subsequently reaps and enjoys the benefits in the party hierarchy by virtue of the

election which he now seeks to impugn as a sham election. This is what is precisely happening in the present case. The documents, produced by the petitioner group itself, show that Shri Sharad Yadav and Shri Javed Raza as outgoing President and General Secretary of the party played dominant role in the conduct of election of Shri Nitish Kumar as interim or acting President of the party by the National Executive on 10th April, 2016 and which was subsequently ratified by the National Council at its meeting on 23rd April, 2016. Again, it is observed from the records of the election proceedings held and concluded at the National Council of the party on 16th October, 2016, that both Shri Sharad Yadav and Shri Javed Raza played an important role in the conduct of those organizational elections to elect regular President of the party and which culminated in the election of Shri Nitish Kumar as regular President of the party on 16th October, 2016. It was Shri Javed Raza himself in his capacity as General Secretary of the party who furnished the proceedings of elections on 10th April, 2016 and 23rd April, 2016 vide his letters dated 11th April, 2016 and 24th April, 2016 to the Commission. When the party held the subsequent organizational election which culminated on 16th October, 2016, to elect regular President of the party, the record of the relevant proceedings produced by the Returning Officer for those elections shows that Shri Sharad Yadav and Shri Javed Raza were given prominent places in the organizational hierarchy after that election and were made members of the

National Council. The above documents further show that both Shri Sharad Yadav and Shri Javed Raza actively participated in the electoral process without questioning the validity of any of the processes involved in the conduct of those elections and Shri Javed Raza was again appointed as General Secretary by Shri Nitish Kumar, President of the party. Shri Sharad Yadav was made a member of the National Executive and also a member of the National Council. Further, Shri Yadav functioned as leader of the party's legislature group in the Parliament.

27. Furthermore, Shri Chotubhai Amarsang Vasava, the petitioner herein, also functioned as the leader of the party's legislature group in the Gujarat Legislative Assembly and was also included as a member of the National Council.

28. In the considered opinion of the Commission, they are estopped from casting any doubts or aspersions on the conduct of elections and question the election results, in view of they themselves having acquiesced in the outcome of those elections and having enjoyed the status of Leader of the Legislature Group of the party in the Rajya Sabha and the General Secretary of the party respectively.

29. Accordingly, Shri Sibal, learned senior counsel for the petitioner group, cannot question the validity of the organizational elections held by the party in October, 2016 at behest of the petitioner Shri Chhotubhai Amarsang Vasava who now claims to have been elected as the President of the party at yet another

election stated to have been held in August-September, 2017 by the petitioner group by nullifying the earlier election results of October, 2016 elections. In any event, as has already been communicated by the Commission in its letters dated 7th February, 2017 and 24th May, 2017 to Shri Govind Yadav, Shri Amitava Dutta, Shri Thakur Balbir Singh, and Shri Pramod Sharma, any question relating to the validity of organizational elections of the party can be raised either before the party forum as provided in the party constitution itself or before the court of competent jurisdiction, the matter being a dispute of civil nature, and not before the Commission, either under the Representation of the People Act, 1951, or under the Election Symbols (Reservation and Allotment) Order, 1968.

30. In view of the above, the Commission is not required to go into the allegations made by Shri Sibal about the alleged non-compliance or violation of the provisions of the party constitution relating to appointment of the National Returning Officer for conduct of organizational elections in all States or non-holding of elections in certain States or non-completion of the electoral college for the Presidential election of the party or the doubts and disputes relating to the conduct of organizational elections in the States of Bihar, Jammu and Kashmir, Jharkhand and Kerala or non-recognition of the elections held in Delhi. All these disputes are of civil nature which have to be appropriately agitated by the aggrieved persons before the competent civil courts.

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31. In so far as the reliance placed by Shri Sibal on the membership strength of the National Council as 1098, as it is claimed to have stood on 23rd April, 2016, it needs to be pointed out that list of 1098 members of the National Council was never brought on the records of the Commission by any group of the party. Further, under Article VI of the party constitution, the term of office of members of various committees in the organizational hierarchy of the party is ordinarily two years. Shri Sibal admits that the said 1098 members of the National Council were elected or nominated after the organizational elections held in 2013; thus, their term of office ordinarily expired in 2015. But as the organizational elections were not held by the party as and when due in 2015, the party sought, and was granted, relaxation of the time limit for holding their organizational elections by the Election Commission on 9th September, 2015 and 30th March, 2016 and ultimately the Commission directed the party by its communication dated 24th October, 2016, to complete their organizational elections and to submit the complete list of office bearers and members of committees, etc., by 15th November, 2016. Pursuant thereto, the organizational elections of the party were held as per Shri Sibal's own assertion. His main contention is that 1098 members of the National Council who participated in the organizational elections which culminated on 23rd April, 2016, and who attended the National Council on that day should alone be taken into account for the purpose of determining the question of majority support among the

members of the National Council. But as mentioned above, the list of the said 1098 persons claimed to be the members of the National Council was not brought on record of the Commission nor is any list brought on the Commission's record of the persons who participated in the said National Council meeting on 23rd April, 2016. While making the above contention, Shri Sibal has also obviously overlooked the fact that once an election is held to elect a new body, the previous body functioning before such election ceases to hold office after the election and it is the new body formed after such election which takes over. He has also overlooked or deliberately ignored the fact that after the subsequent organizational election which culminated on 16th October, 2016, Shri Javed Raza was again made the General Secretary of the party, as per the new list of members of the reconstituted National Council which consisted of 195 members and which the respondent group now claims to be the real present composition of the National Council. As already observed in the Commission's order dated 17th November, 2017, the said list was displayed on the Commission's website soon after its receipt from the Returning Officer on 10th November, 2016 and no one raised any objection to the said list before the arising of the present dispute. The Commission is, thus, not convinced by the contention of the petitioner's group of which both Shri Sharad Yadav and Shri Javed Raza are important members that the Commission should look into the old list of 1098 persons who ceased to hold

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office on the election/nomination of new members of the National Council and not at the list of the new members elected/nominated after the election held in October, 2016.

32. Shri Sibal representing, among others, Shri Sharad Yadav and Shri Javed Raza, cannot resile from the position to which the above two important leaders of his group have acquiesced after October, 2016 elections and never challenged by them till the present proceedings were brought before the Commission.

33. Therefore, the Commission has to apply the test of majority in the organizational wing of the party based on the membership strength of the National Council which stands, as per the records of the Commission, at 195 as reconstituted in October, 2016, and not 1098 as constituted in 2013.

34. The respondent group has filed individual affidavits of 138 members out of the said 195 members claimed to be the members of the present National Council of the party. On the other hand, the petitioner group has not filed individual affidavits of the persons who claim to be the members of the present National Council and supporting the petitioner's group, except one member from the State of Maharashtra who have given affidavit in support of the respondent's group as well. On the other hand, all deponents of the individual affidavits filed by the

petitioner's group claim to be members of the old, now defunct, National Council of 2013. Though some of the members of the defunct National Council may be members of the new National Council as well, but none of them has filed an affidavit in their capacity as member of the New National Council and supporting the petitioner's group, except lone member from Maharashtra, as mentioned above.

35. Shri Sibal has further alleged that the affidavits of some of the members filed by the respondent's group suffer from defects/deficiencies and cannot be taken into consideration by the Commission. The learned senior counsel of the respondent group, Shri Rakesh Dwivedi, has also likewise pointed out similar deficiencies/defects in the affidavits filed on behalf of the petitioner's group. Though he submitted that he stood by his contention that all the affidavits filed by the petitioner's group claiming to be members of the old defunct National Council should not be looked into by the Commission, he stated that he was only making the point that because of certain deficiencies or defects having being pointed out by Shri Sibal in the affidavits of members of the respondent's group, all affidavits of respondent's group should not be ignored altogether, as the affidavits filed by the petitioners group also suffered from similar defects. Shri Dwivedi further submitted that the defects/deficiencies as pointed out by Shri Sibal, in the affidavits produced by the respondent's group were only of technical nature, but the same did

not affect the contents of the statements made by the deponents thereof that they were supporting the respondent's group.

36. In view of the above, all the affidavits filed by the respondent's group cannot be ignored or discarded in toto because of some technical deficiencies in some of those affidavits. Accordingly, the prayer of Shri Sibal to discard all affidavits filed in support of the respondent's group is rejected. And, the claim of support of 138 members out of 195 members of the present National Council by the respondent's group is accepted by the Commission, particularly in view of the fact that the petitioner's group has not claimed the support of those members in their favour, except lone member from Maharashtra, who has given affidavit in favour of both the groups.

37. Thus, the inescapable conclusion of the Commission is that the respondent's group led by Shri Nitish Kumar commands the majority support in the National Council of the party and, consequently, the majority support in the organizational wing of the party as well. As mentioned above, Shri Sibal has already candidly conceded the fact that the respondent's group enjoys majority support in the legislature wing of the party based on the superior numerical strength of the respondent's group among the party Members of Parliament and State

Legislatures. As rightly conceded by Shri Sibal, the relative strength of the two groups in the legislature wing of the party is follows:-

Name of the House	Members Supporting	
	Petitioner's group	Respondent's group
Lok Sabha	-	2
Rajya Sabha	2	7
MLAs (Bihar)	-	71
MLAs (Gujarat)	1	-
MLCs (Bihar)	-	30
MLCs (Maharashtra)	1*	1*

* The lone MLC of Maharashtra has submitted affidavit in favour of both the groups

38. Taking into account, all the available facts and circumstances of the present case and having heard the learned senior counsels, Shri Kapil Sibal and Shri Rakesh Dwivedi, representing the petitioner's group and respondent's group respectively, the Commission is of the considered view that the respondent group led by Shri Nitish Kumar enjoys overwhelming majority support in the legislature wing and also the majority support in the organizational wing of the Janata Dal (United). Thus, applying the test of majority in the above mentioned two wings of the party, as has been applied by the Commission and upheld by the Supreme Court in the case of *Sadiq Ali Vs. Election Commission of India & others* [AIR 1972 SC 187, 1972 (4) SCC 664], the Election Commission hereby decides and

C.T.C.



प्रमोद कुमार शर्मा
PRAMOD KUMAR SHARMA
सचिव/Secretary
भारत निर्वाचन आयोग
Election Commission of India
नई दिल्ली-110001/New Delhi-110001

confirms the order already passed on 17th November, 2017, which has been reproduced in full in para 4 above, and which, inter alia, states that :

- (ii) *The respondent group led by Sh. Nitish Kumar has demonstrated overwhelming majority support in the legislature wing as well as the majority in the National Council of the Party which is the Apex level organisational Body of the Party.*
- (iii) *Accordingly, the group led by Sh. Nitish Kumar is hereby recognised as the Janata Dal (United) in terms of Paragraph-15 of the Symbols Order. Consequently, the group led by Sh. Nitish Kumar is entitled to use the reserved symbol 'Arrow' of the Party as a recognised State Party in Bihar.*

ORDERED ACCORDINGLY

Sd/-

(SUNIL ARORA)

ELECTION COMMISSIONER

Sd/-

(A.K. JOTI)

CHIEF ELECTION COMMISSIONER

Sd/-

(O.P. RAWAT)

ELECTION COMMISSIONER

Place : New Delhi.

Dated: 25th November, 2017

C.F.C

प्रमोद कुमार शर्मा
PRAMOD KUMAR SHARMA
सचिव/Secretary
भारत निर्वाचन आयोग
Election Commission of India
नई दिल्ली-110001/New Delhi-110001