



**LANDMARK JUDGEMENTS**  
**ON**  
**ELECTION LAW**

**(A Compilation of Important and Far-reaching  
Judgements Pronounced by Supreme Court of India,  
High Courts and Election Commission of India)**

**VOLUME III**

**ELECTION COMMISSION OF INDIA**  
NIRVACHAN SADAN  
ASHOKA ROAD  
NEW DELHI-110001



DR. M.S. GILL

CHIEF ELECTION COMMISSIONER  
OF INDIA

## **FOREWORD**

In June 1999, the Election Commission of India published two volumes of Landmark Judgements on Election Law. Some of these are of the Higher Judiciary, and many of the Election Commission itself. These volumes have been welcomed by all those engaged in election disputes and their resolutions, across the country. Copies have also been given to and welcomed in Pakistan, Nepal, Bangladesh and Sri Lanka. We are now bringing out the third volume of such important judgements. I am very happy to compliment the Judicial Division of the Election Commission for this historic work, which, for decades to come, will be beneficial to our electoral process, and give valuable material even to the Election Commissions in our neighbouring countries.

**(Dr. M.S. GILL)**

New Delhi  
21st July, 2000

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# **SUPREME COURT OF INDIA**

**Writ Petitions (Civil) No. 2,4,6 and 37 of 1995**

**Ram Deo Bhandari and Others, etc.**

**Vs.**

**Election Commission of India and Others, etc.**

## **SUMMARY OF THE CASE**

Rule 28 of the Registration of the Electors Rules, 1960, provides that the Election Commission may, with a view to preventing impersonation of electors and facilitating their identification at the time of poll, direct the issue of photo identity cards to electors in any constituency or part thereof. Further, Rules 35(3) and 37(2)(b) of the Conduct of Elections Rules, 1961 provide for the compulsory production of these identity cards by the electors at the time of poll in the constituencies where these cards have been issued.

The proposal to issue photo identity cards to electors had been engaging the attention of the Commission and the Government of India for a number of years since 1970. On 28th August, 1993, the Election Commission issued a notification in terms of the aforesaid Rule 28 of the Registration of Electors Rules, 1960 that photo identity cards shall be issued to electors in all Parliamentary and Assembly Constituencies in India, except the Parliamentary Constituencies in the State of Jammu and Kashmir. The Election Commission set the deadline of 31st December, 1994 for the completion of the work in all the aforesaid constituencies, and further indicated that no elections would be held in the States in which the work of issue of identity cards was not completed by the stipulated date. The Commission, by its circulars dated 15th December, 1993, and 28th December, 1993, also issued detailed guidelines for the execution of the above work by the State Governments and the electoral authorities. The above decision of the Election Commission and the modalities prescribed by the Commission in regard to the completion of the work were challenged before the Calcutta High Court and Kerala High Court. Whereas the Kerala High Court upheld the decision and directions of the Election Commission and dismissed the writ petition filed by a private individual, the Calcutta High Court admitted the writ petition filed by the State of West Bengal and stayed the operation of the Commission's impugned notification and directions. Thereupon, the Election Commission moved the Supreme Court seeking a vacation of the stay order of the Calcutta High Court and also the transfer of the writ petition, and also the transfer of the appeal pending before the Kerala High Court against the High Court's orders dismissing the writ petition.

The Supreme Court, by an interim order dated 12.4.1994, vacated the stay order of the Calcutta High Court, and allowed the transfer of the pending writ petition and the writ appeal before the Calcutta and Kerala High Courts to it for disposal. The Supreme Court further directed by an order dated 1.8.1994, that if any other writ petition was filed relating to the issue of identity cards in any other High Courts, the same shall also be transferred to the Supreme Court for disposal.

While the matters continued to pend before the Supreme Court, the Election Commission issued a Press Note on 8th December, 1994, making the issue of identity cards to all eligible electors in the States of Bihar, Orissa, etc., as a precondition for the holding of polls in those States, where general elections were due in early 1995 for constituting their new Legislative Assemblies. Thereupon, the present writ petitions were filed before the Supreme Court by the State of Orissa and some political parties of Bihar, questioning the validity of the Commission's decision not to hold the elections in those States if the identity cards were not issued. The Supreme Court heard the matter on 17th January, 1995 and made a detailed order (see Appendix) recording, inter-alia, the issues involved as well as the stand of the Election Commission in relation thereto. The Commission stated before the Supreme Court on the aforesaid date that it would not withhold the elections to the State Assemblies on the ground that identity cards had not been supplied to all electors.

Thereafter, the work relating to issue of photo identity cards has been progressing in all States and Union Territories and the outstanding differences between the Commission and the Governments have been settled by mutual discussion and consultation. All the States and Union Territories have realised the imperative need for identity cards and have been extending their cooperation in the matter to the satisfaction of the Commission. More than Rupees One Thousand Crores have already been spent, both by the Central and State Governments, for the issue of these cards.

At the time of the general election to the Haryana Legislative Assembly in February, 2000, the Election Commission reviewed the progress of issue of identity cards in that State and observed that more than 85 % of electors in the State had been supplied with identity cards. The Commission, therefore, decided to insist upon compulsory production of those cards by the electors at the time of poll. Where any electors were not able to produce their identity cards for any reason, an alternative list of documents was specified by the Commission any one of which could be produced by those electors for their identification at the time of poll. Similar procedure was followed by the Commission in several by-elections held in May, 2000. The Commission placed these developments before the Supreme Court, by way of an affidavit on 25th July, 2000, and also produced a statement showing

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the progress of the issue of identity cards in all States as on 30th June, 2000.

Taking note of the stand taken by the Commission in its aforesaid affidavit dated 25th July, 2000, the present writ petitions and all connected matters were considered by the Supreme Court as having become infructuous. None of the respondent to these petitions also had any objection in this behalf. Accordingly, the Supreme Court disposed of all the pending cases as having become infructuous, by its order 17th August, 2000.

**SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS**

Transfer Petition (Civil/Crl.) No.(s) 151-152 of 1994

**Election Commission of India & Others**

***Petitioner(s)***

**Vs.**

**State of West Bengal & Others etc. etc.**

***Respondent(s)***

Date: 12.4.1994.

This / these petition(s) was / were called on for hearing today.

**CORAM :**

Hon'ble the Chief Justice  
Hon'ble Mr. Justice G.N. Ray

For the petitioner(s) : Mr.. S. Muralidhar, Advocate

For the respondent(s) :

**ORDER**

Upon motion the matter is taken on board. Heard learned counsel.

Issue notice.

Interim stay of further proceedings before the Division Bench of the High Court of Calcutta and High Court of Kerala.

**Sd/-**  
**(Dinesh Kumar)**  
Court Master

**Sd/-**  
**(S.R. Thite)**  
Court Master

**SUPREME COURT OF INDIA**  
**CIVIL ORIGINAL JURISDICTION**  
**Transfer Petition (C) Nos. 151-52 of 1994**

**Election Commission of India and Others**

*Petitioners*

**Vs.**

**State of West Bengal and Others etc.**

*Respondents*

**ORDER**

These transfer petitions under Article 139A of the Constitution of India have been filed by the Election Commission of India seeking transfer of two petitions, one filed in Calcutta High Court and other in the Kerala High Court as they raise similar questions of law which are of substantial importance.

On 29th August, 1993 the Election Commission issued a notification requiring every State to supply identity cards to the voters. In furtherance of this notification, instructions were issued in December, 1993 to various State Governments to proceed with the work of preparing and supplying identity cards by 30th November, 1994. This was challenged by the State of West Bengal by way of Writ Petition No. 251 of 1994 and a learned Single Judge, by a detailed reasoned order, stayed the operation of orders and notification issued by the Election Commission. The order was subsequently not aside by this Court. But the writ petition is pending for final adjudication. In the meantime, a learned Single Judge of the Kerala High Court dismissed the writ petition upholding the validity of the notification and the orders. Against the order of the learned Single Judge an appeal is pending in the High Court.

We have heard the learned counsel for petitioners and the petitioner of the Writ Appeal in Kerala High Court who is an advocate and appeared in person. We have heard the learned counsel for the State of West Bengal as well.

The submission of the respondent in the Kerala appeal that the two petitions do not raise similar issues does not appear to be correct. Validity of the notification and orders issued by the Election Commission are issues which arise for consideration in both the petitions. They raise substantial questions of law as well.

Considering the nature of dispute which is substantially the same and in order to ensure uniformity, it appears just and proper to withdraw both the petitions pending in Calcutta and Kerala High Courts for disposal by this court. It is also made clear that any such petition, if filed in any other High Court, shall after entertaining the same transfer it to this Court.

The transfer petitions are accordingly allowed and the Writ Petition No. 251 of 1994 (State of West Bengal Vs. Election Commission of India and Others) and Writ Appeal No. 379 of 1994 (J. William John etc. Vs. The Chief Election Commissioner and Others) pending before the High Courts of Calcutta and Kerala respectively are transferred to this Court for hearing and disposal.

*Sd/-*

.....**J.**  
**(R.M. Sahai)**

*Sd/-*

.....**J.**  
**(S. Mohan)**

New Delhi  
1st August, 1994

Rao Deo Bhandari and Others, etc. Vs. Election Commission of India and Others, etc.

**ORIGINAL JURISDICTION  
WRIT PETITION (CIVIL) NO. 2 OF 1995**

**Ram Deo Bhandari and Others** *Petitioners*

**Vs.**

**Election Commission of India and Others** *Respondents*

WITH  
TRANSFERRED CASE NO. 13 OF 1994

**J. William John and Gandeevan** *Petitioners*

**Vs.**

**The Chief Election Commissioner and Others** *Respondents*

WITH  
CIVIL APPEAL NO. 6106 OF 1994

**Shri T.N. Seshan** *Appellant*

**Vs.**

**State of West Bengal and Others** *Respondents*

WITH  
WRIT PETITION (CIVIL) NO. 4 OF 1995

**Gautam Sagar Rana and Others** *Petitioners*

**Vs.**

**Election Commission of India and Others** *Respondents*

WITH  
WRIT PETITION (CIVIL) NO. 6 OF 1995

**State of Orissa** *Petitioner*

**Vs.**

**Election Commission of India and Others** *Respondents*

Rao Deo Bhandari and Others, etc. Vs. Election Commission of India and Others, etc.

WITH  
TRANSFERRED CASE NO. 14 OF 1994

**Arjun** *Petitioner*  
**Union of India and Others** *Respondents*  
Vs.

WITH  
TRANSFERRED CASE NO. 16 OF 1994

**Manmohan Narisinghdasji Maheshwari** *Petitioner*  
**State of Maharashtra** *Respondent*  
Vs.

WITH  
WRIT PETITION (CIVIL) NO. 37 OF 1995

**Samata Party and Others** *Petitioners*  
**Election Commission of India and Others** *Respondents*  
Vs.

WITH  
TRANSFERRED CASE NO. 18 OF 1995

**State of West Bengal** *Petitioner*  
**Election Commissioner of India** *Respondent*  
Vs.

## **ORDER**

Article 168 of the Constitution provides that every State shall have a Legislature and Article 172(1) provides that every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly. Under this Article, the five year term of the Legislative Assemblies of two States, namely, the States of Bihar and Orissa will expire on March 15, 1995. It is obvious that on the expiration of the said term of five years on March 15, 1995, the assemblies of the said two States will stand dissolved. To satisfy the mandate of Article 168, it is necessary that elections should be held in the aforesaid two States in a manner that the election results are declared

before March 15, 1995. The latest Press Note issued by the Election Commission on December 8, 1994 states that the elections in the States of Bihar and Orissa would be completed before March 10, 1995. Ordinarily no objection can be raised by either of the States to the schedule of elections fixed with a view to completing the same before March 15, 1995.

However, in paragraph 06 of the said Press Note it is ordained:

“A poll in any of these States will not be taken without the supply of electoral identity cards to all eligible electors. The State Government will be called upon to furnish a certificate that photo identity cards have been supplied to all eligible electors”.

On a plain reading of the said paragraph it is clear that unless ‘all’ eligible electors are supplied electoral identity cards and a certificate to that effect is not furnished by the concerned State Government, no poll will be taken in that State. It is, therefore, apprehended by the petitioners of Writ Petitions Nos. 2 and 6 of 1995 which concern the States of Bihar and Orissa that since the said two States are not in a position to complete the requirement of supplying photo identity cards to ‘all’ eligible electors before the last date fixed for the same, elections may not be taken in the said two States thereby denying to the electors thereof their constitutional right to elect a new assembly for their respective States. The petitioners contend that that would tantamount to the eligible electors of the State being denied their constitutional and democratic right to elect a new assembly. This apprehension arises in the background of the following events.

On August 28, 1993, the Election Commission in purported exercise of powers under Rule 28 of the Registration of Elector Rules, 1960 read with Section 130(2) of the Representation of People Act, 1950, issued a directive for the supply of photo identity cards to electors in the assembly as well as parliamentary constituencies in each State, with a view to preventing impersonation of electors and facilitating their identification at the polls. It was also made clear in no uncertain terms that no polling at elections for which the Election Commission is responsible shall take place after January 1, 1995 unless ‘all’ eligible electors have been supplied with identity cards. What features the identity cards shall bear was also indicated with a caution that ‘there will be no departure from these features in any manner whatsoever’. This was followed by High Level Meetings at which certain State Governments, including the representatives of the said two States of

Bihar and Orissa, pointed out certain difficulties in the implementation of the said directive. The Chief Election Officers of the States were held responsible for maintaining the schedule for completion of the identity cards to the electors before deadline fixed by the Election Commission. On May 11, 1994, the Election Commission wrote to the Chief Secretary and Chief Election Officer, Bihar that there was virtually no progress made towards issuance of identity cards and added 'the Commission hereby forewarns you that the responsibility for any constitutional stalemate that may arise because of your failure to comply with the instructions of the Commission .....will rest squarely with you and the State Government'. This was followed by a letter dated November 6, 1994 drawing the attention of the State of Bihar that the progress was very unsatisfactory and warned that should any constitutional crisis arise on account of elections not being held for want to identity cards, the responsibility will rest squarely on the State Government. Then by the letter of December 29, 1994, the Election Commission stated that the notification calling the elections would be issued only after the receipt of the certificate from officers of the State Government that all eligible voters had been supplied with photo identity cards. By the order of November 30, 1994, the Election Commission stated that in no case will any request for extension of deadline be entertained. This gave rise to the apprehension that the elections to the legislative assemblies of the States of Bihar and Orissa will not be held before March 15, 1995, for their failure to comply with the directive of grant of identity cards.

When the writ petitions filed under Article 32 of the Constitution came up for admission before us yesterday we heard counsel for the petitioners, Shri Fali S. Nariman for the State of Orissa in Writ Petition No. 6 of 1995 and Shri Soli J. Sorabjee in Writ Petition No. 2 of 1995 and Shri Bhat for the State of Bihar as well as counsel for the petitioner in Writ Petitions Nos. 4 and 37 of 1995 and Shri G. Ramaswamy, counsel for the Election Commission at some length. We also heard them on the question of grant of interim relief. During the course of the hearing Shri Soli J. Sorabjee briefly indicated in writing the points arising for consideration. Shri G. Ramaswamy, learned senior counsel for the Election Commission stated that since the State of Orissa had virtually complied with the direction, in that, it had supplied photo identity cards to almost 86% of voters, the Election Commission will not enforce its instruction contained in paragraph 06 extracted earlier. In other words Shri Ramaswamy contended that in the State of Orissa elections will not be held for want of supply of identity cards to 'all' electors eligible to vote and for want of an undertaking/certificate in

that behalf from the State Government. That should settle the matter insofar as Orissa is concerned. As far as the State of Bihar is concerned, Shri Ramaswamy submitted that it was a willful defaulter since it made no serious effort to comply with its direction for the supply of identity cards. On the other hand Shri Bhat contended that the Chief Election Commissioner had failed to appreciate the economic as well as the social conditions in Bihar and without taking into account the ground realities had tried to press, nay, coerce the State into submission. At that stage Shri Guptoo, the learned Advocate General for West Bengal, who was in court, stated that as far as his State Government is concerned, the Chief Election Commissioner had gone to the length of saying that failure to implement his order would tantamount to be a break down of the constitutional machinery in the State and threatened to inform the President of India accordingly. While there may be force in the submission that the language used in the correspondence by the Election Commission is unduly harsh and abrasive, ordinarily not used in correspondence between high-level functionaries, the fact remains that the State of Bihar had lagged far behind in implementing the orders of the Election Commission. Counsel for the State of Bihar stated that his government was firmly of the opinion that the Election Commission had no power or authority to hold up or to threaten to hold up the election process if the identity cards were not issued. This would be a larger question to be answered at the final hearing.

Shri Ramaswamy in the light of discussion made a statement at the Bar and followed it up by placing it in writing, which runs thus :

“The Commission has no intention of creating any constitutional crisis. Since 18 months’ time has been given for completion of the exercise, the deadline of 1.1.1995 fixed 18 months ago was insisted upon.

Since elections to the legislative assembly of the State of Bihar have been notified, the Election Commission will not withhold the elections on the ground that identity cards have not been supplied to all voters provided the Government of Bihar gives an undertaking to this court that it will complete the exercise of issuing identity cards before 30.9.1995.

This is without prejudice to the contentions of the parties to the writ petitions.”

**Sd/-**  
**(S.K. Mendiratta)**  
Secretary  
Election Commission of India

From the above statement it becomes clear that whatever the Election Commission may have said in the earlier correspondence and no matter how forcefully it may have insisted, the Election Commission is mindful of the consequences that may follow should the two States not be allowed to go to the polls for their failure to supply identity cards to 'all' eligible electors. It has also assured us that since elections to the legislative assembly of Bihar have been notified, the Election Commission will not withhold the elections for want of identity cards. The Election Commission has, however, desired that the State of Bihar should undertake to complete the entire exercise before September 30, 1995. Such an undertaking would of course be without prejudice to the contentions of the parties. Shri Bhat on the other hand contended that it is the contention of the State Government that the Election Commission has no power or authority to withhold elections for failure to issue identity cards and it cannot refuse to permit an elector to cast his vote for want of such a card and, therefore, there is no question of the State of Bihar giving any such undertaking and in case he cannot do so without the express authority of his client. We appreciate his difficulty.

Taking all the above facts and circumstances into consideration we direct rule nisi to issue in all the four writ petitions and direct counsel to complete the paper books within four weeks. Printing dispensed with.

We further direct that the Election Commission shall not withhold the elections to the legislative assemblies of Bihar and Orissa on the ground that the said Governments had failed to complete the process of issuance of photo identity cards by the deadline prescribed by it. There will be an interim stay in the said terms. The Election Commission will, however, be free to take such other steps as it considers necessary and are permissible to ensure a fair and free poll.

As regards the grant of undertaking, no such undertaking having been sought from the State of Orissa, the learned counsel for the State of Bihar may obtain instructions in that behalf from his client and report within four weeks.

Rao Deo Bhandari and Others, etc. Vs. Election Commission of India and Others, etc.

Let the writ petitions come up with Transferred Cases Nos. 13, 14, 16 and 18 of 1994 and Civil Appeal No. 6106 of 1994 (Shri T.N. Seshan Vs. State of West Bengal).

Liberty to mention for early hearing.

Since the averments in the Writ Petitions filed subsequent to writ Petition No. 2 of 1995 are more or less identical we have mainly referred to the averments in the first petition.

*Sd/-*  
..... CJI.

*Sd/-*  
.....J.  
(S.P. Bharucha)

*Sd/-*  
.....J.  
(K. Jayachandra Reddy)

New Delhi  
17th January, 1995

**SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION  
Writ Petitions (C) No. 2 of 1995**

**Ram Deo Bhandari and Others**

*Petitioners*

**Vs.**

**Election Commission of India and Others**

*Respondents*

With TC (C) No. 13 / 1994, WP (C) Nos. 4/1995, 6/1995, 37/1995, TC (C) Nos. 14/1994, 16/1994, 18/1995, 1/1996, 8/1997 and 33-34/1995.

**ORDER**

Mr. K.K. Venugopal, learned counsel for the Election Commission of India, draws our attention to the affidavit on its behalf dated 25th July, 2000 and, in particular, to paragraph 6 thereof. He reiterates the stand taken in the affidavit and submits that, in view thereof, these writ petitions and transferred cases do not survive for consideration.

No other party has any objections in this behalf.

In view of the above statement on behalf of the Election Commission of India, the writ petitions and transferred cases are disposed of as having become infructuous.

*Sd/-*

.....J.  
**(S.P. Bharucha)**

*Sd/-*

.....J.  
**(Y.K. Sabharwal)**

*Sd/-*

.....J.  
**(S.N. Variava)**

New Delhi  
17th August, 2000

# **SUPREME COURT OF INDIA**

## **CIVIL ORIGINAL JURISDICTION Writ Petitions (Civil) No. 2 of 1995**

**Ram Deo Bhandari and Others**

*Petitioners*

**Vs.**

**Election Commission of India and Others**

*Respondents*

### **AFFIDAVIT ON BEHALF OF ELECTION COMMISSION OF INDIA**

I, K.J. Rao, S/o Late Shri K. Byragi, aged about 57 years, Secretary, Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi do hereby solemnly affirm and state on oath as under :-

1. That I am the Secretary of the Election Commission of India and am fully conversant with the facts and circumstances and records of the above case. I am making this affidavit to place on record certain developments subsequent to the previous hearing of the above matter.

2. The above writ petition challenges the validity of the orders and directives dated 28.8.1993, 15.12.1993 and other similar orders culminating in the press note dated 8.12.1994 issued by the Election Commission of India making the issue of Photo Identity Cards to all eligible electors in the State of Bihar as a pre-condition to the holding of polls in that State. The other connected matters in the batch also deal with the same issue, i.e., the validity of the direction of the Election Commission of India in relation to Photo Identity Cards.

3. When the above writ petition and the connected matters were heard by this Hon'ble Court on 17.1.1995, this Hon'ble Court made a detailed order recording inter alia, the issue involved as well as the stand of the Election Commission of India in relation thereto. This Hon'ble Court noted that para 06 of the press note dated 8.12.1994 issued by the Election Commission of India stated as under :-

“A poll in any of these States will not be taken without the supply of electoral identity cards to all the eligible electors. The State Govt. will be called upon to furnish a certificate that photo identity cards have been supplied to all eligible electors”.

This Hon'ble Court further recorded the statement made on behalf of the Election Commission of India to the following effect :-

“The Commission has no intention of creating any constitutional crisis. Since 18 months' time has been given for completion of the exercise, the deadline of 1.1.1995 fixed 18 months ago was insisted upon.

Since elections to the Legislative Assembly of the State of Bihar have been notified, the Election Commission will not withhold the elections on the ground that identity cards have not been supplied to all voters provided the Govt. of Bihar gives an undertaking to this Court that it will complete the exercise of issuing identity cards before 30.9.1995.

This is without prejudice to the conditions of the parties to the Writ Petitions.”

**Sd/-**  
**(S.K. Mendiratta)**  
Secretary  
Election Commission of India

4. Subsequent thereto, the work of issue of photo identity cards has progressed satisfactorily in various States and Union Territories.

A Status Report on the progress of the issue of photo identity cards in various States and Union Territories as on 30th June, 2000 is annexed herewith as Annexure-R.1.

From the said Annexure, it may kindly be seen that in several States, more than 70% of electors have been issued photo identity cards and All India average is 62.11%.

5. The Election Commission of India submits that all the States and Union Territories have realized the imperative need of the photo identity cards and have been extending their cooperation in the matter to the satisfaction of the Election Commission of India. More than Rupees One Thousand Crores have already been spent both by the Central and State Governments for the issue of these photo identity cards.

6. In the General Elections to the Haryana Legislative Assembly held in February, 2000 and in several bye-elections to the House of the People and certain State Legislative Assemblies held subsequently in May, 2000, the Election Commission of India has enforced its directives on compulsory production of photo identity cards without any difficulty. Where the States have not been able to complete the exercise of issuing photo identity cards, the Election Commission of India has given the voters concerned an alternative list of documents any of which may be produced by the electors concerned for their identification at the time of poll. Thus, the holding of elections has not been affected anywhere for want of the photo identity cards. The Election Commission of India proposes to continue this practice in future as well, so long as the photo identity cards have not been issued to all electors.

7. In view of the above developments, it is submitted that the issues raised in the above writ petition and connected matters may no longer survive to be adjudicated by this Hon'ble Court.

8. It is prayed that this Affidavit may be taken on record and the above writ petition and connected matters be disposed of in terms thereof.

**Sd/-  
DEPONENT**

**VERIFICATION :-**

I, the deponent above named, do hereby verify and declare that the contents of this affidavit are true and correct to the best of my knowledge; no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on this 25th day of July, 2000.

**Sd/-  
DEPONENT**



- (i) If an election (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.
- (ii) Any decision sought and rendered will not amount to “calling in question an election” if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.
- (iii) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.
- (iv) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.
- (v) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the court’s indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.

## **JUDGEMENT**

**R.C. Lahoti, J.**

An interim order passed by the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution, during the currency of the process of election, whereby the High Court has stayed the Notification issued by the Election Commission of India containing direction as to the manner of counting votes and has made directions of its own on the subject, has been put in issue by the Election Commission of India filing these appeals by special leave under Article 136 of the Constitution.

The facts in brief : The 12th Lok Sabha having been dissolved by the President of India on 26.4.1999, the Election Commission of India announced the programme for the General Election to constitute the 13th Lok Sabha. Pursuant thereof, the polling in the State of Kerala took place on 11.9.1999. The counting of votes was scheduled to take place on 6.10.1999.

In exercise of the powers conferred by Rule 59A of the Conduct of Election Rules, 1961, the Election Commission of India issued a notification published in Kerala Gazette Extra-ordinary dt. 1st October, 1999 which reads as under:

### **“NOTIFICATION**

No.470/99/JUD-II(H.P.) -- WHEREAS, rule 59A of the Conduct of Elections Rules, 1961 provides that where the Election Commission apprehends intimidation and victimisation of electors in any constituency and it is of the opinion that it is absolutely necessary that ballot papers taken out of all ballot boxes used in that constituency should be mixed before counting, instead of being counted polling stationwise, it may, by notification in the Official Gazette, specify such constituency;

2. AND WHEREAS, on such specification under the said rule 59A of the Conduct of Elections Rules, 1961, the ballot papers of the specified constituency shall be counted by being mixed instead of being counted polling stationwise;

3. AND WHEREAS, the Election Commission has carefully considered the matter and has

decided that in the light of the prevailing situation in the State of Kerala, and in the interests of free and fair election and also for safety and security of electors and with a view to preventing intimidation and victimisation of electors in that State, each of the Parliamentary Constituencies in the State except 11-Ernakulam and 20-Trivandrum Parliamentary Constituencies, may be specified under the said rule 59A for the purposes of counting votes at the General Election to the House of the People, 1999 now in progress;

4. NOW, THEREFORE, the Election Commission hereby specifies each of the said Parliamentary Constituencies except 11-Ernakulam and 20-Trivandrum Parliamentary Constituencies in the State of Kerala, as the constituencies to which the provisions of rule 59A of the Conduct of Elections Rules, 1961 shall apply for the purposes of counting of votes at the current General Election to the House of the People.

BY ORDER

Sd/-

(K.J. RAO)

Secretary, Election Commission of India”.

In Ernakulam and Trivandrum constituencies, electronic voting machines were employed for polling. In all other constituencies of Kerala, voting was through ballot papers.

On 4.10.1999, two writ petitions were filed respectively by the respondents No.1 & 2 herein, laying challenge to the validity of the above notification. In O.P. No.24444/1999 filed by respondent No.2, who was a candidate in the election and has been a member of the dissolved Lok Sabha having also held the office of a Minister in the Cabinet, it was alleged that large scale booth capturing had taken place in the Lok Sabha election at Kannur, Alappuzha and Kasaragod constituencies. Similar allegations of booth capturing were made as to polling stations throughout the State. At such polling stations, the polling agents of Congress party and their allies

were not allowed to sit in the polling booths. In 70 booths, polling was above 90%, in 25 booths the percentage of polling was more than 92% and in 5 booths it was 95% and above. The presiding officers and the electoral officers did not take any action on the complaints made to them and they were siding with the ruling party (Left Democratic Front or the LDF). At some places the representatives of the Congress party were ordered to be given police protection by the Court but no effective police protection was given. There are other polling booths where the percentage of polling has been very low, as less as 7.8% in booth No. 21 at Manivara Government School. No polling was recorded in booth No.182. In 27 booths, polling was 26%. Complaints were also made to the Chief Election Commissioner. Under Section 135A of the Representation of the People Act, 1951, booth capturing is an offence,

O.P. No.24516/1999 was filed by respondent No.1, who contested from the Alappuzha constituency as an independent candidate, alleging more or less similar facts as were alleged in O.P. No. 24444/1999.

In both the writ petitions it is alleged that in the matter of counting the Election Commission of India issued guidelines'on 22nd September, 1999 which directed — "All the ballot boxes of one Polling Station will be distributed to one table for counting the ballot papers." There was no change in the circumstances ever since the date of the above-said guidelines and yet on 28.9.1999 the Election Commission of India issued the impugned notification. According to both the writ petitioners, if counting took place in accordance with the directions issued on 28.9.1999, valuable piece of evidence would be lost as the allegations as to booth capturing could best be substantiated if the counting of votes took place polling station wise and not by mixing of votes from the various booths. An interim relief was sought for by both the writ petitioners seeking suspension of the notification dated 28.9.1999.

Notice of the writ petition and applications seeking interim relief was served on the standing counsel for the State Government and the Government Pleader who represented the Chief Electoral Officer. Paucity of time and the urgency required for hearing the matter did not allow time enough for service of notice on the parties individually.

The prayer for the grant of interim relief was opposed by the learned counsel appearing for the respondents before the High Court by placing reliance on Article 329(b) of the Constitution. According to the writ petitioners before the High Court, the normal rule was to count votes boothwise unless exceptional circumstances were shown to exist whereupon Rule 59A could

be invoked. According to the learned counsel for the respondents before the High Court, in Ernakulam and Trivandrum parliamentary constituencies, polling was done with the aid of voting machines and hence excepting these two constituencies the Election Commission of India formed an opinion for invoking Rule 59A which the Election Commission of India was justified, well within its power to do. In the opinion of the High Court, in view of large number of allegations of booth capturing (without saying that such allegations were correct) it was necessary to have the votes counted boothwise so that the correctness of the allegations could be found out in an election petition which would be filed later, on declaration of the results. The High Court also believed the averment made in the affidavits filed in support of the stay petitions wherein it was stated that training was given to the officers for counting the votes boothwise, i.e. with mixing or without mixing. Mixing of votes of all booths will take more time in counting and require engagement of more officers. The learned Government Pleader was not able to demonstrate before the High Court if the notification dated 28.9.1999 was published in the official gazette. On a cumulative effect of the availability of such circumstances, the High Court by its impugned order dated 4th October, 1999 directed the Election Commission and Chief Electoral Officer to make directions in such a way that counting was conducted boothwise consistently with the guidelines dated 22.9.1999.

On 5.10.1999 the Election Commission of India filed the special leave petitions before this court which were taken up for hearing upon motion made on behalf of the petitioner-appellant. A copy of the official gazette dated 1st October, 1999 wherein the notification dated 28.9.1999 was published, was also produced for the perusal of this court on the affidavit of Shri K.J. Rao, Secretary, Election Commission of India. This court directed notices to be issued and in the meanwhile operation of the order of the Kerala High Court was also directed to be stayed.

When the matter came up for hearing after notice, leave was granted for filing the appeals and interim direction dated 5.10.1999 was confirmed to remain in operation till the disposal of appeals. At the final hearing it was admitted at the Bar that in view of the impugned order of the High Court having been stayed by this court, the counting had taken place in accordance with the Notification dated 28.9.1999 made by the Election Commission of India. In view of these subsequent events, the appeals could be said to have been rendered infructuous. However, the learned counsel for the appellant submitted that the issue arising for decision in these appeals is of wide significance in as much as several writ petitions are filed before the High Courts seeking interim directions interfering with the election

proceedings and therefore it would be in public interest if this court may pronounce upon the merits of the issue arising for decision in these appeals. We have found substance in the submission so made and, therefore, the appeals have been heard on merits.

The issue arising for decision in these appeals is the jurisdiction of the High Court to entertain petitions under Article 226 of the Constitution of India and to issue interim directions after commencement of the electoral process.

Article 324 of the Constitution contemplates constitution of the Election Commission in which shall vest the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under the Constitution. The words "superintendence, direction and control" have a wide connotation so as to include therein such powers which though not specifically provided but are necessary to be exercised for effectively accomplishing the task of holding the elections to their completion. Article 329 of the Constitution provides as under :

**329. Bar to interference by courts in electoral matters - Notwithstanding anything in this Constitution**

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented by such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

The term 'election' as occurring in Article 329 has been held to mean and include the entire process from the issue of the Notification under Section 14 of the Representation of the People Act, 1951 to the declaration of the result under Section 66 of the Act.

The constitutional status of the High Courts and the nature of the jurisdiction exercised by them came up for the consideration of this Court in *M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd., Goa - 1993 Supp (2) SCC 433*. It was held that the High Courts in India are superior courts of record. They have original and appellate jurisdiction. They have inherent and supplementary powers. Unless expressly or impliedly barred and subject to the appellate or discretionary jurisdiction of Supreme Court, the High Courts have unlimited jurisdiction including the jurisdiction to determine their own powers. The following statement of law from *Halsbury's Laws of England, (4th Edn., Vol. 10, para 713)* was quoted with approval:

“Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognisance of the particular court.”

This Court observed that the jurisdiction of courts is carved out of sovereign power of the State. People of free India are the sovereign and the exercise of judicial power is articulated in the provisions of the Constitution to be exercised by courts under the Constitution and the laws thereunder. It cannot be confined to the provisions of imperial statutes of a bygone age. Access to court which is an important right vested in every citizen implies the existence of the power of the Court to render justice according to law. Where statute is silent and judicial intervention is required, Courts strive to redress grievances according to what is perceived to be principles of justice, equity and good conscience.

That the power of judicial review is a basic structure of Constitution — is a concept which is no longer in issue.

Is there any conflict between the jurisdiction conferred on the High Courts by Article 226 of the Constitution and the embargoes created by Article 329 and if so how would they co-exist came up for the consideration of a Constitution Bench of this Court in *N.P. Ponnuswami Vs. The Returning Officer, Namakkal Constituency & Ors. - AIR 1952 SC 64*. The law enunciated in Ponnuswami's case was extensively dealt with, also amplified, by another Constitution Bench in *Mohinder Singh Gill and Anr. Vs. The Chief Election Commissioner. New Delhi and Ors. - AIR 1978 SC 851*. The plenary power of Article 329 has been stated by the Constitution Bench to

be founded on two principles : (1) The peremptory urgency of prompt engineering of the whole election process without intermediate interruptions by way of legal proceedings challenging the steps and stages in between the commencement and the conclusion;

(2) The provision of a special jurisdiction which can be invoked by an aggrieved party at the end of the election excludes other form, the right and remedy being creatures of statutes and controlled by the Constitution. On these principles the conclusions arrived at in Ponnuswami's case were so stated in Mohinder Singh Gill's case:

"(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election"; and if any irregularities are committed while it is in progress and they belong to the category or class which under the law by which elections are governed, would have the effect of vitiating the "election" and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress."

However, the Constitution Bench in Mohinder Singh Gill's case could not resist commenting on Ponnuswami's case by observing (vide para 25) that the non-obstante clause in Article 329 pushes out Article 226 where the dispute takes the form of calling in question an election, except in special situations pointed out at, but left unexplored in Ponnuswami.

Vide para 29 in Mohinder Singh Gill's case, the Constitution Bench noticed two types of decisions and two types of challenges: the first relating to proceedings which interfere with the progress of the election and the second which accelerate the completion of the election and acts in furtherance of an election. A reading of Mohinder Singh Gill's case points out that there may be a few controversies which may not attract the wrath of Article 329 (b). To wit : (i) power vested in a functionary like the Election Commission is a trust and in view of the same having been vested in high functionary can be expected to be discharged reasonably, with objectivity and independence and in accordance with law. The possibility however cannot be ruled out where the repository of power may act in breach of law or arbitrarily or mala fide. (ii) A dispute raised may not amount to calling in question an election if it subserves the progress of the election and facilitates the completion of the election. The Election Commission may pass an order which far from accomplishing and completing the process of election may thwart the course of the election and such a step may be wholly unwarranted by the Constitution and wholly unsustainable under the law. In Mohinder Singh Gill's case, this Court gives an example (vide para 34). Say after the President notifies the nation on the holding of elections under Section 15 and the Commission publishes the calendar for the poll under Section 30 if the latter orders returning officers to accept only one nomination or only those which come from one party as distinguished from other parties or independents, which order would have the effect of preventing an election and not promoting it, the Court's intervention in such a case will facilitate the flow and not stop the election stream.

A third category is not far to visualise. Under Section 81 of the Representation of the People Act, 1951 an election petition cannot be filed before the date of election, i.e., the date on which the returned candidate is declared elected. During the process of election something may have happened which would provide a good ground for the election being set aside. Purity of election process has to be preserved. One of the means for achieving this end is to deprive a returned candidate of the success secured by him by resorting to means and methods falling foul of the law of elections. But by the time the election petition may be filed and judicial assistance secured, material evidence may be lost. Before the result of the election is declared, assistance of Court may be urgently and immediately needed to preserve the evidence without any manner intermeddling with or thwarting the progress of election. So also there may be cases where the relief sought for may not interfere or intermeddle with the process of the election but the jurisdiction of the Court is sought to be invoked for correcting the process of

election taking care of such aberrations as can be taken care of only at that moment failing which the flowing stream of election process may either stop or break its bounds and spill over. The relief sought for is to let the election process proceed in conformity with law and the facts and circumstances be such that the wrong done shall not be undone after the result of the election has been announced subject to overriding consideration that the Court's intervention shall not interrupt, delay or postpone the ongoing election proceedings. The facts of the case at hand provide one such illustration with which we shall deal with a little later. We proceed to refer a few other decided cases of this court cited at the Bar.

In *Lakshmi Charan Sen Vs. A.K.H. Hassan Uzzaman* (AIR 1985 SC 1233) writ petitions under Article 226 of the Constitution were filed before the High Court asking for the writs of mandamus and certiorari, directing that the instructions issued by the Election Commission should not be implemented by the Chief Electoral Officer and others; that the revision of electoral rolls be undertaken de novo; that claims, objections and appeals in regard to the electoral roll be heard and disposed of in accordance with the rules; and that, no notification be issued under S.15(2) of the Representation of the People Act, 1951 calling for election to the West Bengal Legislative Assembly, until the rolls were duly revised. The High Court entertained the petitions and gave interim orders. The writ petitioners had also laid challenge to validity of several provisions of Acts and Rules, which challenge was given up before the Supreme Court. The Constitution Bench held 'though the High Court was justified in entertaining the writ petition and issuing a rule therein since, the writ petition apparently contained a challenge to several provisions of Election Laws, it was not justified in passing any order which would have the effect of postponing the elections which were then imminent. Even assuming, therefore, that the preparation and publication of electoral rolls are not a part of the process of 'election' within the meaning of Article 329(b), we must reiterate our view that the High Court ought not to have passed the impugned interim orders, whereby it not only assumed control over the election process but, as a result of which, the election to the Legislative Assembly stood the risk of being postponed indefinitely'.

In *Election Commission of India Vs. State of Haryana* - AIR 1984 SC 1406 the Election Commission fixed the date of election and proposed to issue the requisite notification. The Government of Haryana filed a writ petition in the High Court and secured an ex-parte order staying the issuance and publication of the notification by the Election Commission of India under Sections 30, 56 and 150 of the Representation of the People Act, 1951. This Court deprecated granting of such ex-parte orders. During the course of its

Judgment (vide para 8), the majority speaking through the Chief Justice observed that it was not suggested that the Election Commission could exercise its discretion in an arbitrary or mala fide manner; arbitrariness and mala fide destroy the validity and efficacy of all orders passed by public authorities. The minority view was recorded by M.P. Thakkar, J. quoting the following extract from A.K.M. Hassan Uzzaman (1982) 2 SCC 218 :

“The imminence of the electoral process is a factor which must guide and govern the passing of orders in the exercise of the High Court's writ jurisdiction. The more imminent such process, the greater ought to be the reluctance of the High Court to do anything, or direct anything to be done, which will postpone that process indefinitely by creating a situation in which, the Government of a State cannot be carried on in accordance with the provisions of the Constitution.”

and held that even according to Hassan's case, the Court has the power to issue an interim order which has the effect of postponing an election but it must be exercised sparingly (with reluctance) particularly when the result of the order would be to postpone the installation of a democratic elected popular Government.

In *Digvijay Mote Vs. Union of India & Ors.* - (1993) 4 SCC 175 this Court has held that the powers conferred on the Election Commission are not unbridled; judicial review will be permissible over the statutory body, i.e., the Election Commission exercising its functions affecting public law rights though the review will depend upon the facts and circumstances of each case; the power conferred on the Election Commission by Article 324 has to be exercised not mindlessly nor mala fide nor arbitrarily nor with partiality but in keeping with the guidelines of the rule of law and not stultifying the Presidential notification nor existing legislation.

*Anugrah Narain Singh and Anr. Vs. State of U.P. & Ors.* - 1996 (6) SCC 303 is a case relating to municipal elections in the State of Uttar Pradesh. Barely one week before the voting was scheduled to commence, in the writ petitions complaining of defects in the electoral rolls and de-limitation of constituencies and arbitrary reservation of constituencies for scheduled castes, scheduled tribes and backward classes the High Court passed interim order stopping the election process. This Court quashed such interim orders and observed that if the election is imminent or well under way, the Court

should not intervene to stop the election process. If this is allowed to be done, no election will ever take place because some one or the other will always find some excuse to move the Court and stall the elections. The importance of holding elections at regular intervals cannot be over-emphasised. If holding of elections is allowed to stall on the complaint of a few individuals, then grave injustice will be done to crores of other voters who have a right to elect their representatives to the democratic bodies.

In *C Subrahmanyam Vs. K. Ramanjaneyullu and Ors.* - (1998) 8 SCC 703 this Court has held that non-compliance of a provision of the Act governing the elections being a ground for an election petition, the writ petition under Article 226 of the Constitution of India should not have been entertained.

In *Mohinder Singh Gill's case* (supra) the Election Commission had cancelled a poll and directed a re-polling. The Constitution Bench held that a writ petition challenging the cancellation coupled with repoll amounted to calling in question a step in "election" and is therefore barred by Article 329 (b). However, vide para 32, it has been observed that had it been a case of mere cancellation without an order for repoll, the course of election would have been thwarted (by the Election Commission itself) and different considerations would have come into play.

Election disputes are not just private civil disputes between two parties. Though there is an individual or a few individuals arrayed as parties before the Court but the stakes of the constituency as a whole are on trial. Whichever way the lis terminates it affects the fate of the constituency and the citizens generally. A conscientious approach with overriding consideration for welfare of the constituency and strengthening the democracy is called for. Neither turning a blind eye to the controversies which have arisen nor assuming a role of over-enthusiastic activist would do. The two extremes have to be avoided in dealing with election disputes.

Section 100 of the Representation of the People Act, 1951 needs to be read with Article 329 (b), the former being a product of the latter. The sweep of Section 100 spelling out the legislative intent would assist us in determining the span of Article 329 (b) though the fact remains that any legislative enactment cannot curtail or override the operation of a provision contained in the Constitution. Section 100 is the only provision within the scope of which an attack on the validity of the election must fail so as to be a ground available for avoiding an election and depriving the successful candidate of his victory at the polls. The Constitution Bench in *Mohinder Singh Gill's case* (vide para 33) asks us to read Section 100 widely as "covering

the whole basket of grievances of the candidates". Sub-clause (iv) of clause (d) of sub-section (1) of Section 100 is a "residual catch-all clause". Whenever there has been non-compliance with the provisions of the Constitution or of the Representation of the People Act, 1951 or of any rules or orders made thereunder if not specifically covered by any other preceding clause or sub-clause of the Section it shall be covered by sub-clause (iv). The result of the election insofar as it concerns a returned candidate shall be set aside for any such non-compliance as abovesaid subject to such non-compliance also satisfying the requirement of the result of the election having been shown to have been materially affected insofar as a returned candidate is concerned. The conclusions which inevitably follow are: in the field of election jurisprudence, ignore such things as do not materially affect the result of the election unless the requirement of satisfying the test of material effect has been dispensed with by the law; even if the law has been breached and such breach satisfies the test of material effect on the result of the election of the returned candidate yet postpone the adjudication of such dispute till the election proceedings are over so as to achieve, in larger public interest, the goal of constituting a democratic body without interruption or delay on account of any controversy confined to an individual or group of individuals or single constituency having arisen and demanding judicial determination.

To what extent Article 329 (b) has an overriding effect on Article 226 of the Constitution? The two Constitution Benches have held that Representation of the People Act, 1951 provides for only one remedy; that remedy, being by an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. The non-obstante clause with which Article 329 opens pushes out Article 226 where the dispute takes the form of calling in question an election (see para 25 of Mohinder Singh Gill's case, supra). The provisions of the Constitution and the Act read together do not totally exclude the right of a citizen to approach the Court so as to have the wrong done remedied by invoking the judicial forum; nevertheless the lesson is that the election rights and remedies are statutory, ignore the trifles even if there are irregularities or illegalities, and knock the doors of the courts when the election proceedings in question are over. Two-pronged attack on anything done during the election proceedings is to be avoided — one during the course of the proceedings and the other at its termination, for such two-pronged attack, if allowed, would unduly protract or obstruct the functioning of democracy.

The founding fathers of the Constitution have consciously employed use of the words 'no election shall be called in question' in the body of Section 329 (b) and these words provide the determinative test for attracting

applicability of Article 329 (b). If the petition presented to the Court 'calls in question an election' the bar of Article 329 (b) is attracted. Else it is not.

For convenience sake, we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:

1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the

Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.

These conclusions, however, should not be construed as a summary of our judgment. These have to be read along with the earlier part of our judgment wherein the conclusions have been elaborately stated with reasons.

Coming back to the case at hand it is not disputed that the Election Commission does have power to supervise and direct the manner of counting of votes. Till 22nd September, 1999 the Election Commission was of the opinion that all the ballot boxes of one polling station will be distributed to one table for counting the ballot papers and that would be the manner of counting of votes. On 28.9.1999 a notification under Rule 59A came to be issued. It is not disputed that the Commission does have power to issue such notification. What is alleged is that the exercise of power was mala fide as the ruling party was responsible for large scale booth capturing and it was likely to lose the success of its candidates secured by committing an election offence if material piece of evidence was collected and preserved by holding polling stationwise counting and such date being then made available to the Election Tribunal. Such a dispute could have been raised before and decided by the High Court if the dual test was satisfied ; (i) the order sought from the Court did not have the effect of retarding, interrupting, protracting or stalling the counting of votes and the declaration of the results as only that much part of the election proceedings had remained to be completed at that stage, (ii) a clear case of mala fides on the part of Election Commission inviting intervention of the Court was made out, that being the only ground taken in the petition. A perusal of the order of the High Court shows that one of the main factors which prevailed with the High Court for passing the impugned order was that the learned Government Advocate who appeared before the High Court on a short notice, and without notice to the parties individually, was unable to tell the High Court if the notification was published in the Government Gazette. The power vested in the Election Commission under Rule 59A can be exercised only by means of issuing notification in the official gazette. However, the factum of such notification having been published was brought to the notice of this Court by producing a copy of the notification. Main pillar of the foundation of the High Court's order thus collapsed. In the petitions filed before the High Court, there is a bald assertion of mala fides. The averments made in the petition do not travel beyond a mere *ipsi dixit* of the two petitioners that the Election Commission was motivated to oblige the ruling party in the State. From

such bald assertion an inference as to mala fides could not have been drawn even prima facie. On the pleadings and material made available to the High Court at the hearing held on a short notice we have no reason to doubt the statement made by the Election Commission and contained in its impugned notification that the Election Commission had carefully considered the matter and then decided that in the light of the prevailing situation in the State and in the interests of free and fair election and also for safety and security of electors and with a view to preventing intimidation and victimisation of electors in the State, a case for direction attracting applicability of Rule 59A for counting of votes in the constituencies of the State, excepting the two constituencies where electronic voting machines were employed, was made out. Thus, we find that the two petitioners before the High Court had failed to make out a case for intervention by the High Court amidst the progress of election proceedings and hence the High Court ought not to have made the interim order under appeal though the impugned order did not have the effect of retarding, protracting, delaying or stalling the counting of votes or the progress of the election proceedings. The High Court was perhaps inclined to intervene so as to take care of an alleged aberration and maintain the flow of election stream within its permissible bounds.

The learned counsel for the Election Commission submitted that in spite of the ballot papers having been mixed and counting of votes having taken place in accordance with Rule 59A it would not be difficult for the learned Designated Election Judge to order a re-count of polls and find out polling-wise break-up of the ballots if the election-petitioner may make out a case for directing a re-count by the Court. In his submission the grievance raised before the High Court was fully capable of being taken care of at the trial of the election petition to be filed after the declaration of the results and so the bar of Article 329 (b) was attracted. In this connection he invited our attention to “Chapter XIV-B Counting of Votes” of Handbook for Returning Officers (1998) issued by Election Commission of India. This is an aspect of the case on which we would not like to express any opinion as the requisite pleadings and material are not available before us.

For the foregoing reasons, the appeals are allowed. The impugned orders of the High Court are set aside. No order as to the costs.

We make it clear that anything said in this order shall not prejudice any plea raised or any issue arising for decision in any election petition which

has been filed or may be filed and the same shall be decided on its own merits un-obsessed by any observation made herein.

*Sd/-*  
..... **CJI**

*Sd/-*  
.....**J.**  
**(R.C. Lahoti)**

*Sd/-*  
.....**J.**  
**(K.G. Balakrishnan)**

New Delhi  
30th August, 2000

# **SUPREME COURT OF INDIA**

## **Writ Petition No. 606 of 1993**

### **Election Commission of India Vs. Union of India and Others**

*Representation of the People Act, 1950- Section 13 CC - Representation of the People Act, 1951- Section 28A - Disciplinary control of Election Commission over election officers - Settlement between Election Commission and Union Government regarding extent of disciplinary control - Terms of settlement, Supreme Court taking note of.*

### **SUMMARY OF THE CASE**

Section 13 CC of the Representation of the People Act, 1950 and Section 28A of the Representation of the People Act, 1951, as inserted by the Representation of the People (Amendment) Act, 1988 (1 of 1989), provide that all election officers and staff employed in connection with preparation, revision and correction of electoral rolls for, and the conduct of, all elections to Parliament and State Legislatures shall be deemed to be on deputation to the Election Commission for the period during which they are so employed and such officers and staff shall, during that period, be subject to the control, superintendence and discipline of the Election Commission. These provisions are also applicable to the police personnel designated for the time being by the State Governments for the conduct of any election.

There had been some controversy between the Election Commission and the Government of India and the State Governments as to the meaning of the word 'discipline' as used in the above mentioned two Sections. Whereas the Election Commission was of the view that it could take disciplinary action against all election officers and staff performing election duties for any dereliction of duties on their part, the Central Government took the stand, in 1993, that the Election Commission could only recommend disciplinary action against erring election officers but could not take action against them on its own. The State Governments also took the same stand, taking the cue from the decision of the Central Government. Things came to such an impasse that the Election Commission had to approach the Supreme Court for determination of this vital legal issue. The Commission, therefore, filed the present writ petition before the Supreme Court. The writ petition also sought some other reliefs, like, the Election Commission to have the power to decide how much staff is required and who is required for conducting elections, the Commission to have the power to direct Central and State Governments to deploy such Central and State police forces as

considered necessary for proper maintenance of law and order for conduct of peaceful, free and fair elections, and the Commission to have the services of the Chief Electoral Officers of the States on whole time basis.

When the writ petition came for preliminary hearing before the Supreme Court on 10th August, 1993, the Apex Court, appreciating the importance and significance of the issues involved, issued notice to the Advocates General of all States, besides the Union of India and other named respondents (see Appendix).

By its further interim orders dated 11th October, 1993 and 14th October, 1993 (see Appendices), the Supreme Court directed the Union of India that the Home Ministry officers and State Government authorities and DGs of BSF, CRPF, etc., should sit with the Election Commission and take a collective decision with regard to (i) the requirement of Observers by the Commission, and (ii) the deployment of Central police forces in the States which were then going to the polls. Thereafter, at every subsequent general election, the Home Ministry has been invariably deciding the matters relating to the deployment of Central police forces, in consultation with the Election Commission. The Government is also making available the services of as many senior government officers as are required by the Commission for appointment as Observers. The State Governments have also accepted the arrangement to make the services of the Chief Electoral Officers, selected by the Commission, available to it on whole time basis. In view of the above, all reliefs claimed in the writ petition, except the contentious issue relating to disciplinary control of the Election Commission over election officers and staff, were achieved by the Commission.

As regards the last remaining issue of disciplinary control, the Chief Election Commissioner took up the matter with successive Prime Ministers of India, in the years 1998, 1999 and 2000, for an amicable settlement of the issue by mutual dialogue and discussion. As a result of these efforts, a settlement was reached between the Election Commission and the Union of India, in the following terms :-

“That the disciplinary functions of the Election Commission of India over officers, staff and police deputed to perform election duty during election period shall extend to -

- (a) suspending any officer / official / police personnel for insubordination or dereliction of duty;
- (b) substituting any officer / official / police personnel by another such person, and returning the substituted individual to the cadre to which

be belongs, with appropriate report on his conduct;

(c) making recommendation to the competent authority, for taking disciplinary action, for any act of insubordination or dereliction of duty, while on election duty. Such recommendation shall be promptly acted upon by the disciplinary authority, and action taken will be communicated to the Election Commission, within a period of six months from the date of Election Commission's recommendations;

(d) the Government of India will advise the State Governments that they too should follow the above principles and decisions, since a large number of election officials are under their administrative control".

At a meeting held by the Attorney General for India with the Standing Counsel for all State Governments on 1st September, 2000, the State Governments of Andhra Pradesh, Maharashtra, Mizoram, Tamil Nadu and Tripura accepted the above terms in toto.

These Terms of Settlement were placed before the Supreme Court by means of a joint application filed by the Election Commission and the Union of India. The Supreme Court disposed of the writ petition and the connected matters by the present order.

**SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS**

**Election Commission of India**

*Petitioner*

**Vs.**

**Union of India and Others**

*Respondents*

(With Application for Stay)

Date : 30.08.1993

**CORAM :**

Hon'ble the Chief Justice

Hon'ble Mr. Justice E. Mohan

**ORDER**

1. This writ petition is by the Election Commission of India and is brought before this Court under certain extra-ordinary circumstances. The Commission feels constrained to seek a judicial declaration as to the extent and exclusivity of its jurisdiction, powers and authority in the

discharge of its high constitutional functions for the ensurement of the purity of the electoral process in the country which, in the ultimate analysis, constitutes the very foundation and survival of a democratic polity.

## **ISSUE RULE**

Issue notices to all the Advocates-General of the States which are not, eo-nomine, parties to the writ petition.

II. Interlocutory prayers made in this writ petition over-lap similar prayers made in the several transfer petitions and special leave petitions preferred by the Election Commission against the various interlocutory orders of the High Courts. We propose to deal with the interlocutory prayers separately in the SLPs and TLPs.

III. SLP Nos. 12317, 12469/93 and TP No. 754/93 [Arising out of Writ Petition (C) No. 2943 of 1993 in the High Court of Bombay].

It may be recalled that the Election Commission, in its General Order dated 2nd August, 1993, declared :

“Accordingly, till such time as the present deadlock, which is solely the making of the Government of India, is resolved, the Commission does not find itself in a position to carry out its constitutional obligations in the manner envisaged by the makers of the Constitution, and has accordingly decided that all and every elections under its control, including biennial and bye elections to the Council of States, bye elections to the State Legislative Councils, bye elections to the House of the People and bye elections to the State Legislative Assemblies, as have been announced or notified or are in progress, shall remain postponed until further orders.

Consequential notifications, wherever necessary, in respect of the elections shown in Annexure XIV are being issued separately”.

Those consequential directions postponing the polls pursuant to the electoral process earlier initiated till 18th December, 1993 have also come to be issued. This postponement affected the poll scheduled to be held on

the 3rd August, 1993 for the Pune Local Authorities Constituency to the Maharashtra State Legislative Assembly. One of the candidates, Shri Sharad Pawar, assailed these orders of the Election Commission in Writ Petition (C) No. 2943 of 1993 before the High Court of Bombay. The High Court passed two interlocutory orders in those proceedings - one dated 2nd August, 1993, and other dated 3rd August, 1993. The effect of these orders was that the poll as scheduled earlier for the 3rd August, 1993 be proceeded with and that the counting of votes should also follow. The poll was held. But, the operation of the latter order as to counting has since been stayed by this Court by the order dated 3rd August, 1993. The result is that while the poll was taken on 3rd of August, 1993, the counting of votes remains stayed.

The matters were argued at some length by learned counsel. Sri Harish Salve, learned senior counsel appearing for the writ petitioner in the High Court and Shri K.K. Venugopal and Shri Vaidyanathan, learned senior counsels appearing for petitioners in the matters arising from cases in the Madras High Court urged that the order of the Election Commission dated 2nd August, 1993 would stultify the democratic process and that the constitutional jurisdiction of the superior courts was to keep Governmental authorities within bounds and that the bar of jurisdiction could be urged to circumvent this constitutional duty of the superior courts.

While we reiterate the judicial perception as to the constitutional position and the plenitude of the powers of the Election Commission as a high and exclusive body charged with the duty, at once sensitive and difficult, of overseeing the free and fair elections in the country and that its perceptions of the imperatives for a free and fair elections are not to be interfered with by the courts, we must also indicate that there are no unreviewable discretions under the constitutional dispensation. The overall constitutional function to ensure that constitutional authorities function within the sphere of their respective constitutional authority, is that of the courts. Whether the blanket suspension of the electoral process purported in the order dated 2nd August, 1993 is justiciable on that principle of judicial review is eminently arguable. But one thing seems clear : The jurisdiction of courts would not extend to issuing directions to the Election Commission for the conduct of particular polls on particular dates independently of the perception by the Commission as to their feasibility and practicability consistent with what may be needed to ensure the purity of the electoral process. On this aspect we have reservations about the permissibility of the various interlocutory orders of the High Courts which may have the effect and implications of compelling the Election Commission to conduct polls on particular dates and also to follow those events up to their sequential and

logical ends. But in the light of the submissions made by Shri G. Ramaswamy, it becomes unnecessary to consider these aspects any further at this stage.

Sri G. Ramaswamy, learned senior counsel for the Election Commission, submitted that the Commission will reconsider the question of continuance of the embargo imposed by its order dated 2nd August, 1993, and, in all likelihood, might withdraw that notification. The effect of this rescission is, it is submitted, that all other notifications issued pursuant to the order of 2nd August, 1993 postponing the polls in individual elections would also come to an end. However, the Election Commission, it was submitted, would reserve to itself its constitutional function to notify such suitable dates for the polling as the circumstances and exigencies obtaining in the respective constituencies may permit. This stand of the Election Commission is proper and reassuring. The fixing of the dates of polling is a matter for the informed judgment of the Election Commission consistent with its perception of the law and order situation and of the ensurement of the requisite precautionary and remedial resource.

Writ Petition (C) No. 2943 of 1993 in the Bombay High Court need not, therefore, be proceeded with. Indeed, on an earlier occasion Shri F.S. Nariman, learned senior counsel appearing for the candidate-petitioner, had fairly stated that his client would unconditionally withdraw the writ petition if the Election Commission even indicated its inclination to reconsider its order dated 2nd August, 1993. We, accordingly, direct that further proceedings in Writ Petition (C) No. 2943 of 1993 be stayed. We also stay the operation of the interlocutory order dated 2nd August, 1993, passed by the High Court. Transfer Petition No. 754 of 1993, for withdrawal of Writ Petition No. 2943 of 1993 will be considered, if necessary, depending on the decision that the Election Commission might take pursuant to the submissions now made before us.

IV. Transfer Petition (C) No. 757 of 1993 (Arising from CWJC No. 7750/1993 in the Patna High Court)

Issue notice on the transfer petition and on the interlocutory application for stay.

There will be no interlocutory order as we are told that the High Court has reserved judgment after finally hearing the matter. It is open to the Election Commission to make a submission before the High Court as to the need or otherwise of a pronouncement of judgment in this case, in view of the stand made manifest before us.

V. Special leave Petition (C) Nos. 12655-57 of 1993 and Transfer

**Petition No. 756 of 1993 (Arising out of W.P. No. 14690/1993 to 14692/1993 - High Court of Judicature at Madras)**

These special leave petitions arise out of and are directed against the interlocutory orders made in three writ petition nos. 14690-92 of 1993, on the file of the High Court of Judicature at Madras moved by the State of Tamil Nadu. They pertain to the postponement of the polling in the “Palani Parliamentary Constituency” and the “Ranipet Assembly Constituency” respectively.

One of the controversies pertains to the authority of the Election Commission to direct deployment of security forces to ensure peaceful, free and fair polling.

Issue notices on the transfer petition and on the SLPs to the Respondents.

There will be interim stay of the operation of the interlocutory orders dated 7th August, 1993, in the three writ petitions made on 7th August, 1993. Further proceedings in the said writ petitions before the High Court shall also remain stayed until further orders of this Court.

**VI. Special Leave Petition (C) No. 12481/93 and Transfer Petition (C) No. 755/1993 arising out of the order dated 3rd August, 1993 in CR No. Nil/93 (Rajesh Khaitan Vs. the Election Commission of India) and SLP (C) No. 12721 of 1993 and the unnumbered TP of Election Commission of India against the order dated 05.08.1993 and 06.08.1993 of the Calcutta High Court in Matter No. Nil/93 (State of West Bengal Vs. the Election Commission of India).**

These petitions are moved by the Election Commission against the order dated 3rd August, 1993, made by the High Court of Calcutta in CR No. Nil of 1993 (Rajesh Khaitan Vs. The Election Commission of India) and the orders dated 5th August, 1993 and 6th August, 1993 made by the High Court of Calcutta in Matter No. Nil/93 (State of West Bengal Vs. The Election Commission of India).

Issue notice. There will be an interim stay of operation of the orders dated 3rd August, 1993, 5th August, 1993 and the 6th August, 1993 made by the High Court in the aforesaid two writ petitions. The further proceedings of the writ petitions in the High Court shall remain stayed until further orders.

**VII. Transfer Petition No. (unnumbered) ../93 (Arising out of the order dated 7th August, 1993 in SCA No. 7881 of 1993 in the High Court of Gujarat.**

By this transfer petition, the Election Commission seeks to have SCA No. 7881 of 1993 on the file of the High Court of Gujarat - (Madhu Bhai Vs. T.N. Seshan) withdrawn to this Court.

We have perused the orders made by the High Court of Gujarat in the writ petition. The High Court, if we may say so with respect, has acted with great restraint and circumspection. It has requested the Election Commission, in view of its high constitutional position, to resolve the matter in a satisfactory manner. There is an equally reassuring response from the Election Commission that it would endeavour to resolve the matter before the 13th August, 1993 and make an appropriate submission before the High Court.

In view of the way the matter is proceeded with by the High Court, there is no justification for interference with the proceedings before the High Court. Parties may make further submissions in this behalf before the High Court. We dismiss the Transfer Petition.

VIII. Parties are at liberty to mention.

**Sd/-**  
**(Virender K. Sharma)**  
Court Master

**Sd/-**  
**(S.R. Thite)**  
Court Master

**SUPREME COURT OF INDIA**

**RECORD OF PROCEEDINGS**

**Writ Petition (C) No. 606 of 1993**

**Election Commission of India**

*Petitioner*

**Vs.**

**Union of India and Others, etc.**

*Respondent*

(with App. for stay and Office Report and Directions)

With SLP (C) Nos. 12481/93, 12721/93, 12655-57/93, TP (C) No. 755-57/93, 772, 774-75/93.

Date: 11.10.1993

These petitions were called on for hearing today.

**CORAM :**

Hon'ble the Chief Justice  
Hon'ble Mr. Justice S.C. Agrawal  
Hon'ble Dr. Justice A.S. Anand

- For Petitioner(s)** : Mr. R.K. Garg, Sr. Adv.  
Mr. S. Muralidhar, Adv.
- For Union of India** : Mr. M.K. Banerjee, AC, Mr. A.S. Rao,  
Ms. A. Subhashini, Adv.
- For West Bengal** : Mr. Naranarayan Gooptu, Adv. Gen.  
Mr. T.C. Dutt, Mr. H.K. Puri, Adv.
- For Assam** : Mr. S.N. Bhuyan, Adv. Gen.  
Mr. S.K. Nandy, Adv.
- For Tamil Nadu** : Mr. R.K. Jain, Sr. Adv.  
Mr. P.R. Seetharaman, Adv.
- For Orissa** : Mr. S.C. Roy, Adv. Gen.  
Mr. R.K. Mehta

**For other Res. States** : Ms. Lira Goswami, Mr. W.A. Firoz,  
Ms. S. Janani, Mr. A.S. Bhasme,  
Mr. Naresh K. Sharma, Mr. S.K. Mehta,  
Mr. P.H. Parekh, Mr. G. Prakash,  
Mr. T.V.S.N. Chari, Mr. G.K. Bansal,  
Mr. D.A. Dave, Mr. Ch. Badri Nath Babu  
Mr. Anip Sachthey, Mr. M. Veerappa,  
Mr. Deepak Dhingra, for Khaitan & Co.  
Advs.

## **ORDER**

Supplementary affidavit of the Election Commission presented in Court is taken on record. This shall be read as part of I.A. No. 2. We have heard Mr. R.K. Garg, learned Senior counsel for the Election Commission and the learned Attorney General for the Union of India. Some of the learned Advocates General of the High Courts also expressed their views.

2. This order disposes of that part of I.A. No. 2 which pertains to the controversy between the Election Commission on the one hand and Governments of States and the Union of India on the other in regard to the prescription of the number of 'Observers' of the level of Joint Secretary / Director to be deployed by the Election Commission.

3. There seems to be a wide divergence in the assessments of the requirements in this behalf between the Election Commission which estimates the number of Observers at 400, and of the estimates of the Union of India which places the number at about 160. In suggesting the figure of 160, the Union of India, we are told, has also put into the scales, the minimum requirement of the regular day-to-day administrative needs and the number of officers that could be spared to the Election Commission without prejudice to and consistent with the needs of the day-to-day administrative requirements.

4. The controversy placed before the Court for its directions is not susceptible of an easy solution as it essentially lacks an adjudicative disposition. There are no judicially manageable standards to assist the Court in adjudicating the issue. This is essentially an area of professional expertise in security management. Generally speaking, "the courts are hesitant to review operational decisions of the police or tell them how and when to exercise their powers in specific situations as the court is not in a position to determine what action particular situations will require. Nor will the courts review the disposition of forces and the allocation of resources to particular crimes or areas". (See Judicial Remedies in Public Law : Clive Lewis). This

is not so far want of jurisdiction but for absence or inadequacy of judicially manageable standards.

5. Having regard to the urgency of the matter and our concern that any impasse that may develop in an area of utmost public concern in the ensuing elections is not desirable, we think, we should issue these interim directions :

(a) The Election Commission will, in respect of each State, have a consultative meeting of its experts / advisors or nominated officers with the Chief Secretary, the Home Secretary, the Director General of Police and Inspector General of Police (Security and Intelligence) of the concerned State; the Director General of Intelligence Bureau, Government of India and the Home Secretary, Government of India or his nominee, to discuss and evolve standards on the basis of which an assessment of the number of Observers for each State could be determined.

(b) This exercise will have to be done separately with regard to each of the States going to polls.

(c) If the Election Commission accepts the proposals evolved at the consultative meeting, the Commission may adopt the same. But if it does not accept, the assessment evaluated at the meeting shall not be taken as binding on the Election Commission but shall form the basis for the Election Commission to make a reasonable assessment of the requisite number of observers to be followed up by a requisition to the Executive to make available the number of Observers to be deployed in the electoral process and in case that requisition is not accepted, to seek directions from this Court.

(d) This exercise in all the States going to the polls may be completed within a period of ten days from today.

(e) The Election Commission will immediately inform the Chief Secretary / Home Secretary of each of the States and the Home Secretary, Government of India and Director General (Intelligence Bureau) as to the date and time of meeting with regard to the concerned State.

(f) This exercise would give the Court some assistance in evolving some standards, if it becomes necessary to evolve these standards by a judicial order in view of para (c) above.

List on Thursday afternoon.

**Sd/-**  
**(Dinesh Kumar)**  
Court Master

**Sd/-**  
**(S.R. Thite)**  
Court Master

*Note: Copy to be issued on 12.10.1993.*

**SUPREME COURT OF INDIA**

**RECORD OF PROCEEDINGS**

**Writ Petition (Civil) No.(s) 606 of 1993  
With SLP(C) Nos. 12481/1993, 12721/93,  
TP(C) Nos. 772, 774-75/1993**

**Election Commission of India**

***Petitioner***

**Vs.**

**Union of India and Others**

***Respondents***

Date: 13.8.1993

These petition(s) was / were called on for hearing today.

**CORAM :**

**Hon'ble the Chief Justice  
Hon'ble Mr. Justice S. Mohan  
Hon'ble Mr. Justice  
Hon'ble Mr. Justice**

**For the Petitioner(s)** : Mr. G. Ramaswamy, Sr. Adv.  
Mr. S. Muralidhar, Adv.

**For the RR** : Mr. D.P. Gupta, S.G. with/  
Mr. C.S. Vaidyanathan, Sr. Adv.  
Mr. A. Subhashini, Adv. / with  
Mr. K.V. Mohan, Adv.

Mr. Kapil Sibal, Sr. Adv., Mr. H.N. Salve,  
Sr. Adv., Mr. S. Fazl, Mr. P.H. Parakh,  
Advs.

Mr. K.K. Venugopal, Sr.  
Adv. with M/s. O.P. Khaitan,  
Gautam Khaitan, Deepak  
Dhingra, Advs.

Mr. K.K. Venugopal, Sr. Adv.  
Mr. K. Subramanian, Adv. Genl.  
Mr. P.R. Seetharaman, Adv.  
Mr. K.V. Visvanathan, Adv.

## **ORDER**

I. This writ petition is by the Election Commission of India and is brought before this Court under certain extra-ordinary circumstances. The Commission feels constrained to seek a judicial declaration as to the extent and exclusivity of its jurisdiction, powers and authority in the discharge of its high constitutional functions for the ensurement of the purity of the electoral process in the country which, in the ultimate analyses, constitutes the very foundation and survival of a democratic polity.

Issue Rule.

Issue notices to all the Advocates-General of the States which are not, eo-nomine, parties to the writ petition.

II. Interlocutory prayers made in this writ petition over-lap similar prayers made in the several transfer petitions and special leave petitions preferred by the Election Commission against the various interlocutory orders of the High Courts. We propose to deal with the interlocutory prayers separately in the SLPs and TPs.

III. SLP Nos. 12317, 12469/93 and TP No. 754/93 [Arising out of Writ Petition (C) No. 2943 of 1993 in the High Court of Bombay]

It may be recalled that the Election Commission, in its General Order dated 2nd August, 1993, declared :

“Accordingly, till such time as the present deadlock, which is solely the making of the Government of India, is resolved, the Commission does not find itself in a position to carry out its constitutional obligations in the manner envisaged by the makers of the Constitution, and has accordingly decided that all and every elections under its control, including biennial and bye elections to the Council of States, bye elections to the State Legislative Councils, bye elections to the House of the People and bye elections to the State Legislative Assemblies, as have been announced or notified or are in progress, shall remain postponed until further orders.

Consequential notifications, wherever necessary, in respect of the elections shown in Annexure XIV are being issued separately.”

Those consequential directions postponing the polls pursuant to the electoral process earlier initiated till 18th December, 1993 have also come to be issued. This postponement affected the poll scheduled to be held on the 3rd August, 1993 for the Pune Local Authorities Constituency to the Maharashtra State Legislative Assembly. One of the candidates, Mr. Sharad Pawar, assailed these orders of the Election Commission in Writ Petition (C) No. 2943 of 1993 before the High Court of Bombay. The High Court passed two interlocutory orders in those proceedings - one dated 2nd August, 1993, and the other dated 3rd August, 1993. The effect of these orders was that the poll as scheduled earlier for the 3rd August, 1993 be proceeded with and that the counting of votes should also follow. The poll was held. But, the operation of the latter order as to counting has since been stayed by this Court by the order dated 3rd August, 1993. The result is that while the poll was taken on 3rd of August, 1993, the counting of votes remains stayed.

The matters were argued at some length by learned counsel. Mr. Harish Salve, learned senior counsel appearing for the writ petitioner in the High Court and Mr. K.K. Venugopal and Mr. Vaidyanathan, learned senior counsels appearing for petitioners in the matters arising from cases in the Madras High Court urged that the order of the Election Commission dated 2nd August, 1993 would stultify the democratic process and that the constitutional jurisdiction of the superior courts was to keep Governmental authorities within bounds and that the bar of jurisdiction could be urged to circumvent this constitutional duty of the superior courts.

While we reiterate the judicial perception as to the constitutional position and the plenitude of the powers of the Election Commission as a high and exclusive body charged with the duty, at once sensitive and difficult, of overseeing the free and fair elections in the country and that its perceptions of the imperatives for a free and fair elections are not to be interfered with by the courts, we must also indicate that there are no unreviewable discretions under the constitutional dispensation. The overall constitutional function to ensure that constitutional authorities function within the sphere of their respective constitutional authority, is that of the courts. Whether the blanket suspension of the electoral process purported in the order dated 2nd August, 1993 is justiciable on that principle of judicial review is eminently arguable. But one thing seems clear : The jurisdiction of courts would not extend to issuing directions to the Election Commission for the conduct of particular polls on particular dates independently of the perception by the Commission as to their feasibility and practicability consistent with what may be needed to ensure the purity of the electoral process. On this aspect, we have reservations about the permissibility of the various

interlocutory orders of the High Courts which may have the effect and implications of compelling the Election Commission to conduct polls on particular dates and also to follow those events up to their sequential and logical ends. But in the light of the submissions made by Mr. G. Ramaswamy, it becomes unnecessary to consider these aspects any further at this stage.

Mr. G. Ramaswamy, learned senior counsel for the Election Commission, submitted that the Commission will reconsider the question of continuance of the embargo imposed by its order dated 2nd August, 1993, and, in all likelihood, might withdraw that notification. The effect of this rescission is, it is submitted, that all other notifications issued pursuant to the order of 2nd August, 1993 postponing the polls in individual elections would also come to an end. However, the Election Commission, it was submitted, would reserve to itself its constitutional function to notify such suitable dates for the polling as the circumstances and exigencies obtaining in the respective constituencies may permit. This stand of the Election Commission is proper and reassuring. The fixing of the dates of polling is a matter for the informed judgment of the Election Commission consistent with its perception of the law and order situation and of the ensurement of the requisite precautionary and remedial measures.

Writ Petition (C) No. 2943 of 1993 in the Bombay High Court need not, therefore, be proceeded with. Indeed, on an earlier occasion, Mr. F.S. Nariman, learned senior counsel appearing for the candidate-petitioner had fairly stated that his client would unconditionally withdraw the writ petition if the Election Commission even indicated its inclination to reconsider its order dated 2nd August, 1993. We, accordingly, direct that further proceedings in Writ Petition (C) No. 2943 of 1993 be stayed. We also stay the operation of the interlocutory order dated 2nd August, 1993, passed by the High Court. Transfer Petition No. 754 of 1993, for withdrawal of Writ Petition No. 2943 of 1993, will be considered, if necessary, depending on the decision that the Election Commission might take pursuant to the submissions now made before us.

IV. Transfer Petition (C) No. 757 of 1993 (Arising from CWJC No. 7750 / 1993 in the Patna High Court)

Issue notice on the transfer petition and on the interlocutory application for stay.

There will be no interlocutory order as we are told that the High Court has reserved judgment after finally hearing the matter. It is open to the Election Commission to make a submission before the High Court as to the need or otherwise of a pronouncement of judgment in this case, in view of the stand made manifest before us.

V. Special leave petition (C) nos. 12655-57 of 1993 and Transfer Petition No. 756 of 1993 (Arising out of W.P. No. 14690/1993 to 14692/1993 - High Court of Judicature at Madras)

These special leave petitions arise out of and are directed against the interlocutory orders made in three writ petitions nos. 14690/92 of 1993, on the file of the High Court of Judicature at Madras moved by the State of Tamil Nadu. They pertain to the postponement of the polling in the “Palani Parliamentary Constituency” and the “Ranipet Assembly Constituency” respectively.

One of the controversies pertains to the authority of the Election Commission to direct deployment of security forces to ensure peaceful, free and fair polling.

Issue notices on the transfer petition and on the SLPs to the respondents.

There will be interim stay of the operation of the interlocutory orders dated 7th August, 1993, in the three writ petitions made on 7th August, 1993. Further proceedings in the said writ petitions before the High Court shall also remain stayed until further orders of this Court.

VI. Special Leave Petition (C) Nos. 12481/93 and Transfer Petition (C) No. 755/1993 arising out of the order dated 3rd August, 1993 in CR No. Nil/93 (Rajesh Khaitan Vs. The Election Commission of India) and SLP (C) No. 12721 of 1993 and the unnumbered TP of the Election Commission of India against the order dated 5.8.93 and 6.8.93 of the Calcutta High Court in Matter No. Nil/93 (State of West Bengal Vs. The Election Commission of India).

These petitions are moved by the Election Commission against the order dated 3rd August, 1993, made by the High Court of Calcutta in CR No. Nil of 1993 (Rajesh Khaitan Vs. The Election Commission of India) and the order dated 5th August, 1993 and 6th August, 1993 made by the High Court of Calcutta in Matter No. Nil/93 (State of West Bengal Vs. The Election Commission of India).

Issue Notice. There will be an interim stay of operation of the orders dated 3rd August, 1993, 5th August, 1993 and the 6th August, 1993 made by the High Court in the aforesaid two writ petitions. The further proceedings of the writ petitions in the High Court shall remain stayed until further orders.

VII. Transfer Petition No. (unnumbered)../93 (Arising out of the order dated 7th August, 1993 in SCA No. 7881 of 1993 in the High Court of Gujarat)

By this transfer petition the Election Commission seeks to have SCA No. 7881 of 1993 on the file of the High Court of Gujarat - (Madhu Bhai Vs. T.N. Seshan) withdrawn to this court.

We have perused the orders made by the High Court of Gujarat in the writ petition. The High Court, if we may say so with respect, has acted with great restraint and circumspection. It has requested the Election Commission, in view of its high constitutional position, to resolve the matter in a satisfactory manner. There is an equally reassuring response from the Election Commission that it would endeavour to resolve the matter before the 13th August, 1993 and make an appropriate submission before the High Court.

In view of the way the matter is proceeded with by the High Court, there is no justification for interference with the proceedings before the High Court. Parties may make further submissions in this behalf before the High Court. We dismiss the Transfer Petition.

VIII. Parties are at liberty to mention.

**Sd/-**  
**(Virender K. Sharma)**  
Court Master

**Sd/-**  
**(S.R. Thite)**  
Court Master

**SUPREME COURT OF INDIA**

**RECORD OF PROCEEDINGS**

**Writ Petition (Civil/C) No. (s) 606 of 1993**

**Election Commission of India**

*Petitioner*

**Vs.**

**Union of India and Others**

*Respondent(s)*

(With Apps. for Directions and Stay and Office Report)

With SLP (C) Nos. 12481, 12721, 12655-57 of 1993

TP (C) No. 755-57 of 1993, 772, 774-75 of 1993

Date : 14.10.1993

**CORAM :**

Hon'ble the Chief Justice

Hon'ble Mr. Justice S.C. Agrawal

Hon'ble Dr. Justice A.S. Anand

**For Petitioner(s)**

: Mr. G. Ramaswamy, Sr. Adv.  
Mr. R.K. Garg, Sr. Adv.  
Mr. S. Muralidhar, Adv.

**For Union of India**

: Mr. M.K. Banerjee, AG  
Mr. A.S. Rao  
Mr. T.V. Ratnam  
Mr. A. Subhashini, Advs.

**For Respondents**

: Mr. R.K. Jain, Sr. Adv.  
Mr. P.R. Seetharaman, Adv.  
Mr. Ashwani Kumar, Sr. Adv.  
Mr. G.K. Bansal, Adv.  
Mr. H.K. Puri, Mr. A.S. Bhasme  
Mr. S.K. Nandy, Mr. Guntur Prabhakar  
Mr. S.K. Mehta, Mr. Dhruv Mehta  
Mr. Aman Vachher, Mr. G. Prakash  
Mr. Suman J. Khaitan, Ms. Kirti Mishra  
Mr. M. Veerappa, Mr. K.H. Nobin Singh

Mr. Bhavani S. Gadnis, Mr. D.A. Dave  
Mr. Chava Badri Nath Babu  
Mr. Anip Sachtey, Advs.  
Mr. R. Singhvi, Mr. S.K. Agnihorti, Advs.  
Mr. T.V.S.N. Chari, Ms. Promila,  
Mr. N. Nayyar, Advs.

## **ORDER**

Learned Attorney General sought to point out that the consultative process indicated in para 5 (a) of the order dated 11th October, 1993 should involve the Election Commission also. This, we think, is the very purport of the exercise. It is also understood by the Election Commission itself as affirmed by Sri G. Ramaswamy, learned counsel appearing for the Election Commission. The Election Commission will participate in these consultative meetings.

It was also suggested that the same consultative machinery, with inclusion of some additional members, should also serve as a consultative committee for the assessment and deployment of para-military and security forces for election purposes. For this purpose and to deal with this aspect the committee may include the Directors General of BSF, CRPF, ITBP and CISF also.

List on 1st November, 1993 at 2.00 p.m.

*Sd/-*  
**(Dinesh Kumar)**  
Court Master

*Sd/-*  
**(S.R. Thite)**  
Court Master

**SUPREME COURT OF INDIA**  
**CIVIL ORIGINAL / APPELLATE JURISDICTION**

**Writ Petition (C) No. 606 of 1993**

**Election Commission of India**

*Petitioner*

**Vs.**

**Union of India and Others**

*Respondent(s)*

With SLP (C) Nos. 12481 / 1993, 12721 / 1993,  
TP (C) No. 772, 774-75/1993 and TC (C) No. 39/1996

**ORDER**

*I.A. No. 5 of 2000 in WP (C) No. 606 of 1993 :*

As between the Election Commission of India and the Union of India (the petitioner and the first respondent to the writ petition), it is agreed that the writ petition be disposed of in terms of the Terms of Settlement recorded in paragraph (3) of the interim application.

Learned counsel for the Election Commission and the Union of India state that the States of Tripura, Maharashtra, Tamil Nadu, Andhra Pradesh and Mizoram have accepted these terms in toto. Insofar as other States are concerned, there is some reservation either in respect of one or the other term or altogether.

The writ petition is disposed of in terms of aforesaid Terms of Settlement. As against States other than Respondents 4, 6 and 7, the writ petition is allowed to be withdrawn and the issue is left open to be agitated in the appropriate proceedings, if raised.

*SLP (C) No. 12481 of 1993 :*

Learned counsel for the Election Commission of India (petitioner) states that the special leave petition has become infructuous. It is disposed of as such.

*SLP (C) No. 12721 of 1993 :*

Learned counsel states that the issue involved in the original writ petition has been settled. On the application of learned counsel for the

petitioner, the special leave petition is dismissed as withdrawn.

*TP (C) No. 772 of 1993 :*

The transfer petition relating to the aforementioned writ petition, therefore, does not survive and is dismissed as withdrawn.

*TP (C) Nos. 774-75 of 1993 :*

Learned counsel for the Election Commission of India (petitioner) states that these transfer petitions have become infructuous. They are disposed of as such.

*TC No. 39 of 1996 :*

The petitioner in-person is not present despite notice. In any event, the issue is now settled by the Terms of Settlement between the Election Commission of India and the Union of India in Writ Petition (C) No. 606 of 1993. The transferred case is, therefore, dismissed.

*Sd/-*  
.....**J.**  
**(S.P. Bharucha)**

*Sd/-*  
.....**J.**  
**(Y.K. Sabharwal)**

*Sd/-*  
.....**J.**  
**(Ruma Pal)**

New Delhi  
21st September, 2000

**SUPREME COURT OF INDIA**  
**CIVIL ORIGINAL JURISDICTION**

**I.A. NO. \_\_\_\_\_/2000**

**IN**

**Writ Petition (Civil) No. 606 of 1993**

**Election Commission of India**

***Petitioner***

**Vs.**

**Union of India and Others**

***Respondent(s)***

*Application for Placing on Record the Terms of Settlement arrived at between the Petitioner and Respondent No. 1 and for Directions*

To

The Hon'ble The Chief Justice of India and his companion Justice of the Supreme Court of India

The Joint Application of the petitioner and respondent No. 1 abovenamed.

Most respectfully sheweth

1. By this joint application, the petitioner and respondent No. 1 pray that the terms of settlement in the above matter arrived at between the Petitioner and the Respondent No. 1 be taken on record and further pray for a direction that the writ petition be disposed of in terms thereof.

2. Consequent to differences between the Petitioner and the Respondent No. 1, Union of India as well as other Respondent States in regard to the disciplinary powers of the Petitioner in relation to the conduct of government officials placed on deputation with it for election duty and under its discipline and control during elections, the petitioner filed the above writ petition seeking a declaration from this Hon'ble Court as to its aforementioned powers.

3. This Hon'ble Court had, at the hearing of the above writ petition on 05.11.98, expressed the hope that a positive effort will be made by the authorities concerned to reach an acceptable conclusion. Accordingly,

with a view to resolving the abovementioned differences, the petitioner has in the recent past held negotiations with the respondent No. 1 Union of India. The Cabinet Secretary also discussed the issue with nine respondent states in the above writ petition. Consequent thereto, the following agreed terms of settlement have been arrived at between the petitioner and respondent no. 1 Union of India :

“That the disciplinary functions of the Election Commission of India over officers, staff and police deputed to perform election duties during election period shall extend to -

(a) Suspending any officer / official / police personnel for insubordination or dereliction of duty;

(b) Substituting any officer / official / police personnel by another such person, and returning the substituted individual to the cadre to which he belongs, with appropriate report on his conduct;

(c) Making recommendation to the competent authority, for taking disciplinary action, for any act of insubordination or dereliction of duty, while on election duty. Such recommendation shall be promptly acted upon by the disciplinary authority, and action taken will be communicated to the Election Commission, within a period of six months from the date of the Election Commission's recommendations;

(d) The Government of India will advise the State Governments that they too should follow the above principles and decisions, since a large number of election officials are under their administrative control”.

4. The above terms of settlement are acceptable to both the petitioner and respondent no. 1 and both are agreed that the above writ petition may be disposed of by this Hon'ble Court in terms thereof. Hence both parties are making this joint application which they submit, it would be in the interests of justice for this Hon'ble Court to allow.

**PRAYER**

In the circumstances, the petitioner and respondent no. 1 jointly pray that this Hon'ble Court may be pleased to :

(a) take on record the terms of settlement in the above matter arrived at between the petitioner and respondent no. 1 as mentioned in para (3) above;

(b) dispose of WP (C) No. 606/93 in terms of the settlement as mentioned in para (3) above; and

(c) pass such other orders as this Hon'ble Court may deem fit in the circumstances of the case.

And for this act of kindness, the applicants shall as in duty bound be ever grateful.

FILED BY :

*Sd/-*  
**(B.K. PRASAD)**  
Advocate for the Respondent No. 1

AND

*Sd/-*  
**(S. MURALIDHAR)**  
Advocate for the Petitioner

New Delhi  
26th July, 2000

**SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**I.A. NO. \_\_\_\_\_/2000**

**IN**

**Writ Petition (Civil) No. 606 of 1993**

**Election Commission of India**

***Petitioner***

**Vs.**

**Union of India and Others**

***Respondent(s)***

**AFFIDAVIT**

I, K.J. Rao, S/o Late Sri K. Byragi, Secretary, Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi, do hereby solemnly affirm and state on oath as under :

1. I am the Secretary of the Election Commission of India and am conversant with the facts and circumstances and records of the case.
2. I have read and understood the accompanying application and make this affidavit in support thereof.
3. I say that the contents of the accompanying application are true to my knowledge based on information received as well as on the records of the case.

***Sd/-***  
**DEPONENT**

**VERIFICATION**

I, the deponent abovenamed, do hereby verify and declare that the contents of this affidavit are true and correct to the best of my knowledge; no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi this the 26th day of July, 2000.

***Sd/-***  
**DEPONENT**



# **ELECTION COMMISSION OF INDIA**

**CORAM:**

**Hon'ble**  
**Sh. G.V.G. Krishnamurty**  
Election  
Commissioner

**Hon'ble**  
**Dr. M.S. Gill**  
Chief Election  
Commissioner

**Hon'ble**  
**Sh. J.M. Lyngdoh**  
Election  
Commissioner

**Reference Case Nos. 1(G), 2(G), 3(G), 4(G), 5(G) and 6(G) of 1993  
and 1(G) of 1994**

(References from the Governor of Tamil Nadu under Article 192(2)  
of the Constitution of India)

**In the matter of :**

**Reference Case No.1(G) of 1993**

Dr. Subramanian Swamy,  
President, Janata Party,  
New Delhi.

**Petitioner**

*Versus*

Ms. J. Jayalalitha,  
Former Member of the  
Tamil Nadu Legislative Assembly  
and former Chief Minister of  
Tamil Nadu.

**Respondent**

**Reference Case No.2(G) of 1993**

Smt. R. Kasturi Radhakrishnan  
Chairperson, Madras Citizens  
Progressive Council, No.8,  
5th Street, Elephant Tank,  
Royapettah, Madras.

**Petitioner**

*Versus*

Ms. J. Jayalalitha,  
Former Member of the  
Tamil Nadu Legislative Assembly  
and former Chief Minister of Tamil Nadu.

**Respondent**

**Reference Case No.3(G) of 1993**

**Shri P. Rathanavel, Advocate,  
169, Law Chambers,  
High Court Buildings,  
Madras-600 104.**

**Petitioner**

*Versus*

**Ms. J. Jayalalitha,  
Former Member of the  
Tamil Nadu Legislative Assembly  
and former Chief Minister of  
Tamil Nadu.**

**Respondent**

**Reference Case No.4(G) of 1993**

**Shri Thanga Maruthamuthu,  
Advocate,  
President of Grama  
Munnetra Kazhagam, No.9,  
Kumaran Street, Ayyappa Nagar,  
Tiruchirapalli-21.**

**Petitioner**

*Versus*

**Ms. J. Jayalalitha,  
Former Member of the  
Tamil Nadu Legislative Assembly  
and former Chief Minister of  
Tamil Nadu.**

**Respondent**

**Reference Case No.5(G) of 1993**

**Shri V.V. Swaminathan,  
Ex-M.P.,  
F-33, Ramakrishna Nagar,  
Madras-600 028.**

**Petitioner**

*Versus*

**Ms. J. Jayalalitha,  
Former Member of the  
Tamil Nadu Legislative Assembly  
and former Chief Minister of  
Tamil Nadu.**

**Respondent**

Reference Case No.6(G) of 1993

Dr. Subramanian Swamy, Petitioner  
President,  
Janata Party,  
New Delhi.

Versus

Ms. J. Jayalalitha, Respondent  
Former Member of the  
Tamil Nadu Legislative Assembly  
and former Chief Minister of  
Tamil Nadu.

Reference Case No.1(G) of 1994

Shri S. Thirunavukkarasu, Petitioner  
General Secretary,  
M.G.R. Anna D.M. Kazhagam,  
29, Padbanaba Street (North),  
Madras-17.

Versus

Ms. J. Jayalalitha, Respondent  
Former Member of the  
Tamil Nadu Legislative Assembly  
and former Chief Minister of  
Tamil Nadu.

*Constitution of India - Article 192 - Reference from Governor seeking opinion of Election Commission on question of disqualification of sitting member of State Assembly - apprehension of bias alleged against the then Chief Election Commissioner by respondent - Supreme Court directing the then Chief Election Commissioner to recuse himself from adjudicating the matter, and to give his opinion only if there was difference of opinion between the two Election Commissioners, under doctrine of necessity - Dissolution of Legislative Assembly, meanwhile - reference becomes infructuous.*

**SUMMARY OF THE CASE**

The Election Commission received a reference from the Governor of Tamil Nadu on 29.3.1993 for its opinion under Article 192(2) of the Constitution on the question of alleged disqualification of Ms. J. Jayalalitha, the then Chief Minister of Tamil Nadu. The above question arose on a

petition filed before the Governor by Dr. Subramaniam Swamy, the President of the Janata Party, in terms of Article 192 (1). On 31.3.1993, a single judge of the Madras High Court issued an interim order directing that Sh. T.N. Seshan, the then Chief Election Commissioner, shall not proceed with the inquiry in the reference case as Ms. J. Jayalalitha apprehended bias against her on the part of the then Chief Election Commissioner. The Election Commission raised an objection that under the doctrine of necessity the Chief Election Commissioner had to dispose of the matter as the Election Commission was then composed of only the Chief Election Commissioner. On 2.7.1993, the single judge of the Madras High Court confirmed his interim order and directed the then Chief Election Commissioner to recuse himself from adjudicating the matter. However, the single judge also ruled that Ms. J. Jayalalitha had not become subject to disqualification on the grounds alleged in the petition of Dr. Subramaniam Swamy.

The matter was then taken by Dr. Subramaniam Swamy in appeal to a Division Bench of the High Court. The Division Bench decided the matter on 15.11.93. By that time, the Election Commission had become a multi-member body with the appointment of two Election Commissioners on 1.10.93. The Division Bench of the High Court also directed that the then Chief Election Commissioner should recuse himself from adjudicating the matter and it should be left to be disposed of by one or both of the Election Commissioners. The Division Bench, however, struck down that part of the order of the single judge whereby he had held that the petitioner Ms. J. Jayalalitha had not incurred any disqualification. The Division Bench held that such decision could be made only by the Election Commission and not the High Court, in view of Article 192 of the Constitution.

The matter was then taken to the Supreme Court by way of an appeal by the Election Commission. On 23.4.96, the Supreme Court also upheld the decision of the Division Bench of the High Court and directed the then Chief Election Commissioner to recuse himself from adjudicating the matter. The Supreme Court directed that the matter may be heard and disposed of by the two Election Commissioners and in the event of difference of opinion between them, the Chief Election Commissioner may then give his opinion as the doctrine of necessity would then apply in that event. Meanwhile, six more references had been received by the Election Commission from the Governor of Tamil Nadu raising the question of alleged disqualification of Ms. J. Jayalalitha on several grounds. All these references had also become sub-judice, as Ms. Jayalalitha had approached the Madras High Court in those cases as well. After the resolution of the controversy by the Supreme Court on the above question of the then Chief Election Commissioner's

participation in the proceedings, the two Election Commissioners heard the matter on 31.7.1996. In the mean time, the Tamil Nadu Legislative Assembly of which Ms. J.Jayalalitha was a member, had been dissolved on 9th May, 1996 and a new Legislative Assembly constituted following the general election in which Ms.J.Jayalalitha was defeated and had ceased to be a member of the State Assembly. A preliminary point was raised before the Commission that references from the Governor had become infructuous with the dissolution of the Assembly of which Ms. J.Jayalalitha was a member. The hearing was adjourned, as some of the reference cases were still the subject matter of certain judicial proceedings before the Madras High Court. After the disposal of all those Court cases in terms of the Supreme Court's direction, when the matter was finally heard by the Commission on 21.7.97, the earlier Chief Election Commissioner had retired and, therefore, the matter was heard by the full Commission consisting of the succeeding Chief Election Commissioner and the two Election Commissioners. The full Commission was unanimously of the opinion that all the aforesaid references had become infructuous in view of the dissolution in May, 1996 of the Tamil Nadu Legislative Assembly of which Ms.Jayalalitha was a member, and tendered its opinion accordingly to the Governor of Tamil Nadu on 14.8.97 under Article 192(2) of the Constitution.

## **OPINION**

All these references were received in the years 1993 and 1994 from the Governor of Tamil Nadu under Article 192(2) of the Constitution of India, seeking the opinion of the Election Commission on the question whether Ms. J. Jayalalitha, who then was a sitting member of the then existing Legislative Assembly of Tamil Nadu and also Chief Minister of Tamil Nadu, had become subject to disqualification under Article 191(1) (e) of the Constitution read with Section 9A of the Representation of the People Act, 1951.

These references have a long chequered history, and enquiry into these cases got bogged down from day one, for reasons to which we shall revert shortly. First, however, a brief mention may be made of the relevant particulars of these references, and of the grounds on which the question of alleged disqualification of Ms. Jayalalitha is raised therein, as follows:

References from the Governor of Tamil Nadu under Article 192(2) of the Constitution of India

<b>Reference Case No.</b>	<b>Date of Reference by the Governor</b>	<b>Name of Petitioner</b>	<b>Date of Petition/ Memorandum</b>	<b>Ground of alleged disqualification</b>
1(G) of 1993	26.3.93	Dr. Subramanian Swami, President Janata Party, New Delhi	2.10.1992	Contract by Jaya Publications, a partnership firm in which Ms. J. Jayalalitha is a partner, with the Tamil Nadu Text Book Society for supply of Text Books for schools.
2(G) of 1993	15.7.1993	Madras Citizens Progressive Council represented by Chairperson Smt. Kasturi Radhakrishnan	18th, 19th 21st & 22nd July, 1992	Purchase of land by Jaya Publications at Guindy from the Government at a very low price by misusing the office of Chief Minister.
3(G) of 1993	15.7.1993	Shri P. Rathanavel, Advocate, Madras	15.9.1992	(i) Purchase of land by Jaya Publications from Tamil Nadu Small Industries Corporation at a very low price by misusing the office of Chief Minister.  (ii) Contract by Jaya Publications with Tamil Nadu Text Book Society to print Text Books for schools in Tamil Nadu.
4(G) of 1993	15.7.1993	Sh. Thanga Maruthamuthu Advocate, Tiruchirapalli	4.1.1992 and 31.3.1993	(i) Purchase of land by Jaya Publications from Tamil Nadu Small Industries Corporation at a very low price by misusing the office of Chief Minister.  (ii) Contract by Jaya Publications with Tamil Nadu Text Book Society to print Text Books for schools in Tamil Nadu.  (iii) Contract for supply of vehicles to State Government of M/s. Sasi Enterprises, of which Ms. Jayalalitha is a partner.

References from the Governor of Tamil Nadu under Article 192(2) of the Constitution of India

5(G) of 1993	15.7.1993	Sh. V.V. Swaminathan Ex-MP, Madras	10.1.1993	Purchase of land by Jaya Publications from Tamil Nadu Small Industries Corporation.
6(G) of 1993	15.7.1993	Dr. Subramanian Swamy, President of Janata Party, New Delhi	4.3.1993 and 9.3.1993	Contract by Jaya Publications with the Industries Department, Government of Tamil Nadu for printing of Industrial Policy Note submitted with the budget demands for 1992-93.
1(G) of 1994	13.11.1994	Sh. S. Thirunavukkarasu General Secretary MGR Anna D.M. Kazhagam	13.11.1994	Contract by Jaya Publications with the Industries Department, Government of Tamil Nadu for printing of Industrial Policy Note submitted with the budget demands for 1992-93.

3. The petitioners in Reference Case Nos.3(G)/93, 5(G)/93 and 1(G)/94, namely, S/Sh. P. Rathavel, V.V. Swaminathan and S. Thirunavukkarasu, however, subsequently wrote to the Commission on 18.8.1993, 7.1.94 and 24.4.96 respectively, that they were withdrawing their petitions.
4. Now, we come to the reasons for not taking up these cases earlier.
5. The first reference (No.1 (G) of 1993) was made by the Governor of Tamil Nadu, on 26.3.1993, after the petitioner, Dr. Subramanian Swamy, sought intervention of the Supreme Court to have his memorandum dated 2.10.1992 forwarded by the Governor to the Commission. When that reference was received in the Commission on 29.3.1993, the Commission, at that time, was a single member body, with Shri T.N. Seshan, Chief Election Commissioner, being its sole member. On 30.3.1993, the Commission issued usual notices to the petitioner, Dr. Subramanian Swamy, and the respondent, Ms. J. Jayalalitha, to file their written statements, etc., by 23.4.1993. Parallely, the respondent, Ms. Jayalalitha moved the Madras High Court, by way of Writ Petitions Nos. 6094 and 6095 of 1993, seeking a directions to the then Chief Election Commissioner (Sh. T.N. Seshan) not to deal with the above matter in any manner, as its was alleged in those petitions that Shri T.N. Seshan was personally biased in favour of Dr. Subramanian Swamy and prejudiced against Ms. Jayalalitha. It was also contended in those writ petitions that Ms.

Jayalalitha had not incurred any disqualification on the facts alleged in the memorandum of Dr. Subramanian Swamy. A learned single Judge of the Madras High Court passed an ex-parte interim order on 31.3.1993 restraining Shri Seshan from dealing with the said case. Subsequently, he confirmed the interim order with his final order on 2.7.1993, upholding the allegation of bias raised by Ms. Jayalalitha against Shri Seshan. By the said order of 2.7.1993, the learned single Judge also held that Ms. Jayalalitha had not become subject to any disqualification. Dr. Subramanian Swamy felt aggrieved by this order of the learned single Judge and he filed an appeal (Writ Appeal No.956 of 1993) before Division Bench of the High Court. The Writ Appeal was decided by Division Bench of the High Court on 15.11.1993. By that time, the Commission had become a multi-member body on 1st October, 1993, with the appointment of two of us (Dr. M.S. Gill and Shri G.V.G. Krishnamurty) as Election Commissioners, in addition to the Chief Election Commissioner. The Division Bench of the High Court also restrained Shri Seshan from dealing with the said case and further observed that it was now open to the multi-member Commission, while regulating the procedure for transaction and allocation of its business, allot this case to any one of the two Election Commissioners or to both. The Division Bench, however, struck down that part of the learned single Judge's order, whereby he had held that Ms. J. Jayalalitha had not incurred any disqualification. The Division Bench held that any decision to that effect could be taken only by the Governor on the opinion of the Election Commission under Article 192 of the Constitution, and not by the High Court under Article 226 of the Constitution. Shri Seshan was not satisfied with the above direction of the Madras High Court. He got an Appeal (C.A. No. 504 of 1994) filed before the Supreme Court, on behalf of the Election Commission, but without taking the full Election Commission into confidence. That appeal was ultimately disposed of by the Supreme Court on 23.4.1996, with direction in the following terms :-

"We are, therefore, of the opinion that the proper course to follow is that the Chief Election Commissioner should call a meeting of the Election Commission to adjudicate on the issue of disqualification of Ms. Jayalalitha on the grounds alleged by Dr. Swamy. After calling the meeting he should act as the Chairman but then he may recuse himself by announcing that he

would not participate in the formation of opinion. If the two Election Commissioners reach a unanimous opinion, the Chief Election Commissioner will have the opinion communicated to the Governor. If the two Election Commissioners do not reach a unanimous decision in the matter of expressing their opinion on the issue referred to the Election Commission, it would be necessary for the Chief Election Commissioner to express his opinion on the doctrine of necessity".

6. It was, however, only on 8.7.96 that Shri Seshan, in compliance with the above direction of the Supreme Court, recused himself from dealing with the above matter. Meanwhile, the Tamil Nadu Legislative Assembly, of which Ms. J. Jayalalitha was a member, was dissolved on 9.5.1996, when a new Legislative Assembly was constituted, following a general election which Ms. Jayalalitha was defeated and ceased to be a member of the State Legislative Assembly.
7. Then the two of us (Dr M.S. Gill, the present Chief Election Commissioner, and Shri G.V.G. Krishnamurty, Election Commissioner) heard Dr. Subramanian Swamy and Ms. J. Jayalalitha (through her learned counsel) on 31.7.1996. The opinion was, however, reserved as a preliminary point was raised as to whether the said reference from the Governor of Tamil Nadu still survived after the dissolution of the Tamil Nadu Legislative Assembly in May, 1996 and as it was felt that any expression of opinion on that preliminary issue would be equally applicable in relation to the other 6 (six) references, received from the Governor of Tamil Nadu, and which were pending before the Commission, having become sub-judice before the Madras High Court, in the circumstances mentioned below.
8. When the Commission issued notices to Ms. Jayalalitha in Reference Case Nos. 2(G) to 6(G) of 1993 in July, 1993, she again approached the Madras High Court with Writ Petition Nos. 14120 to 14124 of 1993. A learned single Judge of the High Court, by an interim order dated 29.7.1993 in Writ Petitions Nos.14121 to 14124 of 1993, restrained Shri Seshan from dealing with Reference Case Nos.2 (G) to 5(G) of 1993. (Writ Petition No. 14120 of 93 relating to Reference Case No. 6(G) of 1993, arising out of memoranda dated 4.3.1993 and 9.3.1993 of Dr. Subramanian Swamy, somehow, got delinked before the High Court, while passing the said interim order on 29.7.1993,

presumably because the High Court had already issued the order on 2.7.1993 in Writ Petition Nos. 6094 and 6095 of 1993 restraining Shri Seshan from dealing with Reference Case No.1 (G) of 1993, arising out of earlier memorandum dated 2.10.1992 of Dr. Subramanian Swamy.) The learned single Judge confirmed his interim order on 8.12.1993, directing Shri Seshan to recuse himself from adjudicating in the above reference cases. Again, Shri Seshan felt aggrieved by the above order, and got appeals (Writ Appeal Nos. 334 to 337 of 1994) filed before Division bench of the High Court, without placing the matter before the full Commission. These writ appeals were withdrawn by the Commission on 31.1.1997, after Shri Seshan demitted office of the Chief Election Commissioner in December, 1996.

9. Ms. Jayalalitha filed yet another writ petition (No.2063 of 1995), when a notice was issued to her in January, 1995 in the last of these reference cases (No.1(G) of 1994). In this writ petition also, a learned single Judge of the Madras High Court, by an interim order on 13.2.1995, restrained Shri Seshan from adjudicating in the said reference case. The Writ Petition was ultimately disposed of by the learned single Judge on 28.6.1996, with the direction to follow the orders of the Supreme Court in the above referred Civil Appeal No. 504 of 1994, the relevant extract whereof has already been quoted in para 5 above. As per records of the Commission, Writ Petition No. 14120 of 1993, still continues to pending before the Madras High Court. The pendency of that Writ Petition, however, no longer affects the present proceedings, because the prayer of the writ petitioner therein was to restrain Shri Seshan from adjudicating in Reference Case No.6(G) of 1993, and he has already retired on 12.12.1996 on the expiration of term of his office.
10. Thus, it was only after 31.01.1997, that the Commission could take up the other pending references, unhindered by any judicial proceedings.
11. Thereafter, the Commission proceeded further in these cases and decided to give an opportunity of personal hearing to the remaining petitioners and the respondent, before formulating any opinion in the matter. Certain requests were made on behalf of the parties to hold the hearing, preferably in the month of July, 97 and, accordingly the Commission decided to hear the parties on 21.7.1997. Notices for that purpose were sent to the concerned petitioners and respondent on 24.6.1997. However, at the hearing held on 21.7.97, only one of

the petitioners Shri S. Thirunavukkarasu, (petitioner in Reference No.1(G) of 1994) was represented, through an Advocate. He too had nothing to say, except to make a prayer to adjourn the hearing on the ground that he had received instructions from his client only the previous evening. The Commission did not see sufficient justification for adjournment of the hearing on that ground, as the parties were given notice about one month in advance. The Commission also took note of the fact that the said petitioner had earlier written to the Commission, as well as to the Governor of Tamil Nadu, on 24.4.1996 that he was withdrawing his petition in the matter. The Commission, nevertheless, permitted that Advocate to file written submissions, if he so desired, within a week. He, however, did not make any such submission.

12. When the matter was heard, first by the two of us (Dr. M.S. Gill and Shri G.V.G. Krishnamurty), on 31.7.1996, and again by the full Commission, on 21.7.97, Shri Vinod Bobde, learned counsel for the respondent Ms. J. Jayalalitha, submitted that these references had become infructuous on the dissolution, on 13.5.1996, of the Tamil Nadu Legislative Assembly, of which the respondent Ms. Jayalalitha was a member when these references were made. According to him, the question raised by the petitioners no longer survived, as the questions related to the membership of Ms. Jayalalitha of the earlier House of the Tamil Nadu Legislative Assembly, which had since been dissolved. His submission was that any decision on those questions, after the dissolution of that Assembly, in May, 1996, would be of mere academic interest and that the consistent practice of the Courts had always been not to go into academic question. In support of his contention, he relied, particularly, on the decision of the Supreme Court in the case of Loknath Padhan Vs. Birendra Kumar Sahu (AIR 1974 SC 505).
13. Dr. Subramanian Swamy, petitioner in Reference Case Nos. 1(G) and 6(G) of 1993, however, differed on this point and submitted that the dissolution of the Tamil Nadu Legislative Assembly, of which Ms. Jayalalitha was the member, in May, 1996, did not render these references infructuous, as questions of great public importance, particularly, relating to the conduct of Chief Minister, had been raised therein. He felt that the decision of the Election Commission, on merits, on the alleged illegalities in the conduct and functioning of Ms. Jayalalitha, as raised by him, would have serious impact on the functioning of Chief Ministers in future.

14. The Commission did not have the benefit of the views of other petitioners, as none of them appeared when they were called for hearing on 21.7.1997.
15. In view of the above preliminary issue about the very survival of these references having been raised, by the respondent, it will be highly expedient and desirable that the Commission first decides this important preliminary point. Any inquiry, on merits, into the allegations as made out in the petitioners in the petitions would become necessary, only if the Commission comes to the view that these references still survive, the dissolution of the Tamil Nadu Legislative Assembly in May, 1996 notwithstanding.
16. Before dealing with this issue, it may be appropriate to dispose of, first, that part of the contention of Dr. Subramanian Swamy by which he urged the Commission not to treat these references as infructuous but to give its opinion on merits. He contended that the decision of the Commission, on merits, would be an eye-opener for the Chief Minister of the State not to misuse their authority in future. Legally speaking, the Commission is not concerned with this aspect of the matter. The Commission is required to give opinion under Article 192(2) of the Constitution on the question whether a sitting member of State Legislature has become subject to disqualification under Article 191 (1) : that is to say whether such member is disqualified for continuing as a member of State Legislature, and not whether such member is disqualified or unsuitable for being the Chief Minister of the State. In other words, the Commission is to form opinion on the question of disqualification of the member concerned qua member of the State Legislature and vis-à-vis the disqualification mentioned under Article 191(1) of the Constitution, and not in relation to his/her conduct as Chief Minister or any other office held by him/her. Therefore, the issue whether the present reference still survive or has become infructuous is to be decided with reference to Ms. Jayalalitha's membership of the Tamil Nadu Legislative Assembly and not her Chief Ministership of the State.
17. As mentioned at the very outset, these are references under Article 192(2) of the Constitution. Under that Article, the Commission is called upon to give opinion on the question whether Ms. Jayalalitha has become subject to disqualification for being a member of the Tamil Nadu Legislative Assembly under Article 191(1) of the Constitution. At present, it is an undisputed fact that Ms. Jayalalitha is not a sitting member of the existing Tamil Nadu Legislative Assembly,

which was constituted in May, 1996 on the basis of general election held in the State in April, 1996. Thus, no question in terms of Article 192 of the Constitution can, at present, be said to arise in relation to Ms. Jayalalitha, as she is not at present a sitting member of the Tamil Nadu Legislative Assembly. But, such a question having been raised at a time when she undoubtedly was a sitting member of the State Assembly, the Commission has to consider whether it should give any opinion on that question or not in the changed circumstances.

18. Having considered all relevant aspects of the said question, the Commission is of the view that any such opinion now would be unnecessary. Any enquiry, at this stage, into the question whether Ms. Jayalitha had become subject to disqualification for continuing a member of the earlier House of the Tamil Nadu Legislative Assembly, already dissolved in May, 1996, would be of mere academic interest now, and would be an exercise in futility. Any pronouncement on the above question would not affect her present status, one way or the other, nor would such pronouncement serve any meaningful purpose at this stage. It is a well settled judicial practice, recognised and followed in India, that if an issue is purely academic, in that its decision one way or the other would have no impact on the position of the parties, it would be waste of public time, and indeed not proper exercise of authority for the courts to engage themselves in deciding such academic issues. Shri Bobde was right in placing reliance on the decision of the Supreme Court in the case of Loknath Pradhan Vs. Birendra Kumar Sahu (Supra). In that case, the election of successful candidate to the Orissa Legislative Assembly was challenged on the ground that he had a subsisting contract with the Government of Orissa for the execution of certain works and that he was disqualified under Section 9A of the Representation of the People Act, 1951. The High Court dismissed the election petition, but an appeal was pending before the Supreme Court, when, in the meanwhile, the Orissa Legislative Assembly was dissolved. The Supreme Court dismissed the appeal, as having become infructuous, in view of dissolution of the State Legislative Assembly. The Supreme Court observed that:

*"Whilst the appeal was pending in this Court, the Orissa Legislative Assembly was dissolved by the Governor on 3rd March, 1973 under Article 174(2) (b) of the Constitution. The respondent therefore, raised a preliminary objection at the hearing of the appeal before us that in view of the dissolution of the Orissa Legislative Assembly, it was*

*academic to decide whether or not the respondent was disqualified from being a candidate under Section 9A and we should accordingly decline to hear to appeal on merits. The argument of the respondent was that unless there is a living issue between the parties the Court would not proceed to decide it. It would not occupy its time by deciding what is purely an academic question which has no sequitur so far as the position of the parties is concerned. Here, contended the respondent, even if the appellant was able to satisfy the Court that on the date of the nomination, the respondent was disqualified under Section 9A, it would be a futile exercise, because the Orissa Legislative Assembly being dissolved, the setting aside of the election of the respondent would have no meaning or consequence and hence the Court should refuse to embark on a discussion of the merits of the question arising in the appeal. We think there is great force in this preliminary contention urged on behalf of the respondent. It is a well settled practice recognised and followed in India as well as England that a Court should not undertake to decide an issue, unless it is a living issue between the parties. If an issue is purely academic in that its decision one way or the other would have no impact on the position of the parties it would be waste of public time and indeed not proper exercise of authority for the Court to engage itself in deciding it. ....*

*.....In the present case, the Orissa Legislative Assembly being dissolved, it has become academic to consider whether on the date when the nomination was filed, the respondent was disqualified under Section 9-A. Even if it is found that he was so disqualified, it would have no practical consequence, because the invalidation of his election after the dissolution of the Orissa Legislative Assembly would be meaningless and ineffectual. It would not hurt him. The disqualification would only mean that he was not entitled to contest the election on the date when he filed his nomination. It would have no consequences operating in future. It is possible that the respondent had a subsisting contract with the Government of Orissa on the date of nomination, but that contract may not be subsisting now. The finding that the respondent was disqualified would be based on the facts existing at the date of nomination and it would have no relevance so far as the position at a future point of time may be concerned, and therefore, in view of the dissolution of the Orissa Legislative Assembly, it would have no practical interest for either of the parties. Neither would it benefit the appellant nor would it affect the respondent in any practical sense and it would be wholly academic to consider*

*whether the respondent was disqualified on the date of nomination".*

19. Following the above judicial policy and practice, the Supreme Court has recently dismissed several pending election appeals of 1995, 1994, etc. by treating them as infructuous, in view of the fact that fresh general elections to the House of the People and the concerned State Assemblies have been held in 1996 and the earlier Houses dissolved.
20. In the Commission's considered opinion, the ratio of the Supreme Court's decision in the above referred case of Loknath Pradhan squarely applies to the facts and circumstances of the present references. In that case, the question was whether the returned candidate was subject to disqualification under Section 9A of the Representation of People Act, 1951 and the ultimate relief claimed was that he should not continue as a member of the State Assembly. In the present proceedings also, the question basically was whether Ms. Jayalalitha had become subject to disqualification under the same Section 9A of the Representation of People Act, 1951, and the ultimate relief claimed was that she should not continue as member of the State Assembly. Such a question, if raised in a pending election petition or election appeal, would have undoubtedly been dismissed by the Court, as having become infructuous and of mere academic interest on the dissolution of the State Assembly, consistently with the above policy and practice of the Courts. Then, why should the Commission adopt a divergent course of action or act differently? Any decision of the Commission in the present reference would also be of mere academic interest at this stage. If the Courts do not want to spend public energy and public time in going into the questions of academic interest, there is no reason why the Election Commission should deviate from this well settled practice and policy of judicial fora. It is not disputed that the present proceedings relating to these references are also judicial proceedings (see Sections 146 to 146C of the Representation of the People Act, 1951).
21. In fact, the past precedent show that the Commission has also been consistently following the same policy and practice in such matters. To cite a few examples, the opinion of the Commission was sought in Reference Case No. 2 of 1989 (a reference from the President of India under Article 103(2) of the Constitution which is akin to Article 192(2) of the Constitution) whether Dr. Jagannath Mishra, then a sitting member of the Council of States, had become disqualified for continuing as member of that Council, by reason of his holding the office of Chairman-cum-Director General of the L. N. Mishra Institute

of Economic Development and Social Change, Patna. Before the Commission could look into the matter and form any opinion, Dr. Mishra got elected to the Bihar Legislative Assembly, and resigned his seat in the Council of States. The Commission held that on the resignation of Dr. Mishra from membership of the Council of States, the reference received from the President on the above question had become infructuous. Similarly, in Reference Case No.1 of 1992, the question raised was whether Smt. Jayanthi Natarajan, a sitting member of the Council of States had become disqualified to continue as a member of that Council, on account of her having held the post of Additional Central Government Standing Counsel, with effect from 5.5.1992 to 15.6.1992. Smt. Natarajan was elected to the Council of States in 1986 and her term of office expired on 29.6.92. She again got re-elected to the Council of States in June, 1992 and got a further stint as a member of the Council of States from 30.6.92 till June, 1998. The above question arose when her first stint from June, 1986 to June, 92 during which period she had held the said post of Additional Central Government Standing Counsel, had already been completed. The Commission considered the said reference as infructuous, as it related to her membership of the Council of States which came to an end on 29.6.92, on the expiration of her earlier term of office, notwithstanding the fact that she was again a sitting member of that Council when that reference was made. Again, a similar view was taken by the Commission in Reference Case No. 3 of 1989 (a reference from the Governor of Maharashtra under Article 192(2) of the Constitution) relating to the alleged disqualification of Shri Mahadeo Kashiraya Patil, a member of the Maharashtra Legislative Assembly. In that case also, the Maharashtra Legislative Assembly was dissolved following a general election, during the pendency of the reference. The reference was considered as infructuous, even though Shri M.K. Patil had got re-elected to the Maharashtra Legislative Assembly at that general election. Consistently, the same view has been taken by the Commission in umpteen number of other such cases.

22. Having regard to the above constitutional and legal position, the policy and practice of the Courts and also the past precedents and practice of the Commission, the Commission is of the considered opinion that all these 7(seven) references received from the Governor of Tamil Nadu in the year 1993/1994 relating to the question of alleged disqualification of Ms. J. Jayalalitha have become infructuous, after the dissolution of the Tamil Nadu Legislative Assembly, of which

References from the Governor of Tamil Nadu under Article 192(2) of the Constitution of India

she was a member, in May, 1996. These reference are accordingly returned herewith to the Governor of Tamil Nadu with the Commission's opinion under Article 192(2) of the Constitution, to the above effect.

**Sd/-**  
**(G.V.G. Krishnamurthy)**  
Election Commissioner

**Sd/-**  
**(Dr. M.S. Gill)**  
Chief Election  
Commissioner

**Sd/-**  
**(J.M. Lyngdoh)**  
Election Commissioner

New Delhi  
29th August, 1997



# **ELECTION COMMISSION OF INDIA**

**CORAM :**

**Hon'ble**  
**Sh. G.V.G. Krishnamurty**  
Election  
Commissioner

**Hon'ble**  
**Sh. J.M. Lyngdoh**  
Election  
Commissioner

## **Reference Case No. 1 (RPA) of 1997**

(Reference from the President of India under Section 8A of the Representation of the People Act, 1951)

In re: Disqualification of Dr. Ramesh Yashwant Prabhuo, Ex-MLA of Maharashtra Legislative Assembly.

*Representation of the People Act, 1951 - Section 8A - disqualification of person found guilty of corrupt practice - reference from President to Election Commission for its opinion - Election Commission bound by the findings of the Courts - period of disqualification to be fixed having regard to gravity and nature of corrupt practices committed - non-drawal of emoluments of MLA during the operation of stay order, not an extenuating circumstance.*

## **SUMMARY OF THE CASE**

Dr. Ramesh Yashwant Prabhuo was elected to the Maharashtra Legislative Assembly from 38-Vile Parle Assembly Constituency in a bye-election held in December, 1987. The Bombay High Court, by its judgment and order dated 7th April, 1989, declared the election of Dr. Prabhuo as void on the ground of commission of corrupt practices under Sections 123 (3) and 123 (3A) of the Representation of the People Act, 1951, of making appeal to voters to vote in his favour on the ground of his religion and promotion of feelings of enmity and hatred between different classes of citizens of India on the ground of religion and community. On appeal, the Supreme Court, by its interim order dated 18th May, 89, stayed the operation of the High Court's judgment and order. But, by its final order dated 11th December 1995, the Supreme Court dismissed the appeal of Sh. Prabhuo and upheld the decision of the High Court declaring his election void and finding him guilty of commission of corrupt practices.

In pursuance of Section 8A of the R.P.Act, 1951, the case of Dr. Prabhuo was referred by the President of India to the Election Commission for its opinion as to whether Dr. Prabhuo should be disqualified and, if so, for what period.

In its opinion to the President, the Election Commission observed that:

- (i) it was bound by the findings of the High Court and Supreme Court on the question of commission of corrupt practices by Dr. Prabhoo and it could not go into the correctness or otherwise of those findings;
- (ii) nor could the Commission go into the validity of Section 8A of the R.P.Act, 1951;
- (iii) the fact that, in view of the interim order of the Supreme Court, Dr. Prabhoo had not drawn any emoluments payable to a member of the Maharashtra Legislative Assembly, though he was again elected as member of that Assembly at the general election in 1990, could not be regarded as an extenuating circumstance inasmuch as he continued as member of the Maharashtra Legislative Assembly and could even contest subsequent election in 1990 by virtue of that interim order; and
- (iv) having regard to the gravity of corrupt practices committed by Dr. Prabhoo, he deserved no leniency and should be disqualified for the maximum period of 6 years permissible under the law.

## **OPINION**

In this reference from the President of India under sub-section (3) of Section 8A of the Representation of the People Act, 1951 (hereinafter referred to as '1951-Act') opinion of the Election Commission has been sought on the question whether Dr. Ramesh Yashwant Prabhoo, a former Member of the Legislative Assembly of Maharashtra, should be disqualified and, if so, for what period under Section 8A (1) of the said Act.

2. The relevant facts, in brief, are as follows:-

- (i) Dr. Ramesh Yashwant Prabhoo was elected to the Maharashtra Legislative Assembly from 38-Vile Parle Assembly Constituency in the bye-election held in December, 1987. His election was called in question by Shri Prabhakar Kashinath Kunte, one of the contesting candidates, before the High Court of Bombay in Election Petition No. 1 of 1988.
- (ii) The Bombay High Court, by its judgment and order dated 7.4.89, declared the election of Dr. Ramesh Yashwant Prabhoo as void on the ground of commission of corrupt practices under Sections 123 (3) and 123 (3A) of the 1951-Act. The Court held that Shri Prabhoo had

committed the corrupt practices of -

- (a) making appeal, through his agent and with his consent, to the voters to vote in his favour on the ground of his religion;
  - (b) promotion or attempt to promote feelings of enmity and hatred between different classes of the citizens of India on the ground of religion and community.
- (iii) Shri Prabhoo filed an appeal (Civil Appeal No.2836 of 1997) before the Supreme Court of India against the aforesaid order of the Bombay High Court declaring his election as void. By its order dated 18.5.1989, the Supreme Court of India stayed the operation of the High Court's judgment and also further proceedings under Section 8A of the 1951-Act.
- (iv) By its final order dated the 11th December, 1995, the Supreme Court has dismissed the appeal of Shri Prabhoo and has upheld the decision of the Bombay High Court declaring the election of Shri Prabhoo as void. The Supreme Court has agreed with the findings of the High Court that the charge of corrupt practices under Sections 123(3) and 123(3A) of the 1951-Act of, appealing to the voters on the ground of religion and promotion of enmity and hatred between different classes of electors on ground of religion, has been established.
- (v) Thus, by the said judgement dated the 11th December, 1995 of the Supreme Court Shri Prabhoo has been found guilty of corrupt practices under Sections 123 (3) and 123 (A) of the 1951-Act. On the case of Shri Prabhoo being referred on 14.1.1997 by the Secretary, Maharashtra Legislative Assembly to the President, in terms of Section 8A(1) of the 1951-Act, the matter has been referred to the Election Commission for its opinion under Section 8A(3) of the said Act.
3. Before formulating and tendering its opinion, the Commission decided to afford Dr. Ramesh Yashwant Prabhoo an opportunity of being heard. Dr. Prabhoo could not attend the hearing fixed by the Commission on 4.4.1997, because of by-pass operation, but filed his written statement on 15th March, 1997. A supplementary written statement was also filed by Shri Prabhoo, through his advocate Shri A.B. Bhandari, on 29.05.1997. On receipt of the aforesaid supplementary written statement, the Commission decided to afford Dr. Prabhoo another opportunity of being heard. He was accordingly directed by message and formal notice dated 24.6.1997 to appear either

personally or through his authorised counsel on 31.7.1997 and make his submissions in the matter. In the said notice dated 24.6.1997, the Commission specifically made it clear to Dr. Prabhoo and his Advocate that in default of appearance on 31.7.1997 the matter would be decided without any further reference to them. None appeared at the said hearing on 31.7.1997, despite the fact that the Commission's notice mentioned above was duly received by them as per acknowledgements received back in the Commission. However, on the 29th July, 1997, the Commission had received from Shri Prabhoo a copy of the communication addressed by him to the Secretary to the President of India wherein some written arguments were made. He had mentioned in the said communication that his Advocate would not be able to attend the hearing as he was unwell.

4. Taking this communication on record, the Commission afforded yet another opportunity to Dr. Prabhoo to appear, either in person or through his duly authorised counsel, on 17.9.1997 and make his submissions, if any. It was also made clear in the notice that in default of appearance at the hearing on 17.9.1997, the Commission would formulate and tender its opinion to the President without any further reference to him in the matter. Again none appeared on the said hearing, despite the fact that the Commission's notice was duly received by the Advocate as per acknowledgement card received back in the Commission.
5. In his written statements, Dr. Prabhoo stated that he had been wrongly held to be guilty of corrupt practices by the Bombay High Court and the Supreme Court and that Section 8A of the 1951-Act, under which the present reference has been made by the President to the Commission, is unconstitutional being arbitrary, capricious and violative of Article 14 of the Constitution. Pleading extenuating circumstances, Dr. Prabhoo has argued that the Supreme Court, by an interim order dated 18.5.1989, granted a conditional stay of operation of the High Court's impugned order dated 7.4.1989. The said interim order remained in operation, since the passing of that order and till the final disposal of his appeal on 11.12.1995 by the Supreme Court. In deference to the interim order of the Supreme Court, he has not exercised his right to vote in the Assembly, has not participated in any proceedings of the Assembly and has not drawn any emoluments payable to a member of the Assembly from the date of the interim order dated 18.5.1989, though he was again elected as a member of the Maharashtra Legislative Assembly from the same

38-Vile Parle Asssembly Constituency at the general election held in 1990. He pleaded that he had already been adversely affected by the aforesaid interim order for over six years and six months whereas the maximum period of disqualification permissible under Section 8A(1) of the '1951-Act' is six years. Dr. Prabhoo has further stated that the trial and appeal in respect of the election petition took nearly nine years, whereas the law provides six months for disposal of any election petition. He has, accordingly, prayed that the Commission might be pleased to drop the proceedings initiated against him under Section 8A of the '1951-Act'.

6. The Commission has carefully considered the above submissions made by Dr. Prabhoo. The Commission has consistently taken the view that the findings of the Courts in Election Petitions and Election Appeals cannot be questioned or assailed before the Commission in the proceedings under Section 8A of the '1951-Act', as that would tantamount to the Commission sitting in judgment over the findings of the High Courts or the Apex Court. The Commission cannot assume the powers of review of the findings of the High Courts or of the Apex Court in Election Petitions and Election Appeals. The Commission is, therefore, bound by the findings of the Courts while considering the question of disqualification under Section 8A of the '1951-Act' arising out of such findings of the Courts. Further, the Commission is not the appropriate forum for questioning the Constitutional validity of Section 8A of the '1951-Act'. The Commission is bound to act in accordance with the enacted provisions of Section 8A, so long as it exists on the statute book, as has been held by the Supreme Court in the case of A.C. Jose Vs. Sivan Pillai reported in AIR 1984 SC 921.
7. As regards the adverse effect of the interim order of the Supreme Court, the submissions of Dr. Prabhoo that he has been deprived of the benefits available to the member of the Assembly when he was again elected from the same Assembly Constituency at the General Election held in 1990 cannot be accepted under the law. Dr. Prabhoo took full advantage of the interim order dated 18.5.1989 of the Supreme Court in the appeal filed by him. He could contest the subsequent election in 1990 from the same constituency, only because of the said stay order granted by the Supreme Court, and got elected as member of the Assembly. It was only by virtue of that interim order that not only he did not lose his seat in the Assembly, but on the other hand, continued to be a member thereof for nearly six years.

If there was only adverse effect at all of the interim order in relation to his membership of the Assembly, that was the consequence of his wrong doing and that cannot be considered to be sufficient and adequate punishment.

8. In so far as the submission of Dr. Prabhoo that it took nearly nine years for his case to be decided by the Courts is concerned, the Commission has nothing to say, as it is a matter beyond the purview of the Commission. The Commission is concerned only with the post-decisional effects of the findings of the Courts. The question for consideration before the Commission is whether Dr. Prabhoo should be disqualified and, if so, for what period, having regard to the facts and circumstances of the case.
9. It is an admitted fact that the punishment imposed for the offence should be proportionate to the gravity of the offence. It should neither be excessively harsh and so disproportionate that it may look arbitrary, nor should it be so minimal that the imposition of the punishment may defeat or frustrate the very object underlying the statutory provisions.
10. The Courts adopt very strict standards of proof in relation to a charge of corrupt practice and insist upon the charge being proved beyond any shadow of doubt, realising fully well the serious consequences of the commission of corrupt practice when proved, i.e., declaration of the election as void and the disqualification for a period upto 6 years as envisaged under Section 8A(1) of the '1951-Act'. The Bombay High Court has categorically held Dr. Prabhoo guilty of corrupt practice under Sections 123(3) and 123(3A) of the '1951-Act' and the Supreme Court has also clearly and unambiguously upheld the findings of the High Court and has seen no reason to interfere with the findings of the High Court.
11. In view of the aforesaid categorical findings, the charge of corrupt practices proved against Dr. Prabhoo, under Section 123(3) of appeal to vote on the ground of religion, and under Section 123(3A) of promoting or attempting to promote feelings of enmity and hatred between different classes of citizens on the grounds of religion, etc., of the said Act, are of very serious and grave nature. There cannot be two opinions that such pernicious practices which are highly dangerous and can threaten the very survival of democracy must be viewed with utmost concern and put down with a heavy hand without any leniency. Persons indulging in such nefarious practices must be

visited with the severest penalty permissible under the law, as any leniency shown to them would mean compromising with those corrupt practices which sully the purity of elections.

12. Having regard to the totality of the facts and circumstances of the case and the serious and grave nature of corrupt practices proved against Dr. Prabhuo, he deserves no leniency. He should be disqualified and should be vested with the maximum penalty permissible under the law, viz., Section 8A(1) of the '1951-Act'.
13. Accordingly, the Commission hereby decides, and tenders its opinion to the President under Section 8A(3) of the '1951-Act', that Dr. Ramesh Yeshwant Prabhuo should be disqualified under Section 8A(1) of the Representation of the People Act, 1951, for a period of six years from the date of the Supreme Court's Order, viz., 11.12.1995.
14. The reference received from the President is returned with the Commission's opinion to the above effect.

**Sd/-**  
**(G.V.G. Krishnamurty)**  
Election  
Commissioner

**Sd/-**  
**(J.M. Lyngdoh)**  
Election  
Commissioner

New Delhi  
15th October, 1997



# **ELECTION COMMISSION OF INDIA**

**CORAM :**

**Hon'ble**  
**Dr. M.S. Gill**  
Chief Election  
Commissioner

**Hon'ble**  
**Sh. J.M. Lyngdoh**  
Election  
Commissioner

## **Reference Case No. 2 (RPA) of 1997**

(Reference from the President of India under Section 8A of the  
Representation of the People Act, 1951)

In re: Disqualification of Shri Bal Thackeray.

*Representation of the People Act, 1951 - Section 8A - disqualification of person found guilty of corrupt practice - reference from President to Election Commission for its opinion - Election Commission bound by the findings of the Courts - period of disqualification to be fixed having regard to gravity and nature of corrupt practice committed - delay in initiation of proceedings, not a ground for dropping the proceedings, as delay was rather beneficial - person concerned not contesting any election in the past nor intending to contest any election in future - not a relevant consideration while imposing disqualification - High Courts' order stayed during pendency of appeal before Supreme Court - period of disqualification to be reckoned from the date of Supreme Court's final order.*

## **SUMMARY OF THE CASE**

The Bombay High Court, by its judgment and order dated 7th April, 1989, held that Sh. Bal Thackeray had committed corrupt practices under Sections 123 (3) and 123 (3A) of the Representation of the People Act, 1951, in connection with a bye-election to the Maharashtra Legislative Assembly held in December, 1987 from 38-Vile-Parle Assembly Constituency. The High Court found that Sh. Thackeray had appealed for votes on the ground of religion for the candidate of his party, Dr. Ramesh Yashwant Prabhoo, and promoted feelings of enmity and hatred between different classes of citizens of India on the ground of religion and community. Consequently, the High Court named Sh. Bal Thackeray, under section 99 of the R.P.Act, 1951, as having been found guilty of commission of the above mentioned corrupt practices. Sh. Thackeray went in appeal to the Supreme Court against the order of the Bombay High Court. By its interim order dated 18.5.89, the Supreme Court stayed the operation of the High Court judgment and also

further proceedings under Section 8A of the R.P.Act, 1951. But by its final order dated 11.12.1995, the Supreme Court dismissed the appeal of Sh. Thackeray and confirmed the findings of the High Court against him. The matter was referred to the Election Commission, by the President in November 1997, for its opinion under Section 8A (3) of the R.P.Act, 1951 on the question whether Sh. Thackeray should be disqualified and, if so, for what period.

It was contended on behalf of Sh. Thackeray before the Election Commission that the maximum period of 6 years disqualification under Section 8A had already expired, as the order of the Bombay High Court under Section 99 was passed on 7th April, 1989, that the Commission should first be satisfied about the necessity of imposing disqualification as Sh. Thackeray had never contested any election nor did he intend to contest in future, that there was unreasonable delay in the initiation of the proceedings against him even after the decision of the Supreme Court, and that the speeches made by Sh. Thackeray in the year 1987 should not be made a ground for action against him at this late stage in 1998.

The Election Commission rejected all the above contentions of Sh. Thackeray and tendered its opinion to the President, that Sh. Thackeray should be disqualified for 6 years from the date of the Supreme Court's order. The Election Commission observed in its opinion that the decision of the Courts finding him guilty of commission of corrupt practices took effect from the date of the Supreme Court's final order, and not from the date of the High Court's order which was stayed by the Supreme Court, and, therefore, the period of 6 years had not elapsed from the relevant date. The Commission also observed that the question of disqualification was to be decided on the basis of the nature and gravity of the corrupt practices committed by the person concerned, and not on the basis of a surmise whether he would contest elections or not in future. It was further observed by the Commission that Sh. Thackeray had not suffered adversely by the delay in the initiation of proceedings against him and had rather been benefited by such delay, as the period of his disqualification got reduced thereby. The Commission nevertheless expressed its concern in the matter of delay in the initiation of the proceedings in the present case and desired the law to be amended to simplify the procedure for expeditious tendering of opinion by the Commission in such matters.

## **OPINION**

In this reference from the President of India, under sub-section (3) of Section 8A of the Representation of the People Act, 1951 (hereinafter referred

to as '1951-Act'), the opinion of the Election Commission has been sought on the question, whether Shri Bal Thackeray, who has been found guilty of commission of corrupt practices under sub-sections (3) and (3A) of Section 123 of the said Act, and named under Section 99 of that Act, by the Supreme Court, should be disqualified and, if so, for what period, under sub-section (1) of Section 8A of the said Act.

2. The relevant facts, in brief, are as follows:-

- (i) Dr. Ramesh Yashwant Prabhoo was elected to the Maharashtra Legislative Assembly from 38-Vile Parle Assembly Constituency in the bye-election held in December, 1987. His election was called in question by Shri Prabhakar Kashinath Kunte, one of the contesting candidates, before the High Court of Bombay in Election Petition No. 1 of 1988.
- (ii) The Bombay High Court, by its judgment and order dated 7.4.1989, declared the election of Dr. Ramesh Yashwant Prabhoo as void on the ground of commission of corrupt practices under Sections 123 (3) and 123 (3A) of the 1951-Act.
- (iii) The High Court, while setting aside the election of Shri Prabhoo, also named Shri Bal Thackeray under Section 99, finding him guilty of having committed corrupt practices along with Shri Prabhoo, under the aforesaid sub-sections (3) and (3A) of Section 123 of the said 1951-Act. The Court held that Shri Bal Thackeray, as Shri Prabhoo's agent and with his consent, appealed for votes on the ground of Shri Prabhoo's religion, and promoted or attempted to promote feelings of enmity and hatred between different classes of the citizens of India on the ground of religion and community.
- (iv) Shri Bal Thackeray filed an appeal [Civil Appeal No. 2835 of 1989] before the Supreme Court of India against the aforesaid judgement dated 7.4.1989 of the Bombay High Court. Shri Yashwant Prabhoo also filed Civil Appeal no. 2836 of 1989 against the aforesaid judgement of the High Court declaring his election as void. By its order dated 18.5.1989, the Supreme Court of India stayed the operation of the High Court's judgment, and also further proceedings under Section 8A of the 1951-Act.
- (v) By its final order dated the 11th December, 1995, the Supreme Court has dismissed the appeal of Shri Bal Thackeray, and also of Shri Yashwant Prabhoo, and has confirmed the findings of the High Court, that the charge of corrupt practices under Sections 123 (3) and 123

(3A) of the 1951-Act, of appealing to voters on the ground of religion and promotion of enmity and hatred between different classes of electors on ground of religion, has been established both against Shri Bal Thackeray and Dr. Prabhoo.

- (vi) Thus, by the said judgement dated 11-12-1995 of the Supreme Court, Shri Bal Thackeray has been found guilty of corrupt practices under sub-sections (3) and (3A) of Section 123 of the 1951-Act. The Supreme Court also specifically named him under Section 99 of the said Act. On the case of Shri Thackeray being referred on 14-11-1997 by the Secretary, Maharashtra Legislative Assembly to the President of India, in terms of Section 8A(1) of the 1951-Act, the matter has been referred to the Election Commission for its opinion under Section 8A(3) of the said Act.
3. Before formulating and tendering its opinion, the Commission decided to afford Shri Bal Thackeray an opportunity of being heard, and fixed 14.8.1998 as the date of hearing. In reply to the notice, Shri Bal Thackeray raised a preliminary objection, that he had not been supplied with copies of the reference made by the Secretary to the Maharashtra Legislative Assembly to the President of India, as well as the reference made by the office of the President of India to the Election Commission of India and related documents. He further stated that the charges and/or grounds which were supposed to be rebutted had also not been indicated in the notice. Shri Bal Thackeray also contended that the proposal of disqualification suffered from non-application of mind, and was totally without authority of law. He stated that he had never contested any election to Parliament or State Legislature, and that he had no intention to do so in future. Shri Bal Thackeray further contended that as the judgement of the High Court under Section 99 of the 1951-Act came into force on the 7th April, 1989, the maximum period of disqualification of six years that could be imposed on him under Section 8A (1) had already lapsed.
4. In order that Shri Bal Thackeray should have no grievance on the ground that he was not supplied with the relevant documents, the Commission forwarded copies of the references sought for by him, and in addition also sent him copies of the judgements of the Bombay High Court and the Supreme Court of India, extracts of Sections 7(b), 8A, 99, 107 and 116 B of the R.P. Act, 1951, and Union Law Ministry's Notification dated 25.5.76 specifying authorities to submit the cases of disqualification under Section 8A of the said Act to the President of India.

5. As Shri Bal Thackeray represented to the Commission that the documents sent by the Commission were received by him only on the 9th of August, 1998 and that he would require some more time to go through the same and to have deliberations with his legal experts in the subject matter, his request for postponement of hearing by a fortnight was granted, and the hearing was, accordingly scheduled for 1.9.1998.
6. At the hearing on 1.9.1998, Shri Bal Thackeray was represented by Shri Raju Ramchandaran, learned Senior counsel. The learned counsel pleaded that the proceedings in the present case under Section 8A of 1951-Act had been vitiated on account of gross, inordinate and unexplained delay of nearly two years in the initiation of the proceedings by the Secretary to the Maharashtra Legislative Assembly. He stated that Section 8A of the 1951-Act provided that the case of every person found guilty of corrupt practices by an order under Section 99 shall be submitted, as soon as may be, after such order takes effect. He pleaded that the expression 'as soon as may be' in Section 8A (1) should mean a reasonable time, even though no specific time limit was fixed in that Section. He relied upon the judgements of Supreme Court of India in *Mansa Ram Vs. S.P. Pathak and others* [1984(1) SCC 125] and *Ram Chand Vs. Union of India and others* [1994 (1) SCC 44 ], wherein the Supreme Court has held that "as soon as may be" means "a reasonable time".
7. The learned counsel pleaded that in a matter which involved serious civil consequences, i.e. disqualification for contesting elections and also deletion of the name of the person from the electoral roll, the Commission should have indicated in its notice itself the specific charge and also the contemplated action, i.e., gravity of the matter and the period of contemplated disqualification.
8. The learned counsel further submitted that the disqualification under Section 8A(1) was not something self-operative. The law had deliberately kept the decision making process of the Commission, away from the judicial proceedings of the High Court and the Supreme Court in a matter of corrupt practices. The Commission, when a matter is referred to it under Section 8A of the 1951-Act by the President, has to take an independent view, and should not go by the findings of the Courts.
9. The learned counsel further stated that the three speeches, referred to in the judgement of the High Court, were made by Shri Bal

Thackeray on 29.11.87, 9.12.87 and 10.12.87, i.e. more than 10 years ago, and those speeches should not be made a ground for his disqualification at this late stage. He further added that Shri Bal Thackeray was a well known leader of a particular political party, and it was a publicly known fact that he had never contested any election, and also that he would not contest any election in future. The learned counsel stated that it would make a mockery of the disqualification proceedings, if the Election Commission passed an order of disqualification in vacuum, only in order to pay obeisance to the requirements of a law, which was relevant only for persons contesting elections, and not for a person like Shri Bal Thackeray. He argued that the procedure adopted by the Secretary to the Maharashtra Legislative Assembly, the competent authority to submit the case to the President of India was defective, inasmuch as he had not placed on record, that Shri Thackeray was not likely to contest any election, and also that he had never contested any election.

10. The learned counsel urged that the proceedings should be dropped by the Commission in toto, and that in case the Commission felt it just and proper to recommend any disqualification, it should be for a minimum token period. The learned counsel further requested the Commission to permit him to file a written statement in the matter. The Commission granted his request and allowed him time to submit the same.
11. Shri Raju Ramachandran, the learned Senior counsel, filed a written statement dated 3.9.1998 before the Commission, and the same has been taken on record. The learned counsel has reiterated the oral submissions made by him at the time of hearing, in the said written statement.
12. The Commission has carefully considered all pleas contained therein and submissions made on behalf of Shri Bal Thackeray. Shri Bal Thackeray raised the preliminary objection that the maximum period of disqualification under Section 8A of the 1951-Act, which shall in no case exceed six years from the date on which the order made in relation to him under Section 99 takes effect, had already expired, as the order under Section 99 of the 1951-Act was passed by the Bombay High Court on the 7th April, 1989, and, therefore, the notice to him from the Commission deserved to be withdrawn. The view taken by Shri Thackeray is not consistent with the provisions of law, inasmuch as Section 107 of the 1951-Act clearly provides that the effect of the order of the High Court under Sections 98 and 99 is

subject to the provisions contained in Chapter IV-A of Part VI of that Act, relating to the stay of operation of an order of the High Court. Sub-section (3) of Section 116B, under the said Chapter IV A of the 1951-Act, provides that when the operation of an order of the High Court is stayed by the Supreme Court, the order shall be deemed never to have taken effect under sub-section (1) of Section 107. When the Supreme Court, by its order dated 18.5.1989, stayed the High Court's order dated 7.4.1989, and, further, specifically stayed proceedings under Section 8A, till the final disposal of the appeal against the High Court's order, the period of disqualification, that may be imposed on Shri Bal Thackeray, if any, would count from the date of final order dated 11.12.1995 of the Supreme Court and not from the date of order of the Bombay High Court, as contended by Shri Bal Thackeray. His plea that the stay order was passed by the Supreme Court in the appeal of Dr. Yashwant Prabhoo and not in the appeal filed by him is of no avail, as he was a party to the appeal of Dr. Ramesh Yashwant Prabhoo, being Respondent No.2, and the Supreme Court stayed the operation of the whole judgement and order of the High Court.

13. The learned counsel argued that the Commission should first be satisfied about the very necessity of imposing disqualification, before addressing itself to the question of the period of disqualification. It is true, as contended by him, that disqualification under Section 8A is not a necessary or automatic consequence of judicial determination of the question of a corrupt practice. But the question whether a person should be disqualified or not, is to be decided on the basis of the nature and gravity of the corrupt practice committed by him, and not on the basis of a surmise, whether he would have contested election or not in future. Shri Thackeray has been found guilty of serious corrupt practices under Sections 123(3) and 123(3A) of the 1951-Act. The Commission has consistently taken the view that it is bound by the findings of the Courts relating to the commission of corrupt practices at elections. The role of the Commission is to determine the quantum of punishment, in the form of disqualification, which may be imposed on the persons found guilty of corrupt practices by the Courts. In such determination, the Commission has to see whether the petitioner has shown any mitigating or extenuating circumstances to justify imposition of disqualification for a period lesser than the maximum prescribed under the law. Shri Bal Thackeray has not shown any such mitigating or extenuating circumstances.

14. As regards the delay of about two years in the initiation of the proceedings by the Secretary to the Maharashtra Legislative Assembly, under Section 8A of 1951-Act, the submissions of Shri Bal Thackeray that the Commission ought to recommend, that no further action be taken cannot be accepted. Such delay has caused no prejudice to him. On the other hand, it has worked to his advantage, in that he is still not disqualified and, if disqualified, the period for which he may ultimately have to undergo the disqualification is already greatly reduced. He can not be permitted to reap permanent gain from such a lapse, as that would negate the very purpose and object of Section 8A. The reliance placed by his learned counsel on the apex Court's decisions in the cases of *Mansaram vs S.P. Pathak* [1984 (1) SCC 125] and *Ram Chand vs. Union of India etc* [1994 (1) SCC 44] for his above contention, is misplaced. In the former case, the Supreme Court struck down the eviction proceedings which were initiated, nearly 22 years after the tenant entered the premises, and the ground of the eviction proceedings being that the initial entry of the tenant 22 years ago itself was wrong. The latter case related to delay in the award of compensation to the petitioners for the acquisition of their land, whereby they suffered financially meanwhile. The Supreme Court merely enhanced the compensation amount, but did not quash the acquisition proceedings which the petitioners had challenged on the ground of such delay. Both the cases are clearly distinguishable both on facts and law. Here, Shri Thackeray has not shown any prejudice to have been caused to him by the delay in the initiation of the present proceedings against him. On the contrary, as pointed out above, he was benefited by such delay.
15. The Commission is aware that often, for reasons too obvious to be stated, there may be inordinate delay in the references to emanate from the Secretaries of the Houses concerned. This is one such case. In order that such delays do not recur in future, the Commission has, after taking into consideration the reality of the situation, recommended to the Government, to simplify the procedure, to enable the Commission to tender its opinion to the President with utmost expedition, after giving the person concerned reasonable opportunity of being heard. The Commission hopes that the Government of India will take prompt action in the matter, in the interest of justice, and application of laws made by Parliament.
16. Similarly, the submissions of the learned counsel that the offending speeches made in the year 1987 should not be made a ground for

action at this late stage, also can not be accepted under the law. The Courts may have taken time, for various reasons, in determining the matter, but that can not be a valid ground for the Commission to allow the person found ultimately guilty to go without facing any penal consequences.

17. The submission that Shri Bal Thackeray never contested any election in the past, nor would he contest any election in future, can also not be a valid ground for dropping proceedings under Section 8A against him. On interjection by the Commission, during the course of the hearing, the learned counsel himself conceded that Shri Bal Thackeray could change his mind and contest an election, in future. Further, sub-section (2) of Section 11A of the 1951-Act provides that any person disqualified by a decision of the President under sub-section (1) of Section 8A, from contesting elections for any period, shall be disqualified for the same period, for voting also at any election.
18. The last contention on behalf of Shri Thackeray that the notice issued by the Commission did not set out the specific charge and/or ground, which he was supposed to rebut, is also not maintainable. The Commission's notice dated 15.7.1998 to Shri Thackeray clearly and unambiguously specified that he was named by the Bombay High Court under Section 99 of the 1951-Act for having committed corrupt practices under Sections 123(3) and 123(3A) of the said Act, and also that the Supreme Court had dismissed the appeal filed by him and affirmed the order of the High Court. The notice also clearly mentioned, that the President had referred the matter to the Commission for its opinion under Section 8 A(3) of the Act, whether Shri Thackeray should be disqualified under Section 8 A(1) and if so, for what period, and it was for the purposes of the formation of the opinion on the above question, that the Commission decided to hear Shri Thackeray. He knows well that the period of disqualification under Section 8 A(1) cannot exceed six years from the date on which the order of the appropriate Court takes effect, as is evident from the preliminary objection raised by him. Shri Thackeray, therefore, can not say that he had been denied the right to effectively defend himself.
19. It is a basic tenet of jurisprudence, that the punishment imposed for any offence should be proportionate to the gravity of the offence committed. It should neither be excessively harsh and so disproportionate that it may look arbitrary, nor should it be so minimal, that the imposition of the punishment may defeat or

frustrate the very object underlying the statutory provisions providing for such punishment.

20. The Courts adopt very strict standards of proof in relation to a charge of corrupt practice, and insist upon the charge being proved beyond any shadow of doubt, realising fully well the serious consequences of the commission of corrupt practice when proved, i.e., declaration of the election as void and the disqualification for a period up to 6 years as envisaged under Section 8A(1) of the '1951-Act'. The Bombay High Court has categorically held Shri Bal Thackeray guilty of corrupt practice under Sections 123(3) and 123(3A) of the '1951-Act', and the Supreme Court has also clearly and unambiguously upheld the findings of the High Court, and has seen no reason to interfere with the findings of the High Court.
21. While tendering its opinion to the President in the reference case of Dr. Ramesh Yashwant Prabhoo, the Commission had held that the charges of corrupt practices proved against Dr. Prabhoo, under Section 123(3) of appeal to vote on the ground of religion, and under Section 123(3A) of promoting or attempting to promote feelings of enmity or hatred between different classes of citizens on the grounds of religion, etc., of the said Act, were of a very serious and grave nature. The Commission cannot take a different stand in this case, particularly so, when the speeches which were held by the High Court and Supreme Court to constitute the said corrupt practices in the case of Dr. Prabhoo were made by none other than Shri Bal Thackeray himself. When Dr. Prabhoo has been penalised and disqualified for the speeches of Shri Thackeray, it would belie logic if Shri Thackeray is treated differently. There cannot be two opinions, that any corrupt practices which are highly dangerous, and can threaten the very survival of democracy, must be viewed with the utmost concern, and put down with a heavy hand without any leniency. Persons indulging in such practices, must be visited with the severest penalty permissible under the law, as any leniency shown to them, would mean compromising with those corrupt practices which sully the purity of elections.
22. Having regard to the totality of the facts and circumstances of the case and the serious and grave nature of corrupt practices, Shri Bal Thackeray should be disqualified, and should be visited with the maximum penalty permissible under the law, viz., disqualification for 6 years under Section 8A(1) of the '1951-Act'.

Disqualification of Shri Bal Thackeray

23. Accordingly, the Election Commission of India hereby tenders its opinion to the President of India, under Section 8A(3) of the R.P. 1951-Act, to the effect that Shri Bal Thackeray, should be disqualified under Section 8A(1) of the said Act, for a period of six years from the date of the Supreme Court's Order dated 11.12.1995 i.e. till 10.12.2001.
24. The reference received from the President of India is returned with the Commission's opinion to the above effect.

**Sd/-**  
**(Dr. M.S. Gill)**  
Chief Election  
Commissioner

**Sd/-**  
**(J.M. Lyngdoh)**  
Election  
Commissioner

New Delhi  
22nd September, 1998



# **ELECTION COMMISSION OF INDIA**

**CORAM :**

<b>Hon'ble</b> <b>Sh. G.V.G. Krishnamurty</b> Election Commissioner	<b>Hon'ble</b> <b>Dr. M.S. Gill</b> Chief Election Commissioner	<b>Hon'ble</b> <b>Sh. J.M. Lyngdoh</b> Election Commissioner
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## **Reference Case No.1 of 1998**

[Reference from the Governor of Madhya Pradesh under Article 192 (2) of the Constitution of India]

Inre: Alleged disqualification of Shri Digvijay Singh, a Sitting Member of Madhya Pradesh Legislative Assembly.

*Constitution of India - Article 192 - disqualification of sitting member of a Legislative Assembly - reference from Governor to Election Commission seeking its opinion - Governor not to express any views or to conduct any preliminary enquiry - reference becomes infructuous on dissolution of the Assembly.*

## **SUMMARY OF THE CASE**

The Governor of Madhya Pradesh sought the opinion of the Election Commission on 1st April, 1998, under Article 192 (2) of the Constitution, on the question whether Sh. Digvijay Singh, a sitting member of the then existing Legislative Assembly of Madhya Pradesh, had become subject to disqualification for being a member of that House under Article 191 (1) of the Constitution read with Section 9A of the Representation of the People Act, 1951. The above question arose before the Governor of Madhya Pradesh on a petition dated 18th November 1997, made by another sitting member of the Legislative Assembly. The Governor made a preliminary inquiry into the said petition, and even his views on the maintainability of the petition were conveyed to the Commission, while making the reference to the Commission. The Commission observed that this should not have been done by the Governor, in view of the law laid down by the Supreme Court in *Brundaban Naik Vs. Election Commission* (AIR 1965 SC 1892) and *Election Commission Vs. N.G.Ranga* (AIR 1978 SC 1609) that the Governor was not required to make any inquiry and that he was enjoined upon by Article 192 (2) to refer the question to the Election Commission.

As regards merits of the petition against Shri Digvijay Singh, the Election Commission observed that the allegations in the petition against Sh. Digvijay Singh pertained to a period prior to his election to the dissolved House and they could not be inquired into by the Commission under Article 192 (2) of the Constitution. The Commission further observed that the petition became infructuous as the Legislative Assembly in relation to which the question of disqualification of Sh. Digvijay Singh had been raised had been dissolved on 1st December, 1998.

## **OPINION**

This is a reference dated 1.4.1998 from the Governor of Madhya Pradesh seeking the opinion of the Election Commission under Article 192 (2) of the Constitution of India on the question whether Shri Digvijay Singh, a sitting Member of the then existing Legislative Assembly of Madhya Pradesh, had become subject to disqualification, for being a member of that House, under Article 191 (1) of the Constitution read with Section 9A of the Representation of the People Act, 1951.

2. The above question arose on a petition dated 18.11.1997 made by Shri Shailendra Pradhan, a sitting member of the then existing Madhya Pradesh Legislative Assembly, to the Governor of Madhya Pradesh under Article 192 (1) of the Constitution. In the said petition, the petitioner alleged that Shri Digvijay Singh, who was elected to the then existing State Legislative Assembly at a bye-election held on 26.5.1994 from 30-Chachaura Assembly Constituency, had become subject to disqualification for continuing as a member of the State Legislative Assembly, for having incurred disqualification under Section 9A of the Representation of the People Act, 1951. It was alleged that Shri Digvijay Singh had rented out three buildings, owned by him, to the Government of Madhya Pradesh, for using as Post Office, Government School and a Government College and that the Government was paying a monthly rent of Rs.2750/-, Rs.1655/- and Rs.150/- for the said three buildings. According to the petitioner, the said buildings are alleged to have been given on rent since July, 1970, July, 1984 and October, 1989 respectively. In support of this, the petitioner attached (as Annexure P-3 to the petition) a copy of the answer given to Assembly Question No. 15 (580) on 22.2.1996 in the State Assembly. He alleged that leasing out of these buildings on rent to the Government amounted to entering into a lease agreement with the Government of Madhya Pradesh, which was still existing and subsisting. The said agreement is alleged to be a contract within the meaning of Section 9A of the Representation of the People Act,

1951, and as such it was contended that Shri Digvijay Singh had become subject to disqualification for continuing as a member of the then existing Legislative Assembly of Madhya Pradesh, under Article 191 (1) (e) of the Constitution of India read with Section 9A of the Representation of the People Act, 1951.

3. It appears that the Governor of Madhya Pradesh, on receipt of the petition submitted to him by Shri Shailendra Pradhan, made a preliminary enquiry into the said petition and called for the comments of Shri Digvijay Singh on the petition, before making a reference to the Commission, for its opinion in terms of Article 192 (2) of the Constitution of India. Even his views in regard to the maintainability of the petition were conveyed to the Commission in his aforesaid reference to the Commission. This should not have been done. While interpreting Article 192 of the Constitution, the Supreme Court has laid down in *Brundaban Naik Vs. Election Commission* (AIR 1965 SC 1892) and *Election Commission Vs. N.G. Ranga* (AIR 1978 SC 1609) that the Governor is not required to make any enquiry or collect any material in regard to any complaint or petition made to him in terms of Article 192 (1) and he is enjoined upon by clause (2) of that Article to refer that question to the Election Commission. It is the function of the Election Commission to make necessary enquiry and collect relevant material even if the complaint made before the Governor is frivolous. This true constitutional position in regard to matters arising under Article 192 of the Constitution, as enunciated by the Supreme Court, has been succinctly explained in the Commission's circular letter No. 113/2/KT/83-J.S.I, dated 24th June, 1983, addressed to the Secretaries to Governors of all States, copies of which were also endorsed to the Chief Secretaries to Governments and Chief Electoral Officers of all States. The above constitutional position was re-emphasized and again brought to the notice of the Secretaries to Governors of all States vide Commission's letter No. 113/1/AP/Governor/91-J.S.I, dated 20th March, 1992. As is apparent, the above procedure as laid down under the Constitution was not strictly adhered to in the case of the present reference by the Governor of Madhya Pradesh to the Commission.
4. As regards the petition of Shri Shailender Pradhan, even if it be assumed, for the sake of argument, in favour of the petitioner that the abovementioned alleged contract attracts the disqualification clause of Article 191 (1) (e) of the Constitution read with Section 9A of the Representation of the People Act, 1951, it is observed from the petitioner's own averments that the alleged disqualification, if at all, of Shri Digvijay Singh subsisted prior to, and on the date of, his election to the Madhya Pradesh Legislative Assembly at the bye-

election from 30-Chachaura Assembly Constituency held in May, 1994 as aforesaid. It is well settled by the Supreme Court in a catena of decisions [see Election Commission Vs. Saka Venkata Rao (AIR 1953 SC 210), Brundaban Naik Vs. Election Commission of India (AIR 1965 SC 1892), etc.] that under Article 192 (1) of the Constitution only such cases of disqualification of a sitting member of a State Legislature can be raised before the Governor to which the said member has become subject after his election and that any question relating to alleged disqualification of the member from which he was suffering prior to, or on the date of his election, can be agitated only by means of an election petition presented in accordance with Article 329 (b) of the Constitution read with Part-VI of the Representation of the People Act, 1951.

5. The above apart, subsequent to the making of the present reference to the Commission for its opinion, certain important developments have taken place which too have a vital bearing on the present proceedings. The Governor of Madhya Pradesh vide Notification No.13-L.Ele.-98-4-461, dated 30.10.1998, under the provisions of sub-section (2) of Section 15 of the Representation of the People Act, 1951, called a general election to constitute a new Legislative Assembly for the State, to replace the then existing State Assembly on the expiration of its normal term of five years. Pursuant thereto, the general election to the Madhya Pradesh Legislative Assembly was duly held in November, 1998, as scheduled, and new Legislative Assembly was duly constituted by the Commission on 1.12.1998, vide its Notification No.308-MP-LA-98, dated 1.12.1998, under the provisions of Section 73 of the aforesaid Representation of the People Act, 1951. Thereupon, the Governor of Madhya Pradesh dissolved, on 1.12.1998, the then existing State Legislative Assembly, under the provisions of Article 174 (2) (b) of the Constitution. Thus, the very House of the Madhya Pradesh Legislative Assembly, in relation to the membership whereof the question of alleged disqualification of Shri Digvijay Singh was raised by the petitioner, has itself been dissolved on 1.12.1998, following the general election held in November, 1998 in the State to constitute a new Assembly. In the aforesaid petition dated 18.11.1997, the petitioner had raised the question of continuance of Shri Digvijay Singh as a member of the then existing House of the Madhya Pradesh Legislative Assembly which was dissolved on 1.12.1998, as aforesaid. It is true that Shri Digvijay Singh contested the election from 31-Raghogarh Assembly Constituency and got re-elected at the said general election held in November, 1998 and is now again a sitting member of the present Legislative Assembly and is the incumbent Chief Minister of the State

of Madhya Pradesh. But no question has been raised in the petition under consideration about the continuance of Shri Digvijay Singh as a member of the present House. In fact, no such question could be raised in advance because it could not be foreseen by the petitioner or any one else at the time of making the petition that Shri Digvijay Singh would be re-elected at the next general election. Further, even if it be assumed, for argument's sake again, that Shri Digvijay Singh attracted any disqualification by reason of the facts and circumstances disclosed in the present petition, such disqualification would again have been attracted by him, if at all, before his election to the present House in November, 1998. It would have thus again been a case of his pre-election disqualification, which, as held above, could be raised only by means of an election petition and not in the proceedings under Article 192 (1) of the Constitution of India.

6. Having regard to the well-settled position of law, as stated above, and the abovementioned facts of the case, as furnished by the petitioner himself, the question of alleged disqualification of Shri Digvijay Singh, being a case of pre-election disqualification, if at all, cannot be raised before, or decided by, the Governor of Madhya Pradesh in terms of clause (1) of Article 192 of the Constitution, and, consequently, the Election Commission also has no jurisdiction under clause (2) of that Article to express any opinion on that case of alleged pre-election disqualification. The present petition before the Governor in terms of Article 192 (1) of the Constitution, on the aforesaid facts, is thus non-maintainable.
7. In view of the above, the petition dated 18.11.1997 of Shri Shailendra Pradhan to the Governor of Madhya Pradesh was not maintainable under Article 192 (1) of the Constitution and, even if maintainable, became infructuous on the dissolution of the earlier House of the Madhya Pradesh Legislative Assembly on 1.12.1998, as mentioned above.
8. The reference received from the Governor of Madhya Pradesh is, accordingly, returned to him with the opinion of the Election Commission to the above effect.

**Sd/-**  
**(G.V.G. Krishnamurthy)**  
Election Commissioner

**Sd/-**  
**(Dr. M.S. Gill)**  
Chief Election  
Commissioner

**Sd/-**  
**(J.M. Lyngdoh)**  
Election Commissioner

New Delhi  
7th May, 1999



# **ELECTION COMMISSION OF INDIA**

**CORAM :**

**Hon'ble**  
**Sh. G.V.G. Krishnamurty**  
Election  
Commissioner

**Hon'ble**  
**Dr. M.S. Gill**  
Chief Election  
Commissioner

**Hon'ble**  
**Sh. J.M. Lyngdoh**  
Election  
Commissioner

## **Reference Case No.2 of 1999**

[Reference from the President of India under Article 103 (2)  
of the Constitution of India]

In re: Alleged disqualification of Dr. Ramlakhan Singh Kushwaha, a former  
Member of Lok Sabha.

*Constitution of India - Article 103 - disqualification of sitting member  
of Lok Sabha - reference from President to Election Commission seeking its  
opinion - reference becomes infructuous on dissolution of Lok Sabha.*

## **SUMMARY OF THE CASE**

The President sought the opinion of the Election Commission, under Article 103 (2) of the Constitution, on the question whether Dr. Ramlakhan Singh, a sitting member of the 12th Lok Sabha, had become subject to disqualification for being a member of that House under Article 102 (1) of the Constitution.

Before the Election Commission could make an inquiry into the allegations made in the petition on the basis of which the reference was made to it, the 12th Lok Sabha was dissolved by the President on 24th June, 1999. On such dissolution of the Lok Sabha, the Election Commission tendered its opinion to the President that the petition did not survive any longer and had become infructuous.

## **OPINION**

This is a reference dated 16.3.1999 from the President of India, seeking the opinion of the Election Commission under Article 103 (2) of the Constitution of India, on the question whether Dr. Ramlakhan Singh Kushwaha, a then sitting Member of Parliament (Twelfth Lok Sabha), had become subject to disqualification, for being a member of that House, under Article 102 (1) of the Constitution of India.

2. The above question arose on a petition, dated 10.3.1999, made by Shri Udaybhan Singh Kushwaha, Ex-MLA, Bhind, to the President of India under Article 103 (1) of the Constitution. The petitioner alleged that Dr. Ramlakhan Singh Kushwaha, who was elected from 2-Bhind Parliamentary Constituency in Madhya Pradesh at the Twelfth Lok Sabha General Election held in February-March, 1998, got his name deleted from the electoral roll for 12-Bhind Assembly Constituency (comprised within the said Bhind Parliamentary Constituency) on 28.9.1998. The petitioner contended that on forfeiting his right of exercising adult franchise and ceasing to fulfil the statutory requirement under section 4(d) of the Representation of the People Act, 1951, of being an elector, Dr. Ramlakhan Singh Kushwaha had become subject to disqualification for continuing as a member of the Twelfth Lok Sabha, under Article 102 (1) (e) of the Constitution of India read with Section 4 (d) of the Representation of the People Act, 1951.
3. Before tendering its opinion to the President, on the petition of Shri Udaybhan Singh Kushwaha, the Commission decided to make enquiry in the matter. Accordingly, the Commission, vide notice dated 5th April, 1999, called upon the petitioner to file a written statement, duly supported by an affidavit and accompanied by all relevant documents, on or before 14th May, 1999, in respect of the allegations contained in his aforesaid petition to the President. Pursuant to the aforesaid notice dated 5th April, 1999, the petitioner filed his written statement before the Commission on 12th April, 1999.
4. While the Commission was in the process of looking further into the matter, certain important developments have taken place which have vital bearing on the very maintainability of the present reference to the Commission, at this stage. The Twelfth Lok Sabha of which Dr. Ramlakhan Singh Kushwaha was a member, was dissolved by the President by his Order dated 26th April, 1999, in exercise of the powers conferred on him by sub-clause (b) of clause (2) of Article 85 of the Constitution of India, The said Presidential order dated 26th April, 1999 has been published in the Gazette of India Extraordinary, Part-I, Section-I, dated 26th April, 1999, by the Lok Sabha Secretariat, for general information vide Notification No.37/2/99/T, dated 26th April, 1999.
5. As stated above, the question raised in the petition of Shri Udaybhan Singh Kushwaha relates to the alleged disqualification of Dr. Ramlakhan Singh Kushwaha, for continuing as a member of the

Disqualification of Dr. Ramlakhan Singh Kushwaha, a former Member of Lok Sabha

Twelfth Lok Sabha. The Twelfth Lok Sabha has now been dissolved by the President on 26th April, 1999. Thus, the very House, in relation to the membership whereof the question of alleged disqualification of Dr. Ramlakhan Singh Kushwaha was raised is no longer in existence now.

6. In view of the above, the petition, dated 10.3.1999 of Shri Udaybhan Singh Kushwaha, to the President of India under Article 103 (1) of the Constitution does not survive any longer, as the same has become infructuous on the dissolution of the Twelfth Lok Sabha on 26th April, 1999.
7. The reference received from the President, in the present case is, accordingly, returned with the opinion of the Election Commission to the above effect.

**Sd/-**  
**(G.V.G. Krishnamurthy)**  
Election Commissioner

**Sd/-**  
**(Dr. M.S. Gill)**  
Chief Election  
Commissioner

**Sd/-**  
**(J.M. Lyngdoh)**  
Election Commissioner

New Delhi  
21st May, 1999



# **ELECTION COMMISSION OF INDIA**

**CORAM :**

<b>Hon'ble</b> <b>Sh. J.M. Lyngdoh</b> Election Commissioner	<b>Hon'ble</b> <b>Dr. M.S. Gill</b> Chief Election Commissioner	<b>Hon'ble</b> <b>Sh. T.S. Krishna Murthy</b> Election Commissioner
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## **Reference Case No.1 of 1999**

(Reference from the President of India under Article 103 (2)  
of the Constitution of India)

In re: Alleged disqualification of Shri Jaswant Singh, a sitting member of Parliament (Rajya Sabha).

*Constitution of India - Article 103 - Question of pre-election disqualification cannot be raised before President under Article 103.*

## **SUMMARY OF THE CASE**

Shri Jaswant Singh, a sitting member of Rajya Sabha, was appointed as Special Envoy of the Government of India on 12th June, 1998. He was also appointed as Deputy Chairman of the Planning Commission of India, in the rank of Cabinet Minister, on 21st March, 1998 and continued to hold that office till 4th December, 1998. While holding the above offices of the Deputy Chairman of the Planning Commission and Special Envoy of the Government of India, he was elected to the Rajya Sabha on 18th June, 1998. A question was raised before the President in terms of Article 103 (1) of the Constitution that Sh. Jaswant Singh had become disqualified to continue as member of the Rajya Sabha because he was holding an office of profit under the Government. The President referred the matter to the Election Commission for its opinion under Article 103 (2) of the Constitution.

The Commission observed that the allegations relating to the holding of office of profit by Shri Jaswant Singh pertained to the period prior to his election to the Rajya Sabha and, therefore, raised question of pre-election disqualification, if at all. The Commission opined that such question of pre-election disqualification could not be raised before the President under Article 103 (1) of the Constitution and the Commission also had no jurisdiction to inquire into such question of pre-election disqualification, in view of the law laid down by the Supreme Court in the cases of Election Commission Vs.

Saka Venkata Rao ( AIR 1953 SC 210), Brundaban Naik Vs. Election Commission (AIR 1965 SC 1892 ), and Election Commission Vs. N.G.Ranga (AIR 1978 SC 1609).

## **OPINION**

This is a reference dated 5th March, 1999 from the President of India, seeking the opinion of the Election Commission, under Article 103 (2) of the Constitution of India, on the question whether Shri Jaswant Singh, a sitting Member of Parliament (Rajya Sabha), has become subject to disqualification, for being a member of that House, under Article 102 (1) of the Constitution of India.

2. The above question arose on a petition dated 28th December, 1998, made by one Shri Ashok Kumar Asandas Maidasani, of Bhusaval (Maharashtra), to the President of India under Article 103 (1) of the Constitution. In the said petition, the petitioner averred that the Central Government had appointed the respondent, Shri Jaswant Singh, as Deputy Chairman of the Planning Commission of India, with the rank of a Cabinet Minister, on 21st March, 1998 and he continued to hold the said office of the Deputy Chairman till 4th December, 1998. The petitioner stated that Shri Jaswant Singh was elected as a member of Parliament (Rajya Sabha) on 18th June, 1998, at the biennial election to the Council of States from the State of Rajasthan, and was subsequently inducted into the Council of Ministers and was appointed as Foreign Minister on 5th December, 1998. The petitioner further averred that Shri Jaswant Singh was also appointed as Special Envoy of the Prime Minister in the second week of June, 1998, i.e. 12th June, 1998, prior to his election to the Rajya Sabha on 18th June, 1998. The petitioner contended that the office of Special Envoy of the Government of India, was an office of profit within the meaning of clause (1) (a) of Article 102 of the Constitution of India and the holder of that office was disqualified for being chosen as, and for being, a member of Parliament. In paras 6 and 8 of the petition, the petitioner has mentioned several activities of the respondent, Shri Jaswant Singh, as the Special Envoy of the Government of India, during the period from 12th June to 7th November, 1998 i.e., both prior to, and after, his election to the Rajya Sabha on 18th June, 1998, and also as the Foreign Minister of India from 5th December, 1998, in addition to his holding of office of the Deputy Chairman of the Planning Commission. The contention of the petitioner is that the office of Special Envoy of the Govt. of India,

Ministry of External Affairs is an office of profit under the Government of India and it has not been declared by law that the holder of this office will not be disqualified for being chosen as, and for being, a member of either House of Parliament. The petitioner thus contends that Shri Jaswant Singh, having held the said office of profit under the Govt. of India from 12th June, 1998 to 4th December, 1998, has become subject to disqualification under Article 102 (1) (a) of the Constitution of India.

3. The perusal of the above petition and the examination of the relevant facts by the Commission shows that Shri Jaswant Singh was elected to the Rajya Sabha on 18th June, 1998, from the State of Rajasthan at the biennial election held in June, 1998. Notification under section 12 of the Representation of People Act, 1951 for the said biennial election was issued on 30th May, 1998. Poll for the said election was taken on 18th June, 1998, and the result of the election was also declared by the Returning Officer on the same day. As per the provisions of Section 155 of the Representation of People Act, 1951, the term of office of Shri Jaswant Singh, as a member of the Rajya Sabha, commenced from the date of notification of his election under section 71 of the said Act. In his case, that notification was issued on 5th July, 1998.
4. From the above facts and the averments of the petitioner, it is unambiguously clear that Shri Jaswant Singh was holding the office of the Deputy Chairman of Planning Commission, and also acting as the Special Envoy of the Prime Minister, on the date of his election as Member of the Rajya Sabha on 18th June, 1998. Thus, the disqualification, if at all, which he is alleged to have incurred by holding the above offices, subsisted prior to, and on the date of his election on 18th June, 1998. In other words, according to the petitioner's own averments, it is a case of pre-election disqualification, if at all, and not a case of disqualification which he incurred or to which he became subject after his aforesaid election on 18th June, 1998.
5. It is well settled that under Article 103 (1) of the Constitution, the President has jurisdiction to decide only such question of disqualification to which a sitting member of Parliament becomes subject after his election. Consequently, the jurisdiction of the Election Commission to enquire into question of the alleged disqualification, on being referred to it by the President under Article 103 (2) of the Constitution, also arises only in cases of post-election

disqualification. Any question of pre-election disqualification, i.e., disqualification from which a person was suffering at the time of, or prior to, his election, can be raised only by means of an election petition under Article 329 (b) of the Constitution read with Part-VI of the Representation of the People Act, 1951, and in no other manner. Reference is invited, in this connection, to the Supreme Court's catena of decisions in (i) Election Commission Vs. Saka Venkata Rao (AIR 1953 SC 210); (ii) Brundaban Naik Vs. Election Commission (AIR 1965 SC 1892); (iii) Election Commission Vs. N.G. Ranga (AIR 1978 SC 1609); etc.

6. In view of the well settled constitutional position, referred to above, the question of the alleged disqualification of Shri Jaswant Singh, being a case of pre-election disqualification, if at all, cannot be raised before, or decided by, the President under Article 103 (1) of the Constitution. Consequently, the Election Commission also has no jurisdiction to express any opinion on the question of such alleged pre-election disqualification. The present petition is, therefore, non-maintainable before the President in terms of Article 103(1) of the Constitution. The same view has already been expressed by the Commission in a large number of similar cases, referred to it, by the President and Governors of several States.
7. The reference received from the President, in the present case, is accordingly returned to him, with the opinion of the Election Commission of India, to the above effect.

**Sd/-**  
**(J.M. Lyngdoh)**  
Election  
Commissioner

**Sd/-**  
**(Dr. M.S. Gill)**  
Chief Election  
Commissioner

**Sd/-**  
**(T.S. Krishna Murthy)**  
Election  
Commissioner

New Delhi  
7th March, 2000

# **ELECTION COMMISSION OF INDIA**

**BEFORE :**

**Hon'ble**  
**Sh. G.V.G. Krishnamurthy**  
Election  
Commissioner

**Hon'ble**  
**Sh. T.N. Seshan**  
Chief Election  
Commissioner

**Hon'ble**  
**Dr. M.S. Gill**  
Election  
Commissioner

**In Re.: Telugu Desam Party**

Dispute No. 6 of 1995 : Under Para 15 of the Election Symbols  
(Reservation and Allotment) Order, 1968.

**BETWEEN :**

Shri N. Chandra Babu Naidu

Petitioner

and

Smt. Lakshmi Parvati  
W/o Late N.T. Rama Rao

Respondent

*Advocates for* : Sh. Kapil Sibal, Senior Counsel, S/Sh. K. Rajendra  
*Petitioner* Choudhary, N.V. Ramana and Rakesh Sharma

*Advocates for* : Sh. D.D. Thakur, Senior Counsel, S/Sh. D. Prakash  
*Respondent* Reddy, D. Vidyanatham, Chandra Sekhera Rao,  
Manendra Singh, K.R. Raman and N.N. Bhatt.

*Election Symbols (Reservation and Allotment Order, 1968 — para 15 — split in a party may arise in variety of ways — immaterial, whether split takes place first in legislature wing or in organisational wing — test of majority in both wings, applied.*

## **SUMMARY OF THE CASE**

The Telugu Desam Party (TDP) is a recognised State party in Andhra Pradesh and the symbol 'Bicycle' is reserved for it under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968. There was a split in the party in August, 1995, resulting in the formation of two groups, one led by (late) Sh. N.T. Rama Rao, who was the President of the party as per the records of the Election Commission, and also the incumbent Chief Minister of Andhra Pradesh, and the other by Sh. Chandrababu Naidu respectively. Sh. Naidu claimed that he was elected as the leader of the

legislature wing of the party in the Andhra Pradesh Legislative Assembly in place of Shri Rama Rao, at a meeting on 24th August, 1995, which was attended, among others, by 144 out of 214 MLAs of the party in the Assembly. On coming to know of this development, Shri Rama Rao advised the Governor of Andhra Pradesh on 25th August, 1995 to dissolve the State Assembly. This was resisted by Sh. Naidu and other MLAs supporting him. Thereupon, the Governor called upon Sh. Rama Rao on 27th August, 1995 to prove his majority on the floor of the Assembly on 31st August, 1995. But instead, Shri Rama Rao submitted his resignation as Chief Minister on 31st August, 1995. The Governor then invited Shri Naidu to form the Government and administered him the oath of office of the Chief Minister on 1st September, 1995. Shri Naidu proved his majority on the floor of the Assembly on 7th September, 1995.

On 26th of October, 1995, Shri Naidu filed a petition before the Election Commission in terms of para 15 of the Election Symbols (Reservation and Allotment) Order, 1968, for a declaration that the group led by him was the TDP and entitled to use its reserved symbol. In the petition, Sh. Naidu also claimed that at an extraordinary meeting of the State General Body of the party on 31st August, 1995, he was elected as the party President in place of Shri Rama Rao. In refuting the claims of Shri Chandrababu Naidu, it was averred by Shri Rama Rao that Shri Naidu was expelled from the party on 25th August, 1995 for anti-party activities.

In view of the then fast approaching general election to the House of the People, the Commission heard both the groups on 5th February, 1996. Meanwhile, unfortunately, Sh. Rama Rao expired on 18th January, 1996 and, on his demise, his widow Smt. N. Lakshmi Parvathi claimed to have been elected as the President of the party at an extraordinary meeting of the State General Body on 21st January, 1996. She was allowed by the Commission to be substituted as the respondent to the petition of Shri Chandrababu Naidu.

At the hearing, it was contended, inter-alia, on behalf of the respondent, that the split in the party within the meaning of para 15 of the Symbols Order should have its origin in the organisational wing of the party and as, on the present case, the split took place first in the legislature wing on 24th August, 1995, preceding the split in the organisational wing on 30th August, 1995, para 15 of the Symbols Order was not attracted. The Commission did not agree with that contention and held that -

*“split in a party can arise in a variety of ways. The legislature wing of the party is also a part, and that too a very significant, valuable and definitely*

*ascertainable part, of the overall structure of the party. In a given case, like the present one, some dissensions or differences may arise in the legislature wing of the party which may split the whole organisation resulting in the formation of two rival or splinter groups of the party. In another case, differences among the leaders of the organisational wing may have repercussions on the legislature wing of the party, again resulting in formation of two rivals or splinter groups of the party. What has to be seen is the overall impact of the bringing about of a schism in the party and not whether such schism could be traced for its origin to the organisational or legislature wing of the party”.*

Applying the test of majority laid down by the Supreme Court in *Sadiq Ali Vs. Election Commission (AIR 1972 SC 187)*, the Commission found the group led by Sh. Chandrababu Naidu, enjoying the support of overwhelming majority in both the legislature and the organisation wings of the party. Accordingly, the group led by Sh. Chandrababu Naidu was declared the Telugu Desam Party and entitled to use its reserved symbol.

## **ORDER**

This is an application dated 26.10.1995 filed before the Commission by Shri N. Chandrababu Naidu, the petitioner, seeking a declaration in terms of para 15 of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as ‘Symbols Order’) that the group the Telugu Desam Party led by him as its President is that party, and be recognised by the Commission accordingly.

2. The Telugu Desam Party is a recognised State Party in the State of Andhra Pradesh and the Symbol ‘Bicycle’ is reserved for that party under the provisions of the Symbols Order. According to the records of the Commission, (the late) Shri N.T. Rama Rao was the President of that Party. Shri Chandrababu Naidu (for short, the petitioner) in his application under reference stated that Shri N.T. Rama Rao was elected as the President of Telugu Desam Party as its Founder President in 1982 and was thereafter re-elected from time to time and last such election was held in May, 1992. According to him, the term of the party President under the party constitution is two years and the same expired in May, 1994. Thereafter, no election for any of the offices of the party was conducted; but Shri Rama Rao, however, continued to be the President of the party till 30th August, 1995. Shri Naidu alleged that ever since Shri Rama Rao became the President of the party in 1992, his style of functioning was autocratic and he never heeded the advice of the well-wishes of the party. After the thumping success of

the party in the 1994-Assembly elections, which was attributable not only to the leadership of Shri Rama Rao, but also to the hard work and sacrifice of the applicant and the cadres in general, the behaviour pattern of Shri Rama Rao was completely changed for the worse and he started taking decisions in all party matters at his own whims and fancies, without taking into confidence any of the important party members. The party then suffered serious set-backs in the elections to the local bodies and co-operative banks, as a result of Shri Rama Rao's autocratic behaviour and any person raising a voice of dissent was either suspended or expelled by Shri Rama Rao.

3. According to the petitioner, this resulted in great and widespread resentment amongst the rank and file of the party, from top to bottom, against Shri Rama Rao, which culminated in a meeting of Telugu Desam Legislature Party on the night of 24th August, 1995 at Hyderabad being convened. A due notice was given to all the members of the legislature party for that meeting which was attended by 144 out of 214 members of the Legislative Assembly belonging to the party. Shri Naidu claims to have been elected as the Leader of the Telugu Desam Legislature Party at that meeting in place of Shri Rama Rao. As a result of such election of Shri Naidu as the Leader of the Telugu Desam Legislature Party, at the meeting in place of Shri Rama Rao, two memoranda were submitted to the Hon'ble Governor of the State of Andhra Pradesh and the Hon'ble Speaker of the Legislative Assembly on 25th and 26th August, 1995 respectively, intimating them of the above development. In the meanwhile, Shri Rama Rao, on coming to know of the above developments, advised the Hon'ble Governor on the morning of 25th August, 1995. This was resisted by Shri Naidu by the aforesaid two memoranda, which were accompanied by the signatures of all the aforesaid 144 MLAs. The Hon'ble Governor, after satisfying himself about the majority support enjoyed by Shri Naidu, called upon Shri Rama Rao on 27th August, 1995 to prove his majority on the Floor of the Assembly on 31st August, 1995. But instead, Shri Rama Rao submitted his resignation as Chief Minister to the Hon'ble Governor on the afternoon of 31st August, 1995.

4. The Hon'ble Governor, after accepting the said resignation invited Shri Naidu to form the Government and, accordingly, administered the oath of office of the Chief Minister to him on 1st September, 1995. Shri Naidu's majority was again tested successfully on the Floor of the Assembly on 7th September, 1995. Shri Naidu claimed in the said application that he enjoyed the support and confidence of 169 out of 214 Assembly members of Telugu Desam Party. He also claimed that prior to his becoming the Chief Minister on 1st September, 1995, an extraordinary State General

Body meeting of the Telugu Desam Party was convened on 31st August, 1995, at Hyderabad after due notice and at that meeting of the State General Body which was attended by more than 2/3rd of its members, he was unanimously elected as the President of the Telugu Desam party in place of Shri Rama Rao whose term had expired in May, 1994.

5. Shri Naidu, further, stated that he had kept the Commission informed of the above developments in the party by his letters dated 15th September, 1995, 29th September, 1995, 10th October, 1995 and 24th October, 1995 and that with his letter dated 24th October, 1995, he had submitted original affidavits of as many as 2679 out of 3694 members of the State General Body. On these averments, it was claimed in the application that the group led by him (Shri Naidu) enjoyed the majority support both of the members of the Andhra Pradesh Legislative Party belonging to the Telugu Desam Party and also of the members of the State General Body of the party and thus the said group was entitled to be recognised by the Commission as the real Telugu Desam Party.

6. In his reply dated 20.12.1995 to the petition of Shri Naidu, Shri N.T. Rama Rao, the original respondent (who later was replaced by Mrs. Lakshmi Parvati, his widow as his successor) denied that there was any split in the Telugu Desam Party and claimed that he was the duly elected President of the party and continued to be so. According to him, the matter relating to the alleged election of Shri Naidu as the President of the party was an internal matter of the party and the Commission had no jurisdiction to go into the same. He denied that he had ceased to be the party President on the expiration of the two year term in May, 1994 and asserted that he would continue to hold the office of the party President till the new President was elected by the party's Mahanadu in accordance with the provisions of the party constitution. He claimed that clause 18(vu) of the party constitution provided that "If organisational elections are not held in time such committees, where the elections have not been completed are deemed to be dissolved. But the State Party President shall continue. Under special circumstances the State Party President shall have the power to extend the term of those committees whose elections are not held within time". He denied that his style of functioning was autocratic and stated that if that was so the people of Andhra Pradesh would not have reposed faith in his leadership at the 1994 Assembly elections.

7. A counter allegation was made in the reply that Shri Naidu had been nurturing private ambition to be the Chief Minister, and seething under discontent ever since he (Shri Rama Rao) became the Chief Minister and continued to build up his faction and waited for an opportune time to

stab him (Shri Rama Rao) in the back. It was also alleged that Shri Naidu, by playing immoral and unethical manipulative politics, brought about dissension in the legislature party against his leadership. He further alleged that Shri Naidu worked against the official candidates of the party at the elections to the District Co-operative, Central Bank and District Co-operative Marketing Societies as, some of his followers were not set up as party candidates and on coming to know of such anti-party activities indulged in by Shri Naidu and his faction, the disciplinary committee of the party took a serious view of the same and suspended eight M.L.As. on 16.08.1995 and issued show-cause notices to them and also to two Ministers in his Cabinet. Taking further stock of anti-party activities indulged in by Shri Naidu and his followers, the disciplinary committee suspended Shri Naidu and four Cabinet Ministers from the party on 24.08.1995. The reply states that Shri Naidu met Shri Rama Rao on 24.08.1995 and made some unreasonable demands, which the latter refused to concede. On 25.08.1995, at 6.00 A.M., invoking his powers as President under clause (12) (a) (13) to take a decision in emergency situations in the interest of the party, he expelled Shri Naidu and four Cabinet Ministers from the party. He admitted that he had recommended to the Hon'ble Governor of the Andhra Pradesh to dissolve the State Assembly following a unanimous decision of the Council of Ministers, but that recommendation was not accepted by the Hon'ble Governor and he, on the contrary, invited Shri Naidu to form the Govt. on 31.08.1995 and administered him the oath of office of the Chief Minister on 01.09.1995.

8. It was also alleged that a letter purporting to be his resignation letter from the Chief Ministership was obtained from him when he was lying unconscious for medical treatment in the Medicity Hospital. He also alleged that the Hon'ble Speaker wrongly issued a bulletin on 28.08.1995 to the effect that Shri Naidu was elected as the leader of the Telugu Desam Legislature Party on the removal of Shri Rama Rao from that office, as no valid meeting of the Telugu Desam Legislature Party was held on 24.08.1995 in accordance with the constitution of that legislature party. Being aggrieved by the actions and decisions of Hon'ble Governor and Hon'ble Speaker, the Hon'ble High Court of Andhra Pradesh was moved by Shri Rama Rao by filing a writ petition No. 23509 of 1995. He also averred that all committees in the organisational structure of the party, except the party President, stood automatically dissolved on the expiry of their two-year term in May, 1994 as per article 18(e) of the party constitution and hence there was no State General Body in August, 1995 and, as such, the claim of Shri Naidu of having been elected as party President on 30.08.1995 by the State General Body was not sustainable. He also questioned the legality of the 2679

affidavits filed by Shri Naidu and wanted him to be put to strict proof of the fact that the executants of those affidavits were the members of the State General Body. According to him, Shri Naidu was expelled from the party and he, thus being an outsider, had no right, much less any authority, to claim the name and the symbol of the party.

9. Appreciating the urgency of the matter in view of the fast approaching General Election to the House of the People, the Commission decided to hear both the groups on 01.02.1996. Shri Rama Rao, however, unfortunately expired on 18.01.1996. On his sudden demise, Smt. N. Lakshmi Parvati and Dr. Daggubati Venkateswara Rao claimed to have been elected as the President and Working President of the party at an extraordinary meeting of the State General Body held on 21.01.1996 at Hyderabad and participated in these proceedings as successors to the late Shri N.T. Rama Rao. The Commission did not consider it desirable to waste any time in going into the question of the locus standi of Smt. Lakshmi Parvati and Dr. Venkateswara Rao to represent the late Shri N.T. Rama Rao and allowed them to take part in the present proceedings by treating them as the respondents in place of Shri Rama Rao, in the interests of justice, fair play and equity. Further, the hearing scheduled to be held on 01.02.1996 was postponed to 05.02.1996 at the request of Dr. Venkateswara Rao.

10. Meanwhile, another important development took place. The Hon'ble High Court of Andhra Pradesh dismissed on 22.12.1995, the writ petition filed by Shri N.T. Rama Rao, upholding the actions of the Hon'ble Governor in accepting the claim of Shri Naidu as enjoying the majority support of M.L.As accepting the resignation of Shri N.T. Rama Rao and appointing Shri Naidu as the Chief Minister in place of Shri Rama Rao.

11. At the hearing of this matter before the full Commission on 05.02.1996, Shri Prakash Reddy, learned counsel who represented for the group represented by Smt. Lakshmi Parvati and Dr. Venkateswara Rao (hereinafter referred to as the 'respondent group'), prayed for further adjournment of the hearing on the ground that Smt. Lakshmi Parvati was still busy with the last rites of her deceased husband, Shri N.T. Rama Rao. The Commission granted the prayer and adjourned the hearing to 19.02.1996, but, at the same time, made a purely an interim arrangement, without prejudice to the contentions and the rights of the disputant groups, and in the context of the then on-going biennial election to the Rajya Sabha from the State of Andhra Pradesh, that the two groups may set up their candidates at that biennial election as Telugu Desam Party (Chandrababu Naidu group) and Telugu Desam Party (N.T. Rama Rao group).

12. The matter was then further heard by the full Commission on 19.02.1996 and 20.02.1996.

13. In their oral submissions made through their respective learned Senior Counsel, both the groups reiterated their averments, contentions and claims as made in their written pleadings.

14. The Commission, after careful examination of the facts and circumstances of the case, evidence and submissions made by the Counsel, considered that there are two issues for determination by the Commission in these proceedings.

1. WHICH IS THE REAL 'TELUGU DESAM PARTY' TO BE RECOGNISED FOR THE PURPOSE OF THE SYMBOL IN THIS DISPUTE (UNDER PARA 15 OF THE SYMBOLS ORDER), AMONG THE TWO RIVAL GROUPS OF THE PARTY LED BY SHRI CHANDRA BABU NAIDU AND THE OTHER BY SMT. LAKSHMI PARVATI ?

2. IF ANYONE OF THE GROUPS IS RECOGNISED AS THE REAL TELUGU DESAM PARTY WHAT IS THE POSITION OF THE OTHER GROUP ? IS IT ENTITLED FOR ANY RELIEF ?

15. Now we would like to examine and consider the first issue.

#### **ISSUE NO. 1**

WHICH IS THE REAL 'TELUGU DESAM PARTY' TO BE RECOGNISED FOR THE PARTY TO BE RECOGNISED FOR THE PURPOSE OF SYMBOL, IN THIS DISPUTE (UNDER PARA 15 OF THE SYMBOLS ORDER), AMONG THE TWO RIVAL GROUPS OF THE PARTY LED BY SHRI CHANDRA BABU NAIDU AND THE OTHER BY SMT. LAKSHMI PARVATI ?

Shri Kapil Sibal, learned Senior Counsel for the petitioner, contended that the case had to be decided by the Commission on the test of majority in the organisational and legislature wings of the party. According to him, the law on the subject is laid down conclusively by the Hon'ble Supreme Court in the case of Sadiq Ali (AIR 1972 SC 187) which upheld the rule of majority in the case of split in a political party. He asserted that the relative position of the two rival groups, both in the organisational and legislature wings, was so clear that the matter did not admit of any controversy that the applicant group was the Telugu Desam Party. He stated that 214 members of the Andhra Pradesh Legislative Assembly out of the total

strength of 294 of that House were elected on the Telugu Desam Party ticket at the last General Election to that House in November-December, 1994. Out of those 214 members, the petitioner claimed the support of 178 members.

16. The learned counsel for the petitioner also stated that he had the support of six out of seven members of the party in the Lok Sabha and two out of three party members in the Rajya Sabha. On the organisational side, he claimed the support of as many as 2674 members of the State General Body out of total strength of 3745 as it stood in 1994. He denied that Shri Chandrababu Naidu was expelled from the Telugu Desam Party, as no such expulsion order was ever served on him by Shri N.T. Rama Rao. He also denied that the members of the Andhra Pradesh Legislative Assembly supporting Shri Naidu had voluntarily left the party, as alleged on behalf of the respondent group, and contended that had it been so Shri N.T. Rama Rao would have moved the Hon'ble Speaker of the Assembly for their disqualification under para 2 (1) (a) of the Tenth Schedule to the Constitution. He emphatically averred that no such proceeding under the said para of the Tenth Schedule was ever initiated or was pending before the Hon'ble Speaker. He also laid stress on the point that the claim of majority among the party M.L.As. had been accepted, not only by the Hon'ble Speaker and the Hon'ble Governor of Andhra Pradesh, but also by the Hon'ble High Court in its Judgment and Order dated 22.12.1995 in writ Petition Nos. 23509 and 19609 of 1995 filed by Shri N.T. Rama Rao and some of his supporters.

17. On the other hand, Shri D.D. Thakur, learned Senior Counsel for respondent group, contended that the applicant could not claim to be validly elected either as leader of the Telugu Desam Legislature Party or as President of the Telugu Desam Party and thus he could not lay any claim that the group represented by him was the Telugu Desam Party. His contention was that the rule of majority as upheld by the Hon'ble Supreme Court in the case of Shri Sadiq Ali (Supra) was not applicable to the facts and circumstances of the present case. He stated that even the applicant himself admitted that the late Shri N.T. Rama Rao was the President of the Telugu Desam Party till at least 30th August, 1995. According to him, there is no provision in the party constitution for the removal of the President and his successor could be elected only at the next Mahanadu, and as no organisational elections were held on the expiry of two year term in May, 1994, all organisational bodies at all levels which were last elected in May, 1992, automatically ceased to exist after May, 1994. For this proposition, he relied on the provisions of article 18(e) of the party

constitution which, according to him, provided that where the organisational elections could not be completed in time, the President alone would continue in office. His further case was that Shri Chandrababu Naidu was expelled by the President on 25.08.1995 from the primary membership of the party, and thus he could not even claim to be member of that party much less the President of the party or the leader of the Legislature wing of the party.

18. On these averments, Shri Thakur the learned counsel contended that there was no question of Shri Naidu enjoying the support of majority of the party M.L.As. or of the members of organisational bodies like State General Body. His case thus is that there are no two rival or splinter groups of the Telugu Desam Party within the meaning of para 15 of the Symbols Order.

19. The first question, therefore, which arises for consideration of the Commission in this case is whether there are two rival or splinter groups of the Telugu Desam Party within the meaning of para 15 of the Symbols Order. Shri Thakur alleged that Shri Chandrababu Naidu had been expelled from the primary membership of the Telugu Desam Party on 25.08.1995 and he could not claim to be either the President of the party or the leader of legislature wing of the party and those who are supporting him can not be said to be constituting a group in the party. Shri Kapil Sibal denied that Shri Chandrababu Naidu was expelled and asserted that Shri Naidu was never served with any order expelling him from the party.

20. The perusal of the records of the present proceedings shows that Shri N.T. Rama Rao in his written reply dated 20.12.1995 took the position that Shri Naidu had been expelled by him on 25.08.1995, but he did not choose to place on record a copy of the expulsion order with his said reply. At the conclusion of the oral hearing on 20.02.1996, the Commission directed the learned Senior Counsel for the respondent group to produce a copy of the said expulsion order by 22.02.1996 and also permitted both the groups to file their written arguments and all other documents on which they relied in support of their respective cases. Though the petitioner's group has filed its written arguments, no such written arguments or any further documents have been filed on behalf of the respondent group by 22.02.1996 or even thereafter till date. This lends credence to the stand of the petitioner that he was never served with any expulsion order by the late Shri N.T. Rama Rao. Had he passed any such order and served the same on the petitioner, the records of the party office, which are now admittedly in the possession of the respondent group, would have contained the same. The non-production of copy of such expulsion order by the respondent group, obliges the Commission to draw an adverse inference against the respondent group and to come to the conclusion that no such

order was served on the petitioner. Thus, he cannot be considered to be an outsider, as the respondent group termed him. In that view, the applicant or those who are supporting him in the legislature and organisational wings of the party have to be considered as constituting a rival or splinter group in the Telugu Desam Party within the meaning of para 15 of the Symbols Order.

21. Shri Thakur's next objection was that the petitioner Shri Naidu could not claim to have been validly elected either as the president of the party or as the leader of the legislature wing of the party. According to him, there is no provision in the party constitution for the removal of the party President and he would continue, once elected, till the next organisational elections at the next Mahanadu. There appeared to be some controversy as to the exact meaning and purport of clause 18(e) of the party Constitution as the provision in the Telugu version of the party Constitution seemed to be different from its English translation in English version thereof. As both the versions were, however, placed on the Commission's records by the party along with its application for registration in 1989 the Commission is inclined to accept the averments based on the Telugu text of the party Constitution, it being the original one. But that does not help the respondent group in any way. The party constitution is totally silent as to how the President would be elected or appointed in the case of death or resignation of the incumbent President.

22. Further, for purposes of argument, if the petitioner cannot be considered, according to respondent, to be the duly elected President of the party, so is the case with Smt. Lakshmi Parvati and Dr. D. Venkateswara Rao, who now claim to be the President and Working President respectively of the party on the sad demise of Shri N.T. Rama Rao. The Commission, therefore, does not propose to go into the question of election of the President of the party. Further, as the claim of Shri Naidu as enjoying the support of majority of the members of Andhra Pradesh Legislative Assembly belonging to Telugu Desam Party has been accepted by the Hon'ble Governor of Andhra Pradesh and as his claim of enjoying the support of majority not only among the Telugu Desam Party M.L.As. but of the entire Legislative Assembly has been tested and found valid on the floor of the Assembly and further, as the Hon'ble High Court of Andhra Pradesh has also put its seal of approval on the above claim of Shri Naidu, the Commission is not called upon to go into the question of his election as the leader of the legislature wing of the party.

23. In view of the foregoing, the basic contention of Shri Thakur that it is not a case of split in the Telugu Desam Party within the meaning of para 15 of the Symbols Order cannot be accepted. Shri Thakur had also contended, but feebly, that the split within the meaning of paragraph 15 of

the symbols order would have its origin in the organisational wing of the party and which would have its repercussions on the legislature wing of the party; but in the present case the split according to him, took place first in the legislature wing on 24.08.1995 when Shri Naidu claims to have been elected as the leader of the legislature group of the party and preceded the split in the organisational wing which could be said to have taken place on 30.08.1995 when Shri Naidu claims to have been elected as the party president. This contention of Shri Thakur also is not on sound grounds. As Shri Thakur himself submitted, split in a party can arise in a variety of ways. The legislature wing of the party is also a part, and that too a very significant, valuable and definitely ascertainable part, of the overall structure of the party. In a given case, like the present one, some dissensions or differences may arise in the legislature wing of the party which may split the whole organisation resulting in the formation of two rival or splinter groups of the party. In another case, differences among the leaders of the organisational wing may have repercussions on the legislature wing of the party, again resulting in formation of two rival or splinter groups of the party. What has to be seen is the overall impact of the bringing about of a schism in the party and not whether such schism could be traced for its origin to the organisational or legislature wing of the party.

24. In view of the above, the effort of Shri Thakur to distinguish the present case from the case of Sadiq Ali as decided by the Supreme Court (Supra) and to state that it is not applicable in this dispute, fails. In that case also, the Commission refused to go into the questions of expulsion and counter expulsion of various office-bearers of the party as both the groups were found to be not acting strictly in accordance with the provisions of the party constitution, and the Commission applied the test of majority of the two rival groups in the legislature and organisational wings of the party. The matter was taken in appeal to the Hon'ble Supreme Court, which held [Sadiq Ali Vs. Election Commission and another (AIR 1972 SC 187)] approving the tests laid down as follows :-

“As congress is a 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..... 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. We have absolutely no doubt in our mind that the authoritative decision in Sadiq Ali's case of the full Bench of Supreme Court, which deals with the questions that arise in the case of split and claims and counter-claims of rival political parties in regard to recognition and entitlement for symbol, is fully applicable to this case. As mentioned, in that decision, while determining the claims of and counter-claims of rival groups in the Congress Party, the Supreme Court approved the tests applied to evaluate the relative strengths of different groups, namely,

1. In Parliament - what is the strength of Group A and Group B ?
2. In Legislative Assemblies in State and Union Territory - what is the strength of Group A and Group B.
3. In Legislative Councils in States - what is the strength of Group A and Group B.

The Commission is a tribunal and is bound by the decisions of the Supreme Court and their ratio (vide A.P.H.L.C and another Vs. W.A.Sangma and others, AIR 1977 S.C. 2155)

26. In order to determine as to which of the two rival groups led now by the applicant Shri Chandrababu Naidu and respondents Smt. Laxmi Parvathi and Dr. D. Venkateswara Rao in the present case is the Telugu Desam Party, the Commission is thus required to apply the above mentioned test of majority in the legislative wing and organisation wing, in respect of which documents and evidence is placed before the Commission by the respective groups.

The application of the above test to the facts and circumstances of the present case has assumed much simpler dimension, as the claim of majority, both in the legislature and organisational wings of the party, has been made only by the petitioner group and there is no counter-claim by the respondent group except total silence in the matter. The contention of the respondent group, that Sadiq Ali's this case does not apply in this case and therefore, principles of majority in the legislative wing cannot be applied, has been found totally unacceptable by the Commission, as already held above.

27. It would be useful to refer to the chart method fully approved by

Supreme Court in Sadiq Ali's case for ascertaining the relative strengths of the rival groups to determine as to which one is the real party.

The Chart relied in Sadiq Ali's case by Supreme Court is as follows :-

Name of the House	Position as on 22.6.1970		Position in the later half of 1970		Remarks
	Congress		Congress		
	'J'	'O'	'J'	'O'	
<b>I. PARLIAMENT</b>					
1. Lok Sabha	221	64	228	65	
2. Rajya Sabha	103	42	85	40	
<b>II LEGISLATIVE ASSEMBLIES</b>					
<b>A. STATES</b>					
1. Andhra Pradesh	—	—	175	14	
2. Assam	—	—	75	—	
3. Bihar	81	31	86	28	
4. Gujarat	5	96	8	108	
5. Haryana	(no separate group in the strength of 48 Congress members)		53	6	
6. Jammu & Kashmir	—	—	61	—	
7. Kerala	4	5	33	4	
8. Madhya Pradesh	177	—	192	—	
9. Maharashtra	204	—	191	13	
10. Mysore	23	126	37	127	
11. Nagaland	—	—	No party as Indian National Congress		
12. Orissa	—	—	8	3	
13. Punjab	28	—	28	—	
14. Rajasthan	111	1	113	1	
15. Tamil Nadu	—	—	8	41	
16. Uttar Pradesh	120	102	150	84	
17. West Bengal	38	13	—	—	Assembly dissolved on 30.7.1970
<b>B. UNION TERRITORIES</b>					
1. Goa, Daman & Diu	—	—	1	—	
2. Himachal Pradesh	42	—	43	—	
3. Manipur	Dissolved with effect from 16.10.1969				
4. Pondicherry	6	4	7	3	
5. Tripura	27	—	27	—	
<b>III LEGISLATIVE COUNCILS</b>					
1. Andhra Pradesh	—	—	52	6	
2. Bihar	—	—	33	22	
3. Maharashtra	51	—	46	3	
4. Mysore	6	46	7	48	
5. Tamil Nadu	—	—	2	17	
6. Uttar Pradesh	37	33	33	29	

28. The petitioner Shri Naidu's group has claimed the support of 178 out of 214 members of the Andhra Pradesh Legislative Assembly belonging to the Telugu Desam Party. That group in support has filed individual affidavits of 172 of the said 178 members whose support is claimed. Further, that group has also filed individual affidavits of six out of seven party members in the Lok Sabha and one out of three party members in the Rajya Sabha. They have also claimed that they have affidavits of the remaining six M.L.As. and one more member of the Rajya Sabha in their possession. The respondent group has not disputed or contested any of these claims of the applicant group. The obvious conclusion in such circumstances is that the applicant group enjoys the support of overwhelming majority in the legislature wing of the party. In this conclusion, the Commission is also fortified by the fact that the claim of the majority support of Shri Chandrababu Naidu has already been tested on the floor of the Legislative Assembly. Further, the Hon'ble High Court of Andhra Pradesh has also upheld the decision of the Hon'ble Governor to administer oath of office of Chief Minister to Shri Naidu on the basis of his above claim of enjoying the support of majority of the members of the Legislative Assembly.

29. In so far as the claim of the petitioner group enjoying the majority support in the organisational wing is concerned, it is not disputed that the State General Body is the highest deliberative body of the party under its Constitution. The applicant group claims the support of as many as 2647 members of the State General Body out of its total strength of 3745. This claim is supported by individual affidavits of all the 2647 persons concerned before the Commission.

30. The Chart (*appearing in next page*) shows the relative strength of the two rival groups, on the basis of the statements and affidavits filed by them, in the legislative wing (Parliament and Legislative Assemblies) and the organisational wing - as per the affidavits, charts and other documents before the Commission.

31. As has been rightly contended by the learned Senior Counsel Shri Kapil Sibal for the petitioner group, the State General Body consists not only of the members elected at the organisational elections at the party's Mahanadu but also consists of several persons who become members of that body by virtue of offices held by them, like,, members of both Houses of Parliament, members of State Legislative Assembly, Chairmen of Public Sector Co-operative Central Bank, Marketing Societies, Milk Producers Marketing Societies, Municipal Councils, etc., who are elected to those offices on the ticket of the party. They hold the membership of the State General

**RELATIVE STRENGTH OF RIVAL GROUPS OF  
TELOGU DESAM PARTY**

S.No.	Designation	Total strength of the party	Chandra Babu Naidu Group		Mrs. Laxmi Parvati (formerly of Late N.T. Group)	
			Strength	Affidavits filed	Strength	Affidavits filed
1.	Members of Parliament (Lok Sabha)	07	06	06	1	nil
2.	Members of Parliament (Rajya Sabha)	03	01	01	2	nil
3.	Members of Legislative Assembly	214	172	172	42	nil
4.	Chairmen (Public Sector Corporations)	47	25	25	22	nil
5.	State TDP Executive Members	24	14	14	10	nil
6.	Chairmen of Distt. Coop. Central Banks	20	20	20	0	nil
7.	Chairmen of Distt. Coop. Marketing Society	18	13	13	5	nil
8.	Presidents of Distt. Milk Producers Coop. Society	06	06	06	0	nil
9.	Members of Zilla Parishad Territorial Constituencies	717	543	543	174	nil
10.	Zilla Parishad Co-opted Members	37	20	20	17	nil
11.	Presidents Mandal Parishad	677	526	526	151	nil
12.	Chairpersons of Municipal Councils	33	26	26	7	nil
13.	Distt. TDP Executive Committee Members	399	178	178	221	nil
14.	Presidents of State & Distt. TDP Affiliated Bodies	49	37	37	12	nil
15.	Mandal TDP Presidents	1054	769	769	285	nil
16.	Town TDP Presidents	98	54	54	44	nil
17.	Corporators of Municipal Corporations	86	53	53	33	nil
18.	Divisional TDP Presidents in Corporations	256	184	184	72	nil
	<b>TOTAL</b>	<b>3745</b>	<b>2647</b>	<b>2647</b>	<b>1098</b>	

Note: Though details and affidavits are not filed by Mrs. Laxmi Parvati's Group, the Commission purely for purposes of evaluation, calculated the balance strength of this Group from the figures of affidavits filed by Chandra Babu Naidu Group.

Body ex-officio and continue to be such members so long as they hold those offices, irrespective of whether organisational elections are held every two years or not. According to a chart produced by the learned Senior Counsel, the number of such ex-officio members is 1865. There cannot be any doubt that these persons continue to be the members of the State General Body, even if it be assumed in favour of the respondent group that the others had ceased to be members of that body. Out of these 1865 ex-office members of State General Body, the petitioner group claims to have filed individual affidavits of as many as 1438 members. Again, since this claim has not been contested by the respondent group, it has to be taken as genuine. Having regard to the above, the test of majority in the organisational wing of the party is also found to be in favour of the petitioner group.

32. In the above facts and circumstances of the case, and after evaluating the evidence produced by both the parties, the Commission has come to the inescapable conclusion that the petitioner group led by Shri Chandrababu Naidu, enjoys the support of overwhelming majority both in the legislature and organisational wings of the party. As a logical consequence of such finding, the Commission unanimously holds that the petitioner group headed by Shri Naidu is entitled to be recognised by the Commission as the real Telugu Desam Party and to the use of the symbol 'Bicycle' reserved for that party under the provisions of the Symbols Order, and we direct accordingly.

32. Now we would like to examine Issue No. 2

**ISSUE 2: IF ANY ONE OF THE GROUPS IS RECOGNISED AS THE REAL TELUGU DESAM PARTY', WHAT IS THE POSITION OF THE OTHER GROUP ? IS IT ENTITLED TO ANY RELIEF ?**

Now that in accordance with the tests laid down by Supreme Court in adjudicating disputes between rival groups of political parties, and therefore taking into account the majority of members of the legislative wing and organisational wing, this Commission has held the group led by Shri N. Chandrababu Naidu, as the real Telugu Desam Party, if, as a consequence of this order, the respondent group led by Mrs. Lakshmi Parvati decides to form a separate party and seeks its registration under section 29A of the Representation of the People Act, 1951, the Commission would be prepared to grant it not only registration under the said Act but also recognition as a State Party in the State of Andhra Pradesh. Such a relief would be subject to the group completing the formalities of applying to the Commission for Registration as a political party under section 29-A

of the Representation of the People Act, 1951. They should also furnish positive evidence of their strength to the Commission, and also documents in relation to the votes polled by its members in the last General Election to the State Assembly held in 1994 to claim allotment of a reserved symbol. According such a relief is not only in conformity with the principles of fair play, justice and equity, but also in line with the past practice and precedents of the Commission in such cases.

**ORDERED ACCORDINGLY**  
**THIS DAY THE TWELFTH MARCH NINETEEN**  
**HUNDRED NINTY SIX.**

**Sd/-**  
**(G.V.G. Krishnamurthy)**  
Election  
Commissioner

**Sd/-**  
**(T.N. Seshan)**  
Chief Election  
Commissioner

**Sd/-**  
**(Dr.M.S.Gill)**  
Election  
Commissioner

New Delhi  
12th March, 1996

# **ELECTION COMMISSION OF INDIA**

**CORAM:**

**Hon'ble**  
**Sh. G.V.G. Krishnamurthy**  
Election  
Commissioner

**Hon'ble**  
**Sh. T.N. Seshan**  
Chief Election  
Commissioner

**Hon'ble**  
**Dr. M.S. Gill**  
Election  
Commissioner

In re: Review of Status of Samata Party as a National Party

*Election Symbols (Reservation and Allotment) Order, 1968 - Para 6 - recognition of a party on the basis of poll performance of a member - the member going over to some other party subsequently - effect on the status of the party.*

## **SUMMARY OF THE CASE**

The Samata Party was recognised as a National party in 1994 and the symbol 'Flaming Torch' was reserved for it under the provisions of the Election Symbols (Reservation & Allotment) Order, 1968. The party was born out of a split in another National party, Janata Dal, in 1994. The party was accorded the status of National party giving it, inter-alia, the benefit of the poll performance of Dr.K.K. Mohammad Koya, a Janata Dal candidate at the time of parliamentary election from Lakshadweep in 1991, on the basis of declaration dated 12th October, 1994 made by Dr. Mohammad Koya that he had cast his lot with the group that had then come to be known as the Janata Dal (George) and later on registered with the Election Commission under the name of the Samata Party.

Subsequently, the Commission received the lists from the Samata Party and the Janata Dal of their office bearers, in which both the parties claimed Dr. Mohammad Koya as the President of the Lakshadweep unit of their parties. Dr. M. Koya was summoned to appear before the Commission on 20th March, 1996, and he stated that he always remained as the President of the Lakshadweep unit of the Janata Dal and was never a member of the Samata Party. However, the Samata Party produced several documents before the Commission which showed that Dr. Koya had made false statement before the Commission. It was observed that Dr. Koya had addressed a communication, even to the Commission, on 25th April, 1995 in his capacity as the President of the Lakshadweep unit of the Samata Party. As a result, the Commission continued to recognise the Samata Party as a National Party. The Commission, nevertheless, censured Dr. Mohammad

Koya for his conduct in the episode and his false statement before the Commission.

## **ORDER**

The Samata Party is a National Party and the symbol 'Flaming Torch' is reserved for it under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to 'Symbols Order').

2. The Commission recognised the said Samata Party as a National Party vide its order dated 23.11.1994 by giving to the party the benefit of the poll performance of the members of the House of the People and the State Legislative Assemblies who had earlier contested as 'Janata Dal' candidates and subsequently joined 'Samata Party'. The party was treated as being qualified for recognition in the States of Bihar, Orissa and Manipur and in the Union Territory of Lakshadweep in terms of Paragraph 6(2) of the Symbols Order.

3. In the case of Union Territory of Lakshadweep, the 'Samata Party' was treated as being entitled to recognition in terms of para 6(2)(B) of the Symbols Order on the basis of the poll performance of Dr. K.K. Mohd. Koya as Janata Dal candidate at the time of the last Parliamentary election in 1991 and the benefit of such poll performance was given to the Samata Party on the basis of a 'Declaration' dated 11.10.1994 made by Dr. K.K. Mohd. Koya wherein he had stated that he had cast his lot with the group that had come to be known as Janata Dal (George) [and subsequently registered under the name Samata Party].

4. The Commission subsequently received lists from the Samata Party and the Janata Dal of their office bearers in which lists both the parties claimed Dr. Mohd. Koya as the President of the Lakshadweep unit of their parties.

5. Dr. Mohd. Koya was called by the Commission on the 20th March, 1996 to clarify the position as to whether he was the President of the Lakshadweep unit of the Samata Party or of the Janata Dal and which of the two parties he was / is supporting.

6. After hearing the statement of Dr. Mohd. Koya made by him on oath before the Commission on 20.3.1996, the Commission passed an order on 22.03.1996 taking a prime-facie view that the recognition to the Samata Party as a National party was given after taking into account the purported support of Dr. Mohd. Koya to the Samata Party, while the subsequent facts and the statements of Dr. Koya before the Commission

revealed unambiguously that the support of Dr. Koya had not been actually available to the Samata Party, but was only limited to the extent of Shri George Fernandes taking steps to rebuild the party organisation of the undivided Janata Dal.

7. The Commission, therefore, decided to give the said party an opportunity of being heard before taking any decision in the matter.

8. Accordingly, a hearing was held in the matter on 29.03.1996. The Samata Party was represented by Shri Kapil Sibal, learned Senior Counsel, and Shri George Fernandes in person. The party also filed its written statement on 27.3.1996.

9. After hearing the oral submissions of Shri Kapil Sibal and perusal of the documents furnished by the party, it is apparent that Dr. Mohd. Koya has made palpably false statement on oath before the Commission on 20.03.1996 that he always remained as the President of the Lakshadweep unit of Janata Dal and continued till date as such and that he was never a member of the Samata Party. The documents brought on record by the Samata Party show that Dr. Koya had addressed certain communications, even to the Commission on 25 April, 1995, in his capacity as the President of the Lakshadweep unit of Samata Party, which belie his statement made on oath before the Commission that he was never a member of the Samata Party. The records of the party further show that Dr. Koya had been attending the meetings of the National Executive of the Samata Party and was actively participating in its deliberations by raising issues and moving resolutions. His signatures are appended in the attendance register for such meetings. One such meeting was held on 22—23 April, 1995, i.e., long after the party was registered by the Commission on 27.10.1994. and recognised on 23.11.1994.

10. Having regard to the above, there cannot be any doubt that Dr. Koya was with the group which was registered as Samata Party and lent his support to that party on 11.10.1994 when he made the above mentioned declaration on the basis of which his support to the Samata Party was taken into account for the purposes of recognition of that party as a National party under paras 6(2) and 7 of the Symbols Order.

11. In the above facts and circumstances of the case, the matter with regard to review of the status of the Samata Party as a National party is treated as closed, for the time being. The matter will be further reviewed, as required under the Symbols Order, on the basis of poll performance of the party at the current general elections to the House of the People and certain State Legislative Assemblies.

12. However, before parting with the case, the Commission cannot help expressing its deep anguish and concern over the behaviour of Dr. Mohd. Koya. The Commission severely censures Dr. Koya for his reprehensible conduct in the episode which was further compounded by his false statement made by him on oath before the Commission. He made a categorical statement on oath before the Commission that he was never a member of the Samata Party, whereas the records of that party and even of the Commission speak and prove to the contrary. The Commission would be well within its right to initiate criminal proceedings against Dr. Koya for perjury under the Indian Penal Code, but has taken a lenient view and has decided to let him off by censuring him.

**ORDERED ACCORDINGLY**

**Sd/-**  
**(G.V.G. Krishnamurthy)**  
Election  
Commissioner

**Sd/-**  
**(T.N. Seshan)**  
Chief Election  
Commissioner

**Sd/-**  
**(Dr.M.S.Gill)**  
Election  
Commissioner

New Delhi  
9th April, 1996

# **ELECTION COMMISSION OF INDIA**

## **CORAM:**

<b>Hon'ble</b> <b>Sh. G.V.G. Krishnamurthy</b> Election Commissioner	<b>Hon'ble</b> <b>Sh. T.N. Seshan</b> Chief Election Commissioner	<b>Hon'ble</b> <b>Dr. M.S. Gill</b> Election Commissioner
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In re: Indian Congress (Socialist) — Dispute No. 4 of 1995 - under Para 15 of the Election Symbols (Reservation and Allotment) Order, 1968

## **BETWEEN:**

Sh. K.P. Unnikrishnan		<i>Petitioner</i>
	and	
Sh. Sarat Chandra Sinha and Sh. Sridhar Wasudeo Dhabe		<i>Respondents</i>

*Advocates for Petitioner:* S/Sh. Raju Ramchandran, P.K. Manohar

*Advocates for Respondents:* S/Sh. R. Venkataramani, Suman Doval and Atishi Deepanka

*Election Symbols (Reservation and Allotment) Order, 1968 -para 15 - Petitioner claiming to be president of the party in place of the president whose name is borne on the records of Election Commission - burden of proof on petitioner to substantiate his claim - legislature wing of the party comprised of only one M.P. - such legislature wing irrelevant for applying test of majority.*

## **SUMMARY OF THE CASE**

The Indian Congress (Socialist) was a recognised State party in the States of Kerala and Manipur in 1996 and the symbol 'Charkha' was reserved for it in those States, under the provisions of the Election Symbols (Reservation & Allotment) Order, 1968. There was a split in the party in February, 1994, resulting in the formation of two groups, led by Shri Sarat Chandra Sinha and Shri K.P. Unnikrishnan, the President and General Secretary of the party respectively as per the records of the Commission. There were allegations of expulsions and counter-expulsions by both the groups and both Sh. Sinha and Sh. Unnikrishnan claimed to be the President of the party. The Election Commission, by its order dated 26.11.1994, observed that it was not in a position to determine as to which of the two opposing groups was the Indian Congress (Socialist), because there was no agreed

list of members of the party at various organisational levels. The Commission further observed that the dispute raised was essentially among its office bearers relating to their expulsions and counter-expulsions affecting their civil rights and it was for the civil courts to adjudicate upon those civil rights. Against this order of the Commission, the Supreme Court was moved by a Special Leave Petition, but it was dismissed by the Supreme Court as withdrawn, by its order 17.4.1995, as the Supreme Court observed that the petitioner should invoke jurisdiction of the Commission under para 15 of the Symbols Order. Thereupon, Sh. Unnikrishnan moved a formal petition before the Election Commission under para 15 of the Symbols Order for a declaration that the group led by him was the Indian Congress (Socialist). After hearing the parties, the Commission, by its order dated 19.3.1996, dismissed the petition of Shri Unnikrishnan, holding that the group led by Sh. Sarat Chandra Sinha was the Indian Congress (Socialist) for the purposes of the Symbols Order. The Commission observed that the burden of proof of substantiating his claim lay on the petitioner Shri Unnikrishnan and that he failed to discharge the burden. The Commission also observed that the whole legislature wing of the party then comprised only of Sh. Unnikrishnan as a member of the Lok Sabha and, in those circumstances, it would not be correct to accept that the strength in the legislature wing the the party was determinative of the real party. As regards the organisational wing, the Commission observed that even if the claim of Sh. Unnikrishnan was accepted that Sh. Sarat Chandra Sinha had been removed from the post of the party President on 4.3.1994 by the working committee in the exercise of its extraordinary powers under the emergent situation, such decision of the working committee was not ratified, as per Sh. Unnikrishnan's own admission, by the AICC(S) within six months as required under the party constitution.

## **ORDER**

The Indian Congress (Socialist) is a recognised State party in the States of Kerala and Manipur, and, the symbol, "Charkha" is reserved for it in the said two States under the provisions o-f the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as the 'Symbols Order'). According to the records of the Commission, Shri Sarat Chandra Sinha, is the President and S/Shri K.P. Unnikrishnan, M.P. and S.W. Dhabe are the two General Secretaries of the party. The registered address of the party is 2, Teen Murti Lane, New Delhi and of its Camp Office is 9, Safdarjung Road, New Delhi.

2. As per the records of the Commission the details of the working Committee members are as follows:—

**WORKING COMMITTEE MEMBERS**

	<i>Name</i>	<i>Post held</i>
1.	Shri Sarat Chandra Sinha	President
2.	Shri K.P. Unnikrishnan	General Secretary
3.	Shri S.W. Dhabe	General Secretary
4.	Shri T.P. Peethambaran Master	Joint Secretary

*Members*

5. Dr. Jayanta Kumar Banerjee
6. Shri Charanjit Singh Bedi
7. Shri Satyapal Yuwak
8. Prof. Ramanath Saha
9. Shri Om Prakash Malik
10. Shri A.C. Shanmukhadas, MLA
11. Shri K. Kandaswamy
12. Shri D.K. Barooah

3. On 5.10.1994,, the Commission received from Shri S.W. Dhabe, General Secretary, of the Indian Congress (S) a petition of the same date, purporting to be petition under para 15 of the Symbols Order seeking a declaration to the effect that the petitioner group, led by Shri Sarat Chandra Sinha, be declared as the real Indian National Congress (S) and the symbol “Charkha” allotted for the petitioner group.

The Commission, vide its order dated 26.11.1994, had held that on the basis of the affidavits filed by the petitioner and the respondent in the Dispute Case No.2 of 1994 under para 15 of the Symbols Order, relating to Indian Congress (Socialist), a recognised State Party in Kerala and Manipur that “as far as Working Committee is concerned both the groups could be said to have support of six members each; however, whether the President of the Party enjoys the confidence and majority support of AICC (S) is not clear as neither of the groups had produced any list of the members of AICC (S) and both the opposing groups have also made conflicting claims with regard to the support enjoyed by them among the State PCCs. But here also, no agreed lists of members of those PCCs have been brought on record. On the other hand, claims and counter-claims have been made by both the groups with regard to the expulsions and removals of important functionaries at the State level, including the Presidents of some of those units whosoever has been found inconvenient to that group”.

4. The Commission, therefore, observed that, on the basis of such totally confusing picture of the organisational set up of the party, no conclusions can be drawn as to who is who in the party hierarchy and whether his support has any relevance in the determination of the dispute.

5. Having regard to the above, the Commission held that “it is not in a position to determine finally, as to which of the two opposing groups is the Indian Congress (Socialist). The dispute raised is essentially among the office-bearers and relates to their expulsions and counter-expulsions from their party offices and primary membership of the party. It affects the civil rights of the affected members and it is for the Civil Courts to adjudicate upon these civil rights. The Commission further held that the Commission will abide by the decision of the appropriate Court. Till such time, the Commission will go by its existing reports”. Against this order of the Commission, the petitioner moved the Supreme Court on the ground that the decision of the Commission directing the petitioners to move the civil courts was contrary to law. The Special Leave Petition was “dismissed as withdrawn” by the Hon’ble Supreme Court vide its order dated 17.4.1995 with the following observation :-

“In our opinion, there is no occasion to entertain this SLP at the instance of the present petitioners (also) in as much as the impugned order of the Election Commission was not made by the Election Commission in any petition filed by the petitioners seeking adjudication thereof by the Election Commission. There is thus no refusal by the Election Commission, by the impugned order, to entertain any petition filed by the present petitioners under para 15 of the Symbols Order seeking adjudication of the dispute by the Election Commission. There can thus be no grievance made by the present petitioners at this stage without first invoking the jurisdiction of the Election Commission. The questions raised in the SLP are, thereafter left open for consideration, if necessary, at the appropriate subsequent stage. We may also observe that it would be open to the petitioners to urge before the Election Commission that the Election Commission is empowered in law to adjudicate such a dispute and if such a point is taken by

the petitioners, the Election Commission need not consider itself inhibited by its earlier order to decide the question on merits, in accordance with the law.

Learned Counsel seeks leave to withdraw the SLP. The SLP is, therefore, dismissed as withdrawn.”

6. The present petition moved by Shri K.P. Unnikrishnan, General Secretary, Indian Congress (S) with Another, under paragraph 15 of the Symbols Order, requests that the Commission may declare the group led by the petitioner as the Indian National Congress (S) in the State of Kerala and Manipur. He has submitted that in the light of the Supreme Court’s aforementioned order holding that the Election Commission is empowered in law to adjudicate such a dispute and if such a point is taken by the petitioner, the Election Commission does not consider itself inhibited by its earlier order to decide the question on merits in accordance with the law.

7. Inter alia, the petitioner has stated that party held its last plenary session at Nagpur between 20th and 24th September, 1989. The President and ten members of the Congress Working Committee (S) were elected in the said session; Article XIX of the Congress Working Committee (S) consists of the President and ten elected members; the leader of the party in Parliament and 9 other members are also nominated by the President. Since 1979 and also from the date of holding the last plenary session of the party at Nagpur in September, 1989 the first petitioner has been functioning uninterruptedly as the General Secretary of the party and as the leader of the Congress (S) in Parliament since 1984; organisational elections were held only in a few States after the membership campaign was undertaken in 1993. The second respondent has been functioning as President of the Maharashtra Pradesh Congress (S) without any elections to the Pradesh Congress Committee (S). He further stated that the petitioner, as an incharge of National Headquarter of party and being responsible for convening meetings, issued in the normal course of business, notices to all members of Congress Working Committee (S) on 4.2.94, including to the respondents, for a meeting of the CWC (S) on 4.3.94 at New Delhi, to consider a resolution forwarded by 12 members of the Pradesh Congress Committee to the effect that all units and Committees of the party stand dissolved.

8. It was further submitted that the respondents, after receiving

the aforementioned notice, got issued through the second respondent, an illegal and unconstitutional notice dated 7.2.94 calling for a meeting on 21.2.94. This conduct of the respondent was irregular and against all principles of democracy and discipline and they could have attended the legally convened meeting on 4.3.94 and raised such issues as they think proper; instead they attempted to create confusion by calling a meeting on 21.2.94. The effort of the respondent was to scuttle any decision or discussion on the question of merger with the Indian National Congress.

9. In the absence of a proper quorum of CWC members, the purported meeting of the respondents on 21.2.1994 was unconstitutional and all decisions taken therein are illegal and unenforceable in law. It was further submitted that in the meeting of 4.3.94 convened by the petitioner, 14 out of 18 CWC (S) members were present, who unanimously took a serious view of the attempt of a clique of CWC (S) of 4 members to create a parallel CWC (S). Further, that as the respondents did not attend the legally convened meeting of 4.3.94, they cannot question the decision of the said meeting. The conduct of the respondents brought upon them disciplinary action and they were removed from the primary membership of the party.

10. The petitioner has further submitted that in the elections of Manipur Legislative Assembly in February, 1995 the party has returned one MLA Shri M. Thorill, who is the Minister in the Government headed by Mr. Rishang Kishang and that the lone member of Parliament in Lok Sabha (the petitioner himself), the lone MLA in the Manipur Assembly are with the petitioners.

11. The petitioner has further stated that the last election to the various Committees of the parties were held in July, August 1993 and that the petitioner group has a majority in all the Committees of the party and is, therefore, entitled to exclusive right and use of party's name and symbol "Charkha". It has also been stated that permission of Election Commission to the respondents to put up candidates under the name and symbol of the party and the same has caused serious prejudice, irreparable loss and hardship to the group represented by the petitioners.

12. A notice was issued to both the respondents S/Shri Sarat Chandra Sinha and S.W. Dhabe for filing their reply to the petition forwarding therewith a copy of the application of Shri K.P. Unnikrishnan and Shri D.K. Barooah alongwith its enclosures requiring the respondents to file their reply by 17.8.1995.

13. In response to the above petition, the respondents, Shri Sarat Chandra Sinha and Shri S.W. Dhabe, filed a joint reply requesting

that as the case is going to take a long time, an interim order be passed granting the symbol to the candidates to be set up by the group led by them. The respondents, while filing their reply to the main petition, also sent copies directly to the petitioner who was directed by the Commission vide Commission's letter dated 20.10.95. to file the rejoinder to the Commission on 31.10.1995.

14. The respondents in their reply have stated that it is not correct to say that the last All India Plenary Session of the party was held in Nagpur in 1989 and that the Plenary Session was held in Cochin from 8 to 11 April, 1995 which was largely attended. The motive of the submission of the list of office bearers having been sent on 7.1.94, five years after the elections has also been questioned. The respondents have stated that there is nothing like National Headquarter of the party at 9, Safdarjung Road, New Delhi and that only temporary arrangements were made to have the office first at 2, Teen Murti Lane and then at 9, Safdarjung Road. The Working Committee, in its meeting on 21.2.94 convened by the respondents, has passed a resolution shifting the office from 9, Safdarjung Road to 5, North Avenue, New Delhi. Countering the allegation that respondent No.2 has been functioning as President of Maharashtra Pradesh Congress Committee (S) without any election of PCC (S), it has been submitted that the elections took place in the general body meeting of MPCC (S) on 17.8.92, wherein the respondent No. 2 was unanimously elected as the President. The respondents have also questioned the validity of the claim of the petitioner No.1 that he alone is authorised to call the meetings. All General Secretaries have equal powers under the Constitution and, therefore, any General Secretary can issue notice for the same according to them.

15. They have further submitted that the petitioner No.1 had no authority to call the so-called meeting of the Working Committee on 4.3.94 as he was removed from the post of General Secretary by resolution of the Working Committee on 21.2.94 and hence ceased to have any authority to issue any notices. This fact was suppressed from the members of the alleged Working Committee meeting held on 4.3.94. Claiming legitimacy to the meeting of 21.2.94 and the notice issued for the same having on 7.2.93 by the respondents, it has been submitted that no notices were sent to the respondents by the petitioner group for the so-called meeting on 4.3.94.

16. According to the respondents, the respondent No.1 who is the President of the party had authorised respondent No.2 to call a meeting and this fact had been informed by respondent No.1 to petitioner No.1. The respondents are totally opposed to the merger of the party to the

Congress (I) or to join that or any other party. The purpose of calling the so-called meeting of 4.3.93 by the petitioner was to fulfil the personal ambitions of petitioner No.1 and appeal to others to join the Congress (I), whereas the notice dated 7.2.94 calling the meeting on 21.2.94 was legal and proper. Seven members of the working Committee, it is submitted, attended the meeting of 21.2.94 which is quite regular. The meeting of 4.3.94 called by the General Secretary was not with the authorisation of the President and hence the purported disciplinary action in that meeting is of questionable value. Further, the resolution purporting to suspend Shri Sarat Chandra Sinha and the Respondent No.2 from the post of President and provisional President has not been ratified by the AICC (S) within six months, as required in Article 19(J) of the party. The resolutions, therefore, are illegal.

17. The respondents have submitted that in the Manipur Legislative Assembly elections in February, 1995, the Commission was pleased to grant recognition to the respondent party of which Shri Nokulsana Singh, President of the State Unit and the petitioner could not set up any candidate with the symbol "Charkha". Mr. M. Thorill who was the candidate set up by the respondent and was elected on Congress (S) ticket with the "Charkha" symbol having been allotted by the respondents later on defected from the party after the elections and action is being taken against him for defection from the party. They have denied the contention of the petitioner that Shri Thorill is with the petitioner. They have also questioned the accuracy of the facts regarding the statewide-lists filed by the petitioner and contended that the list of members shown in the petition is 220 and not 450. Reiterating that the symbol was allotted to the respondents as a party, being the real representative of the Indian Congress (S) in the last election to the Manipur Assembly, after the order of the Election Commission and the order of the Manipur Civil Court, the respondents have claimed that this fact has been admitted by the petitioner No.2 in the Supreme Court of India. They have also drawn attention to the Commission's observations in its order dated 26.11.94 in Dispute Case No.2 of 1994 holding that the respondent No.1 Shri Sarat Chandra Sinha is the duly elected President and continues to be the President of Congress (S).

18. The respondents have further contended that the so-called meeting held on 4.3.94 by the petitioner No.1 was wholly unauthorised and illegal. The meeting had no approval from respondent No.1. Thus the decisions taken in that so-called meeting were totally void. They have also submitted that the record of the dispute case No.2 of 1994 decided on

26.11.94 and documentary evidence may kindly be read in this case for the purpose of convenience, equity and justice. The respondents have further stated that in view of the Commission's order dated 26.11.94 criticising the petitioner No.1 and Congress (S) political party functioning in a perfunctory manner and not as per the provisions of the Constitution of the party, the respondents have taken steps to revitalise the party. From February 94 to end of March 95, nine Working Committee meetings were held. Two AICC meetings were held in April and December 94 respectively at Guwahati and Patiala. An All India Plenary Session was held at Cochin from 8th to 11th April, 1995. During that year a second AICC meeting was scheduled to be held on 28th and 29th October, 1995 at New Delhi. At the time of All India Plenary Session, a report of Congress (S) for the year 1994-95 had been printed and published.

19. Further, it has been stated that the Working Committee appointed respondent No.2 as Returning Officer for the election by Shri Sarat Chandra Sinha as President of Congress (S). Respondent No.2 accordingly also took steps for holding the elections of Working Committee members and Central Election Committee in AICC session held during All India Session at Cochin. Out of an elected 382 AICC members, 255 members attended the AICC session at Cochin. The Working Committee held its meeting on 8th April, 1995 and elected the Parliamentary Board and members of Central Election Committee in the AICC meeting held on 10th April, 1995. Similarly, 10 Working Committee members were also elected in the session and President nominated six members on the Working Committee and also three General Secretaries and one Joint Secretary. It has also been submitted that in spite of strictures by the Election Commission in its order dated 26.1.1994, the petitioner group is not interested in running the party on democratic lines but want to harass the respondents and hence the petition may be dismissed. The respondents have submitted that this case may not be decided merely on affidavits but on the basis of evidence to be recorded the case be decided on merit. It has also been stated that in spite of strictures by the Election Commission in order dated 26.1.1994, the petitioner group is not interested in running the party on democratic lines but wants to harass the respondents Congress (S) and the petition may be dismissed.

20. In response to the reply of the Respondents, a joint rejoinder by Shri K.P. Unnikrishnan and D.K. Barooah was filed giving a background of the present split in Indian Congress (S) wherein the petitioner group denied each and every averment, statement and submission contained in the reply statement of the respondents as being contrary to or being

inconsistent with the petition filed by the respondents in case No.4 of 1995 in the Symbols Order. The petitioner group further prayed for the leave of the Commission to refer and rely upon all documents filed in Election Symbols Dispute case No.2 of 1994 for the purpose of this petition.

21. The Commission upon the pleadings in the case being complete, fixed 24.1.1996 at 1500 hours as the date of hearing. Meanwhile, Shri Dhabe, one of the respondents filed another application on 18.1.1996 praying for passing an interim order by the Commission and granting the symbol "Charkha" to the group of respondents led by respondent. The petitioner group was represented by Shri Manoranjan Patnaik, Advocate, while the respondents were represented by Shri R. Venkatramani, Advocate, Supreme Court, during the oral hearing on 24.1.96. Subsequently, Shri K.P. Unnikrishnan, one of the petitioners, moved a prayer that the Commission may grant them another opportunity to make an oral submission on the ground that they could not engage a Senior Counsel to present their case.

22. The Commission considered the request and decided to further hear the matter, as prayed for by the petitioner, and fixed 19th February, 1996 at 4.30 p.m. for the same. Notices to all concerned were accordingly issued. During this hearing, the petitioners were represented through their Counsel Shri Raju Ramachandran while the respondents were represented by Shri R. Venkatramani.

23. During these hearings, the Learned Counsel for both the parties basically reiterated the submissions made by them in the petitions and the rejoinder. The Learned Counsel for the petitioner highlighted that no individual functionary or office bearer can lay claim to supermacy over the party and its organs; that the President, once elected appoints General Secretaries and allots them exclusive subjects through instructions issued to a General Secretary or the permanent Secretary who circulate this to PCC Presidents and CWC (S) members; that the first petitioner is a permanent member of CWC (S) as per Article XIX A of the Constitution and has been throughout dealing with the Administration of the National Headquarter and as a General Secretary of the AICC (S) incharge of CWC (S) Parliamentary Board and all matters relating to Election Commission, the exception being only between November 89 and November 90 when he joined the Union Cabinet when Shri Kisore Chander Dev looked after the working of General Secretary on matters relating to CWC (S); that Shri S.W. Dhabe was never given the charge of CWC (S) and that the first petitioner continued to remain General Secretary and overall incharge of the National Headquarters.

24. It was submitted that in view of the foregoing position, the notice dated 4.2.94, issued by the first petitioner, convening a meeting of the CWC (S) was fully in order and that the notice by Shri Dhabe issued, subsequently on 7.2.94 after the receipt of the petitioner's circular convening the meeting of the CWC (S) on 21.2.94 was ab initio void; that the purported letter dated 8.2.94 of the President authorising Shri Dhabe had been issued after the circular of 7.2.94, usurping the powers of the first petitioner and is hence void. Further, the meeting of 21.2.94 convened by Shri Dhabe did not have adequate quorum as required under Article 19 (B) of the party's Constitution and was hence illegal.

25. It was also submitted that the nomination of Shri T.P. Peethambaran, Shri Ramachandran Kadannappally and Shri M. Dhoiphode are also illegal in as much as the President is empowered to nominate only when vacancies in the category of nominated members arise and that he cannot nominate any member against the 'elective component' of CWC (S). This action is, therefore, void in view of Article 26(b) of the Party Constitution which says :-

“All vacancies shall, unless otherwise provided for, be filled in the same manner in which the vacated member was chosen and members so elected shall hold office for the unexpired term of the seat vacated”.

The failure of the respondents to attend the legally convened CWC (S) meeting on 4.3.94, in spite of due notice resulted in another President being appointed and the resolution for disciplinary action against the respondents being passed as CWC is empowered. The action against the President of the party was taken invoking the powers CWC (S) under Article XIX (f) (IV) and (J) which says :-

“To take such disciplinary action as it may deem fit against a Committee other than the AICC or any individual”.

26. The learned Counsel also contended that nobody can claim exemption from this rule and once a President or office bearer is validly removed he cannot return to the post. It was further stressed that but for the petitioner's performance in the General Election to Lok Sabha from the State of Kerala in 1991 the party would not have been recognised in that State. Further, the first petitioner, on whose account the party was recognised in the State of Kerala and all the elected members of the party in the Manipur Assembly in March, 1994 supported the party as represented

by the petitioner and, therefore, they are legally liable to be recognised as the party. Thus, in the legislative wing, both in Kerala and Manipur, the petitioners were in majority in March, 1994.

27. It was further argued that affidavits of 224 AICC members have been filed on behalf of the petitioners on 11.11.94 a copy of the list of which has been filed; whereas the respondents have made only general statement of denial, without any individual affidavit. In view of the records, the group has claimed that it has majority over all the bodies and is entitled to declaration as a party and that the ratio of the Sadiq Ali's case applies to them. It was urged that the Commission, should take 4.3.94 as the relevant date for the dispute; on that date majority was enjoyed by the petitioner both the legislative and organisational. While conceding that the term of office of every Congress(S) Committee and of its office bearers and Executive Committee and members shall 'ordinarily' be two years, it was stated that failure in completing the elections, in itself, cannot be a reason for considering that the membership or Committee have ceased to exist. The group represented by the respondents on the relevant date on 4.3.94, in both organisational and legislative wing of the party, constituted only a group of persons who had been removed from the party for indiscipline and now constitute a minor faction. The test of majority being relevant in the current case and the ratio laid down in the 'Sadiq Ali' case being applicable on the basis of facts and documents submitted such as individual affidavits of CWC (S), AICC members, MPs as on March, 1994, all other proceedings subsequent to the date, it was urged, are irrelevant and could be regarded only as meetings of one of the factions and cannot be reckoned for arriving at any conclusion in favour of the respondents. In view of this, the petitioners have prayed that their group be declared as the real Indian Congress(S) and the symbol "Charkha" reserved for them.

23. On behalf of the respondents, it was submitted by the learned counsel that the petitioner No.1 has been validly removed from the General Secretary's post and was also suspended from the primary membership by the resolution of the Working Committee dated 21.2.94, and the meeting had a quorum of 7 members. The petitioner No.1 was removed for his attempts at dissolving the party and joining the Indian National Congress by calling an alleged special plenary session which has not been ratified within six months from the date of resolution. Having ceased to be the General Secretary and a primary member of the party the petitioner No.1 has no locus standi to claim to represent the group which is the real party. For similar reasons the petitioner No.2, who was purportedly elected as

provisional President in the illegal meeting of 4.3.94, which again has not been confirmed by the AICC, could not be legally termed as provisional President.

29. The Commission itself, it has been argued, in its order of 26.11.94 had held that “even on a prima facie look at the party constitution and without going into the intricate question of validity or otherwise of the meeting of the Working Committee said to have been held by both the opposing groups, it cannot perhaps be said that the President of the Party, Shri Sarat Chandra Sinha, stands validly removed”. The Commission also further ruled that any decision to remove the President i.e. the respondent No.1 from his post on 4.3.94 may be non-est and of no legal effect after 4.3.94.

30. It has further been submitted that in the light of the Supreme Court’s judgement in All Party Hill Leaders Conference Vs. Captain W.A. Sangma and Others (AIR 1977, SC 2155) wherein, it has been held as follows :-

“Even after a major chunk of the APHLC led by Captain Sangma had joined the INC, if those who still continued under the banner of the APHLC flag and symbol claimed to continue as APHLC and the directions in the Symbols Order did not authorise de-recognition of the APHLC as a body represented by the remainder, as we have found, no case is made out for any interference by the Commission with regard to the reserved symbol. Thus the APHLC, as a recognised State political party in Meghalaya, stays and is entitled to continue with their reserved symbol “FLOWER”.

No interference is called for by the Commission, at the behest of the petitioners and the petition may be filed. It has further been argued that, subsequent to the meeting of 21.2.94, AICC meetings have been held in 1994 and 1995, twice, as per the Constitution and Working Committee meetings are also being held regularly after 1994. In the recent meetings of the Central Election Committee and the Working Committee held at Chandigarh on 29th and 30th December, 1995 it has been decided to set up candidates in 43 Lok Sabha Constituency seats.

31. It was also urged that the group represented by the respondents has been very actively participating in political activities and agitation

and has also taken part in earlier assembly elections and the Panchayat and Municipal elections. The “Charkha” symbol was allotted to them in Manipur assembly elections and Panchayat and Municipal elections in Andaman and Nicobar Islands. It has been pressed that having due regard to the facts and circumstances and material brought on record, as well as the submissions put on record, the dispute filed by the petitioners may be dismissed and the respondents party declared as the Indian Congress (S) and the symbol “Charkha” allotted to it.

32. Based upon the submissions, pleadings and averments of the petitioners and the respondents and also their oral submissions before the Commission which have been carefully gone into, the following issues emerge :-

- ISSUE NO. 1            WHETHER THE RATIO OF THE TEST OF MAJORITY OR NUMERICAL STRENGTH AS LAID DOWN IN SADIQ ALI AND ANOTHER VS. ELECTION COMMISSION OF INDIA AND OTHERS APPLICABLE IN THIS CASE.
- ISSUE NO. 2            WHICH ONE AMONG THE TWO GROUPS IS THE REAL INDIAN CONGRESS (SOCIALIST) ?
- ISSUE NO. 3            IN THE LIGHT OF FINDING ON THE ABOVE ISSUES, IS THE OTHER GROUP ENTITLED TO ANY RELIEF ?

33. *ISSUE NOS. 1 & 2* : As regards the applicability of the ratio of the test of majority or numerical strength being determinative of the legitimacy of one of the Sections being the real party as laid down in ‘Sadiq Ali and Another Vs. Election Commission of India and Others (AIR 1972 SC 187), this has been clinched in the aforementioned landmark judgement by the Hon’ble Supreme Court, wherein it has been observed :-

“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.”

In the very judgement, the Supreme Court has also laid down that under para 15, “the Commission has to act with a certain measure of promptitude and has to see that the inquiry does not get bogged down in a quagmire.” The difficulty of ascertaining the wishes of the primary members has also been highlighted in the judgment. Having regard to the above, the Court has held that the test of majority and numerical strength “is not only a germane and relevant but a very valuable test and it cannot be gainsaid that in deciding which group is the party, the Commission has to decide as to which group constitutes the party”.

34. It is, of course, true that the Commission during the last several years has based its decision on the test of majority in the legislature wing of the party where it has not been possible for the Commission to come to a definite conclusion as to the relative strength of the two splinter or rival groups of a party in its organisational wing. This is for the reason that relative strength of the rival groups in the legislature wing of the party is normally capable of exact determination and easily verifiable. In the present case, however, the task of the Commission in verifying the claims of the two groups in the legislature wing of the party has been complicated by the fact strength in the legislature wing in terms of absolute numbers is so minuscule that any reliance on this alone to the exclusion of the appreciation of the strength of the organisational wing and its legitimacy would not be reflective of the correct position.

35. On the basis of the records it is seen that the recognition to the Indian Congress (S) in the State of Manipur was given on the basis of its candidate Shri P. Seikhogiam, though defeated having polled 10.93% of valid votes polled in the General Election to Parliament in 1991. Thus the party having fulfilled the conditions for recognition as a State Party in Manipur in terms of para 6(2)(B) of the Symbols Order, was recognised as such by the Commission. The Commission while reviewing Recognition given under Symbols Order on the basis of the performance of the party in the General Election to the State Legislative Assembly of Manipur in 1995, found that even though the party, on the basis of its performance in the assembly elections in 1995, was not entitled to continued recognition in terms of Section 6 of the Symbols Order, it was entitled to continued recognition as a State Party in Manipur till the general elections to the Lok Sabha in 1996 on the basis of its performance in Lok Sabha elections of 1991 despite one MLA, Shri M. Thorill being returned by the party.

36. It is also borne out by records that for the general elections to the Legislative Assembly of Manipur in 1995 that it was, the respondent

No.1 who was authorised by the Commission to sponsor the candidates of the Indian Congress (S). Shri K. Nakul Sana Singh was recognised as the President of the Manipur unit of Indian Congress (S) as per the Court's orders dated 18.1.95 and 19.1.95 and was authorised by the President Shri Sarat Chandra Sinha to sponsor candidates at the general elections to the Manipur Legislative Assembly.

37. While the petitioner has stated that Shri M. Thorill, the only MLA returned by the party in the general election to the State Legislative Assembly of Manipur is with them, he has not been able to corroborate it by any affidavit or any other documentary evidence in that behalf. The respondents have stated that Shri Thorill was sponsored as a candidate by them and has since joined the Indian National Congress for which disciplinary action is being taken by them. This leaves, in the legislative wing, the petitioner No.1 as the lone representative of the Indian Congress (S) representing Kerala. While in the normal course, in the absence of a clear cut position emerging out of the organisational picture what has merged in the legislative wing would be an appropriate guide for arriving at a decision in determinant as to which of the group is the real party, in this case, given that there is only one Member of Parliament repeating the entire legislative wing of the party, it would be stretching the logic too far to accept that the strength in the legislative wing is determinative of the real party. This is further compounded for the reason that this member, Shri Unnikrishnan is not even an elected member of the CWC (S), but is so designated ex-officio.

38. As far as the test of majority on the basis of the position in the legislative wing cannot be determined clearly in the facts and circumstances of the case it must, therefore, be held that reliance will have to be placed on the position in the organisational wing of the party. As far as the organisational wing and the allegiance that each of the groups commands is concerned, in its order dated 26.11.94 the Commission has already held that even on a *prima facie* look at the party constitution and without going into the intricate questions of the validity or otherwise of the meetings of the working committee said to have been held by both the opposing groups, it cannot perhaps be said that the President of the party Shri Sarat Chandra Sinha stands validly removed. Even if it be assumed in favour of the respondent group that the Working Committee meeting stated to have been held by them on 4.3.94 was validly convened and that the Working Committee had the power under the constitution to remove the president from his post in emergent situation, such a decision of the Working Committee was required under the party constitution to be

ratified by the AICC (S) within six months. Admittedly, the respondent group has not held any meeting to the AICC (S) within six months from 4.3.1994 and even till this date. Therefore, any decision to remove the President from his post on 4.3.1994 may be *non est* and of no legal effect after 4.9.1994. It was accordingly held that “it would be a logical conclusion to hold that Shri Sarat Chandra Sinha still continues to be the President of the party”.

39. It has also been observed that the whole party has been functioning in a perfunctory manner. It is common ground of both the parties that the last plenary session of the party was held at Nagpur in 1989 when the organisational elections took place. The party constitution provides [Art.XVI (a)] that a Plenary Session shall ordinarily be held once in two years but no such session has been held during the last 5 years. The constitution further provides that the AICC(S) shall ordinarily meet at least twice a year. Again, no AICC(S) meeting has been shown to have been held after 1989, before the disputed session at Guwahati on 18-19 April, 1994 after the differences arose in the party. Even the meetings of the Working Committee which is the highest executive authority to carry out its policies and programmes have not been held regularly and the petitioners (who are the respondents in the present case) grievance is that from 1992 the party was not a living organisation.

40. The removal from the office of the President of Shri Sarat Chandra Sinha, therefore, on the basis of a resolution on 4.6.94 without any ratification as required in the Constitution within six months of the resolution renders the resolution ineffective. From the records it has also been found that the meeting dated 21.2.94 was convened and notices for the same issued by Shri Dhabe who was authorised by the President to do so vide a letter dated 8.2.94. From the records on file it also emerges that the respondents group has been regularly holding CWC meetings after the Commission's order of 26.11.94 wherein the Commission had directed that since the dispute essentially was among office bearers and relating to their expulsions and counter expulsions from their party office and primary membership of the party, it is for the Civil Courts to adjudicate upon these rights and the Commission would abide by the decision of the appropriate Court, the respondent group have held regular meetings copies of the minutes and related documents have also been filed by them. It is not disputed that it is on the basis of this order and the order of the Civil Court of Manipur that Shri Sarat Chandra Sinha was recognised as the President of the party authorised to nominate signatories to Form A of the general election which fact has also not been disputed.

41. As to the legality of the meetings convened subsequent to the 21.2.94 by the respondents group in the light of the default by the petitioner group in convening regular meetings and conducting elections of the party, it is a settled principle of jurisprudence and justice that where both the parties are equally at fault the condition of the defendant is more favourable as expressed in the Latin Maxim, "IN PARI DELICTO, POTIOR/EST CONDITIO POSSIDENTIS (OR DEFENDENT IS)". The Supreme Court in Waman Shrinivas Kini, Appellant Vs. Ratilal Bhagwandas and Co., Respondents (AIR 1959, SC 689), has interpreted, elaborated upon this doctrine and held that "where it has been observed that where circumstances are such that the Court will refuse to assist either party, the consequences must in fact follow that the party in possession will not be disturbed". In the light of this also, it is evident that the respondents group who have been allowed by the Courts to represent the party should not be disturbed.

42. The petitioner group has contended that for the determination of the position, as to who represent the real party, the relevant date is 4.3.96 when the petitioner group had convened a meeting of CWC(S) and removed Shri Sarat Chandra Sinha from the post of President and also from the primary membership of the party. It has been contended that all subsequent meetings purportedly held by the respondent group are not relevant and no credence should be given to them.

43. In this regard, a reading of para 15 of the Symbols Order makes it abundantly clear that the power of the Commission in relation to this provision is attracted when the Commission "is satisfied on information in its possession that there are rival Sections or groups of a recognised political party each of whom claims to be that party and the Commission may after taking into account all the available facts and circumstances of the case decide one such rival Section or group or none of such rival Section or group is that recognised party. It is also provided that the decision of the Commission on this score shall be binding.

44. The contention of the petitioner group, therefore, that 4.3.94 is the date of reckoning for a decision in the case is not correct. It is open to the Commission to take into account "all available facts and circumstances of the case" and to hear representatives of the sections or groups and other persons as may desire to be heard before adjudicating the matter. The petitioner group have themselves admitted that the resolution of 4.3.94 has not been ratified by the general body. Therefore, to argue that 4.3.94 is the relevant date would in itself lead to the inescapable

conclusion that the decisions taken on 4.3.94, in the absence of an appropriate ratification by the AICC (S) within six months, is also null and void.

45. The Commission has also to keep in mind the balance of natural justice, equity and good conscience while adjudicating in such cases. The Commission, therefore, cannot ignore, nay perforce has to also take into account the intention behind the convening of the meeting dated 4.3.94 in which one of the primary resolutions was regarding the merger of the Indian Congress (S) with the Indian National Congress, as has been pointed out by the respondents. The respondent group was in favour of continued existence of the party as a separate entity. They have also been able to aduce evidence to the effect that they have been functioning and contesting elections subsequent to the Commission's order dated 26.11.94 in dispute case No.2 of 1994. In the light of the express principle laid down by the Supreme Court in APHLC Vs. Captain W. Sangma and Others (AIR 1977, SC 2155) and the Constitution of the party not providing for a merger with the Indian National Congress which would have the effect of effacing its very existence without the general body's consent, the respondent group can be said to represent the interest of the continuance of the party as a separate entity whereas the petitioner group, being votaries of the merger would, if they were to take a decision regarding merger, would be doing so against the "general will" so long as there is even a minor group which does not want to go along with the decision of the merger. In this view of the matter also, to the extent that the respondent group represents the interest of continuance of party as a separate entity would be legally entitled to retain the same and consequently would represent the 'real' party.

45A. The Election Commission has been held by the Supreme Court to be a "Tribunal" referred to under Act, 136 of the Constitution and that it does not mean the same thing as Court but includes all adjudicating bodies constituted by the State and are invested with judicial as distinguished from purely administrative or executive, functions. (AIR 1954 SC 520; AIR 1965 SC 1595).

45B. As a tribunal, the Election Commission in deciding a 'symbol dispute under the Symbols Order, is required to accept and judge the evidence before them (AIR 1971 S.C. 2939). It has also to give the parties opportunity' to be heard in accordance with principles of natural justice, while following the norms of the law of evidence. According to such norms contained in 'The Evidence Act, 1872, the burden of proof in a case lies on the petitioner and not on the respondent.

The Sections are as follows :

**Section 101 : Burden of proof - Whoever desires any Court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.**

**Section 102 : On whom burden of proof lies - The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.**

Therefore, in this matter the burden of proof is on the petitioner and if he fails to prove his case, he loses and the respondent succeeds.

46. Having regard to the above, the Commission is of the considered view the petitioner group has failed to prove its claim to be recognised as Indian Congress (S), the burden of proof being on him as petitioner, consequently the Commission holds that the respondent group comprising of Shri Sarat Chandra Sinha as the President and Shri S.W. Dhabe as the General Secretary is the real Indian Congress (S) for the purpose of para 15 of the Election Symbols (Reservation and Allotment) Order, 1968 and they shall be entitled to the use of the reserved symbol "Charkha".

47. The Commission, after examining and considering all the facts and circumstances of the case, the documents a record and all submissions made by both the parties and the law in force and decisions of courts, also keeping in mind the principles of justice, equity and good conscience holds as follows :-

48. ISSUE NOS. 1.AND 2

1. WHETHER THE RATIO OF THE TEST OF MAJORITY OR NUMERICAL STRENGTH AS LAID DOWN IN SADIQ ALI AND ANOTHER VS. ELECTION COMMISSION OF INDIA AND OTHERS APPLICABLE IN THIS CASE.
2. WHICH ONE AMONG THE TWO GROUPS IS THE REAL INDIAN CONGRESS (SOCIALIST) ?

DECISION :

- a) The Commission holds that the principles laid down in Sadiq Ali's case by the Supreme Court is applicable in the instant case.
- b) The burden of proof is on the petitioner. He has failed to prove his case as stated earlier. Therefore, the Commission holds the view that where the tests are unable to give a definite result and the

petitioner fails to prove his case, the totality of circumstances and factors concerning the combined strength in both the wings should be taken into account and therefore decides that the petitioner has failed to prove the requisite strength/majority to justify his claim in the petition. The petition fails and therefore the Commission holds the Respondent Group headed by Shri Sarat Chandra Sinha to be the real Indian Congress (Socialist).

**ISSUE NO. 3 :** IF ANY ONE OF THE GROUPS IS RECOGNISED AS THE REAL INDIAN CONGRESS (SOCIALIST), WHAT IS THE POSITION OF THE OTHER GROUP ? IS IT ENTITLED TO ANY RELIEF ?

Now that in accordance with the tests laid down by Supreme Court in adjudicating disputes between rival groups of political parties, and therefore taking into account the majority of members of the legislative wing and organisational wing, this Commission has held the group led by Shri Sarat Chandra Sinha as the real Indian Congress (Socialist), and if, as a consequence thereof, the petitioner group led by Shri Unnikrishnan decides to form a separate party and seeks its registration under Section 29A of the Representation of the People Act, 1951, the Commission would be prepared to grant it not only registration under the said Act but also recognition as a State Party subject (1) to the group completing the formalities of applying to the Commission for Registration as a political party under Section 29A of the Representation of the People Act, 1951 and (2) they should furnish positive evidence of their strength to the Commission and also documents in relation to the votes polled by its members in the last General Elections to claim allotment of a reserved symbol. According such a relief, is not only in conformity with the principles of fair play, justice and equity, but also in accordance with the past practice and precedents of the Commission in such cases.

**ORDERED ACCORDINGLY**  
**THIS DAY THE NINETEENTH MARCH NINETEEN**  
**HUNDRED NINTY SIX**

**Sd/-**  
**(G.V.G. Krishnamurthy)**  
Election  
Commissioner

**Sd/-**  
**(T.N. Seshan)**  
Chief Election  
Commissioner

**Sd/-**  
**(Dr.M.S.Gill)**  
Election  
Commissioner

New Delhi  
19th March, 1996



# **ELECTION COMMISSION OF INDIA**

**CORAM:**

**Hon'ble**  
**Sh. G.V.G. Krishnamurthy**  
Election  
Commissioner

**Hon'ble**  
**Sh. T.N. Seshan**  
Chief Election  
Commissioner

**Hon'ble**  
**Dr. M.S. Gill**  
Election  
Commissioner

## **Dispute Case No. 2 of 1996**

[Under para 15 of the Election Symbols (Reservation and Allotment)  
Order, 1968]

In re: Samata Party

Sh. Syed Shahabuddin

Applicant

Vs.

Sh. George Fernandes

Respondent

*Election Symbols (Reservation and Allotment) Order, 1968 — para 15 — petitioner claiming to be president of the party in place of the president whose name is borne on the records of Election Commission - burden of proof on petitioner to substantiate his claim.*

## **SUMMARY OF THE CASE**

The Samata Party was a recognised National party in 1996 and the symbol '*Flaming Torch*' was reserved for it under the provisions of the Election Symbols (Reservation & Allotment) Order, 1968. Somewhere in November, 1995, a dispute arose between two groups of the party, one led by Shri George Fernandes, who was the President of the party as per the records of the Commission, and the other led by Shri Syed Shahabbudin. The Commission advised both the groups to settle their party dispute among themselves and the persons affected by expulsions and counter-expulsions may seek their remedy from appropriate civil courts. However, on 12th March, 1996, Shri Shahabbudin wrote to the Commission that he had taken over the presidentship of the party following the expulsion of Shri George Fernandes. He also claimed the support of six members of Parliament for his group. In view of the then ensuing general elections to the House of the People and certain State Legislative Assemblies, the Commission heard both the parties on 29th March, 1996. Shri Shahabbudin claimed to have become the president of the party on the expulsion of Shri George Fernandes by the national executive of the party. But he was not able to produce even an iota

of documentary evidence in support of his claim, nor did he produce any paper from six members of Parliament whose support he was claiming. In view of the above, the Election Commission rejected the claim of Sh. Shahabuddin and recognised Sh. George Fernandes as the president of the party and the group represented by him as the Samata Party, by its Order dated 29th March, 1996.

## **ORDER**

The Samata Party is a recognised National party and the symbol 'Flaming Torch' is reserved for it in all States and Union Territories under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as the 'Symbols Order').

2. As per records of the Commission, Shri George Fernandes is the President of the party, Shri Syed Shahabuddin its Vice President and Ms. Jaya Jaitley and Shri Hari Kishore Singh are its General Secretaries.

3. The Commission started receiving certain communications from November, 1995 from Ms. Jaya Jaitley and Shri Hari Kishore Singh purporting to inform that certain office-bearers had been removed for anti-party activities and certain others had been appointed to replace them. In short, Ms. Jaitley stated to inform that Shri Shahabuddin and Shri Hari Kishore Singh, among others, had been removed from their party posts and expelled from the party, whereas Shri Hari Kishore Singh made a counter-claim that Shri George Fernandes and Ms. Jaitley had been removed from the party posts held by them. The Commission advised both the aforesaid persons on 2.2.1996 that they may settle their internal party disputes among themselves and the persons affected by such decisions may seek remedy, if so desire, from the appropriate civil courts. They were further informed that till such time, the Commission would go by its existing records.

4. The matters rested there till 18.3.1996, when the Commission received a letter dated 12.3.1996 from Shri Shahabuddin. In that letter, Shri Shahabuddin claimed that he had taken over the presidentship of the party following the expulsion of Shri George Fernandes from the presidentship and membership of the party for breach of party discipline. He further stated that the original party had split into two parties and six members of Parliament, whose names were given in that letter and which included him, were forming part of one of those parties of the original Samata Party. He prayed in that letter that the question of symbol may be decided urgently in view of the general elections which would be held soon.

5. Appreciating the urgency of the matter as the Commission had announced the programme for general elections to the House of the People and the Legislative Assemblies of Assam, Haryana, Kerala, Pondicherry, Tamil Nadu and West Bengal on 19.3.1996 and the last date for making nominations for these general elections was fixed as 3.4.1996, the Commission decided to consider and dispose of the matter expeditiously and did not even insist for a formal application or petition to be presented to it under para 15 of the Symbols Order, which it would have otherwise normally insisted upon.

6. Both the parties were heard today (29.3.1996). Shri Shahabuddin appeared in person and made his oral submissions which were supplemented by Shri Chandrajit Yadav, MP. Shri George Fernandes was also present in person, but oral submission on his behalf were made by Shri Kapil Sibal, Senior Advocate. Both the parties had also sent earlier their replies to the Commission's notice for the hearing.

7. Shri Syed Shahabuddin reiterated his claim that Shri George Fernandes was removed from the presidentship of the party on 19.11.1995 and he being the vice-president took over as party president. He further claimed that the National Executive of the party ratified the decision to expel Shri George Fernandes and elected him (Shri Shahabuddin) as the party president on 9.12.1995. He also reiterated his claim of being supported by six members of Parliament.

8. Shri Shahabuddin was, however, not able to produce even an iota of documentary evidence in support of his assertions and claims. He admitted that there was a lacuna to that effect in his case. He was not able to point out any provision in the party constitution which enabled the vice-president or any other authority to remove the party president from his post. Nor could he produce any letter or notice intimating Shri George Fernandes about his removal from the presidentship or expulsion from the membership of the party. There was no document available with him to show that the National Executive of the party had ratified the expulsion of Shri Fernandes and/or had elected him to fill the vacancy of the president caused by the expulsion of Shri Fernandes. Further, apart from his bare assertion that six members of Parliament were supporting him, he had no individual affidavit or any declaration from them to substantiate or support his claim. As regards the organisational wing, he had no claim to make at all that he or his group was enjoying the majority support.

9. Shri Kapil Sibal, learned Senior Counsel for Shri George Fernandes, rightly submitted that the onus of proving the claims made by Shri Shahabuddin initially lay on him (Shri Shahabuddin). That is the well

settled position in law as per the Evidence Act. In the Commission's considered view, Shri Shahabuddin has not been able to discharge that burden which initially and heavily lay on him and on the successful discharge whereof Shri George Fernandes could have been asked to disprove the claims of Shri Shahabuddin. Shri Sibal stated that he had in his possession individual affidavits of eight members of Parliament which he could readily produce. But that was not considered necessary by the Commission in view of the failure of Shri Shahabuddin to make out even a prima facie case in his favour.

10. Shri Shahabuddin and Shri Chandrajit Yadav were specifically asked by the Commission whether they would like the present matter to pend till they were able to produce evidence in support of their case and claims. They, however, categorically and unambiguously stated that they had presented their case in full and had nothing further to say or produce and that the reality of the situation was that there were two groups of the Samata Party and the Commission should decide the matter expeditiously on the available facts and circumstances.

11. Having considered carefully the above submissions of the parties and having examined the records and after taking into account all available facts and circumstances, the Commission is unanimously of the considered opinion that Shri Shahabuddin has not been able to substantiate his claims by any documentary evidence whatsoever and has failed to make out even a prima facie case in his favour. Consequently, the Commission has no hesitation in unanimously rejecting the claims of Shri Shahabuddin as made by him in his above-referred letter dated 12.3.1996. Therefore, the group which he seeks to represent cannot validly lay any claim to the name or the symbol of the Samata Party. The Commission will continue to recognise Shri George Fernandes as the president of the Samata Party and the group represented by him as the Samata Party for the purposes of the Election Symbols (Reservation and Allotment) Order, 1968.

**ORDERED ACCORDINGLY**

**Sd/-**  
**(G.V.G. Krishnamurthy)**  
Election  
Commissioner

**Sd/-**  
**(T.N. Seshan)**  
Chief Election  
Commissioner

**Sd/-**  
**(Dr.M.S.Gill)**  
Election  
Commissioner

New Delhi  
29th March, 1996

# **ELECTION COMMISSION OF INDIA**

**CORAM :**

**Hon'ble**  
**Sh. G.V.G. Krishnamurthy**  
Election  
Commissioner

**Hon'ble**  
**Sh. T.N. Seshan**  
Chief Election  
Commissioner

**Hon'ble**  
**Dr. M.S. Gill**  
Election  
Commissioner

In re: Samata Party — Request for Change of its Reserved Symbol  
'Flaming Torch'

## **ORDER**

The Samata Party is a recognised National party and the symbol 'Flaming Torch' is reserved for it in all States and Union Territories under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968.

2. The party requested the Election Commission on 18.3.1996 that its symbol 'Flaming Torch' may be changed as there were complaints regarding the print quality of that symbol on the ballot papers. The party requested that it may be allotted any of the following two symbols, in order of preference;

- (i) Star
- (ii) Banyan tree

The party made an alternative prayer that if the above mentioned symbols could not be allotted, the existing design of the symbol 'Flaming Torch' may be changed so as to make it more prominent.

3. The matter was considered today (29.03.1996) in the presence of Shri George Fernandes, President of the party. He was represented by Shri Kapil Sibal, learned Senior Counsel.

4. The Commission brought to the notice of Shri Kapil Sibal that the symbol 'Star' could not be allotted to the Samata Party as it was already reserved for the Mizo National Front, a recognised State Party in Mizoram. It was also clarified that the symbol 'Star' was never allotted to or reserved for the Samajwadi Janata Party (Rashtriya), as was being wrongly claimed by that party, as it was only a registered un-recognised party and not entitled to any reserved symbol.

5. Further, symbol 'Banyan Tree' could also not be allotted to Samata Party as it was earlier reserved for erstwhile National Party,

Request for Change of its Reserved Symbol 'Flaming Torch'

Socialist Party, and was frozen in 1977.

6. It was also brought to Shri Kapil Sibal's notice that the existing design of the symbol 'Flaming Torch' was suggested by the Samata Party itself when it was granted recognition in 1994 and the 'pull' of that symbol was also specifically approved by the party when its blocks were prepared.

7. Thereupon, Shri Sibal withdrew the request of the party for allotment of an alternative symbol or change in the design of existing symbol 'Flaming Torch'.

8. Consequently, there will be no change either in the allotment of the reserved symbol 'Flaming Torch' for the Samata Party or in its existing design.

**DIRECTED ACCORDINGLY**

**Sd/-**  
**(G.V.G. Krishnamurthy)**  
Election  
Commissioner

**Sd/-**  
**(T.N. Seshan)**  
Chief Election  
Commissioner

**Sd/-**  
**(Dr.M.S.Gill)**  
Election  
Commissioner

New Delhi  
29th March, 1996

# **ELECTION COMMISSION OF INDIA**

**CORAM :**

**Hon'ble**  
**Dr. M.S. Gill**  
Chief  
Election Commissioner

**Hon'ble**  
**Sh. G.V.G. Krishnamurty**  
Election  
Commissioner

In re: Recognition of Arunachal Congress

*Election Symbols (Reservation and Allotment) Order, 1968 - paras 6 & 7 - recognition of splinter group on the basis of past poll performance of its members, granted - para 5 - symbol 'Rising Sun' (Donyi), an object of veneration among tribal communities in Arunachal Pradesh - Policy of Election Commission to reserve exclusive symbols for each State party underlined.*

## **SUMMARY OF THE CASE**

The Arunachal Congress was born out of a split in the Indian National Congress, a recognised National party. Out of 45 members of the Arunachal Pradesh Legislative Assembly elected on the ticket of the Indian National Congress, 41 members became the members of the Arunachal Congress. The party got itself registered as a separate political party with the Election Commission under Section 29A of the R.P.Act, 1951 on 16.10.1996. On 18.10.1996, the party prayed for recognition as a State party in Arunachal Pradesh and for reservation of the symbol 'Rising Sun' for it under the provisions of the Election Symbols (Reservation & Allotment) Order, 1968. The party also submitted individual affidavits from 52 MLAs and 2 members of Lok Sabha and one member of Rajya Sabha whose support it had claimed.

The Arunachal Pradesh units of the Bharatiya Janata Party and Indian National Congress objected to the reservation of symbol 'Rising Sun' for the Arunachal Congress on the ground that the rising sun (Donyi) was a religious symbol for the tribal people inhabiting the State.

Following the precedents of recognition of the All India Indira Congress (Tiwari), Tamil Maanila Congress (Moopanar) and NTR Telugu Desam Party (Lakshmi Parvathi), which were splinter groups of the Indian National Congress and Telugu Desam Party, the Arunachal Congress was also granted recognition as a State party in Arunachal Pradesh, by giving benefit of the poll performance of its members as being the candidates of the Indian National Congress from which the party had split.

As regards reservation of the symbol 'Rising Sun', the Commission saw some force in the objections of the Indian National Congress and Bharatiya Janata Party that Sun 'Donyi' was an object of great veneration among several tribal communities in Arunachal Pradesh. The Commission, however, refused to reserve the symbol 'Rising Sun' for the Arunachal Congress on the ground that the Commission was considering then a proposal to reserve exclusive symbols for every State party recognised by it and the symbol 'Rising Sun' was already reserved for some other State parties in some other States.

(Subsequently, by an order 29th August, 1997, the Election Commission reserved the symbol '*Two Daos Intersecting*' for the Arunachal Congress).

## **ORDER**

This is an application by the Arunachal Congress, a political party registered under Section 29A of the Representation of the People Act, 1951, for recognition as a State Party in the State of Arunachal Pradesh and for reservation of symbol 'Rising Sun' under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter reserved to as the 'Symbols Order').

2. The applicant party had earlier applied for registration under Section 29A of the Representation of the People Act, 1951. In the said application for registration, the applicant party, inter alia, stated that the party was born out of split in the Indian National Congress, a recognised National Party, whereby 41 out of the 45 members of the Arunachal Pradesh Legislative Assembly elected on the ticket of the Indian National Congress had formed the applicant party. The party also claimed the support of another 11 independent MLAs, both the members of Lok Sabha elected from the state of Arunachal Pradesh and also the lone member elected from that State to the Council of States. After due process of that application, the party was granted registration under Section 29A of the Representation of the People Act, 1951 on 16-10-1996.

3. On 18-10-1996, the applicant party submitted the present application praying for recognition as a State Party in the State of Arunachal Pradesh and for reservation of symbol 'Rising Sun' for it under the provisions of the Symbols Order. The applicant party also submitted individual affidavits from the 52 MLAs, two members of the Lok Sabha and one member of the Rajya Sabha, whose support it had claimed in its application for registration as mentioned above.

4. Before the receipt of the present application from the Arunachal Congress for its recognition and reservation of symbol 'Rising Sun', the Commission had received on 14-09-1996 through the Chief Electoral Officer, Arunachal Pradesh a copy of a letter dated 11-09-1996 from the Arunachal Pradesh unit of the Bharatiya Janta Party (BJP), a recognised National Party, wherein it was stated that the symbol 'Rising Sun' (Donyi) is a religious symbol for the tribal people inhabiting the State and that the said symbol should not be allowed to any party or candidate in future in the State. Subsequently, the Commission received on 17-10-1996, another representation to the same effect from the Arunachal Pradesh unit of the Indian National Congress (INC).

5. For considering its prayers for recognition and reservation of the said symbol, the Commission decided to afford an opportunity to the applicant party of being heard. The Commission also decided to hear the above mentioned representationists, namely, the Arunachal Pradesh units of the BJP and INC who had objected to the allotment of the symbol 'Rising Sun' to any political party or candidate in the State. Accordingly, a hearing was fixed for the purpose on 27th February, 1997.

6. At the hearing held on 27th February, 1997, the applicant party was represented by its learned counsel Shri S.C. Birla, and its General Secretary, Shri Tony Pertin. The Bharatiya Janta Party was represented by its State Unit General Secretary, Shri Mingkir Lolen, and the Indian National Congress was represented by its learned counsel, Shri Gurdial Singh, and S/Shri P.K. Thungon and Laeta Umbri, ex-Members of Parliament.

7. In their oral submissions, S/Shri S.C. Birla and Tony Pertin referred to the party's applications for registration and recognition and reiterated that the party was formed out of split in the State unit of the Indian National Congress. They, therefore, urged the Commission to give the benefit of poll performances of its members who contested the last general election to the State Legislative Assembly in 1995 as candidates of the Indian National Congress. In support of this prayer, they relied upon the decisions of the Commission in the case of recognition of the All India Indra Congress (Tiwari) and the Tamil Maanila Congress (Moopanar). They submitted that if the principle applied by the Commission in those cases was followed in the case of the present party also, it fulfilled the conditions under paras 6 and 7 of the Symbols Order for recognition as a State Party in Arunachal Pradesh.

8. They also reiterated the prayer for reservation of symbol 'Rising

Sun' for the party. They submitted that the said symbol stood included in the list of free symbols for the State of Arunachal Pradesh for a long time and several candidates had contested elections on this symbol during the last several elections. They disputed the allegation that the said symbol had any religious significance or appeal.

9. In fairness to the learned counsel representing the Indian National Congress, he stated that the INC had no objection to the grant of recognition to the applicant party as a State Party in Arunachal Pradesh, if the Commission found it eligible for the same. He, however, stated that the Indian National Congress had serious objection to the reservation of the symbol 'Rising Sun' for the applicant party as it had a religious appeal among various tribal communities in the State.

10. Shri Mingkir Lolen representing the Bharatiya Janta Party also made a common ground with the learned counsel of the Indian National Congress in raising objection to the reservation of symbol 'Rising Sun' for the applicant party. He submitted certain documents also in the form of extracts from certain books and papers presented at some religious meetings to show that sun and moon (Donyi—Polo) is the main religion of a large number of tribal population of Arunachal Pradesh and that the said symbol 'Rising Sun' was a religious symbol for those tribal communities. He also pointed out that the objection to the inclusion of the symbol 'Rising Sun', either as reserved symbol or as free symbol for the State of Arunachal Pradesh, was raised by his party much before the present applicant party had even made application for its recognition.

11. The Commission has carefully examined the documents brought on the record of this case by the applicant party and the State units of the Bharatiya Janta Party and Indian National Congress, and also considered the oral submissions made by the learned counsel and the representatives of the above parties.

12. The first question needing determination of the Commission is whether the applicant party should be given recognition as a State Party in the State of Arunachal Pradesh under the Symbols Order. The learned counsel for the applicant party and Shri Tony Pertin fairly conceded that the applicant party could not be said to have fulfilled the condition mentioned in para 6 (2) (A) (a) in the Symbols Order inasmuch as the party was registered on 16-10-1996 and was thus not engaged in political activity for a continuous period of 5 years as envisaged in the said para. They also conceded that the party had not contested any general election either to the House of the People or the State Legislative Assembly after its

registration. They, however, submitted that these conditions could be deemed to have been fulfilled by the party as the party was a splinter group of the Indian National Congress, a recognised National Party and, therefore, urged that the benefit of poll performance of its members at the last general election to the State Legislative Assembly should be given to the applicant party as was done by the Commission in the case of All India India Congress (Tiwari) and Tamil Maanila Congress (Moopanar).

13. There is quite a force in the above contention of the applicant party. The case of the applicant party also stands on the same footing as that of the above mentioned two parties, particularly, the Tamil Maanila Congress (Moopanar). The said Tamil Maanila Congress (Moopanar) was born out of split in the Tamil Nadu unit of the Indian National Congress, and the present applicant party has been formed as a result of split in the Arunachal Pradesh unit of the same Indian National Congress. Further, the same principle was applied while granting recognition to a splinter group, namely, NTR Telugu Desam Party (Lakshmi Parvathi), of the Telugu Desam Party, a recognised State Party in Andhra Pradesh.

14. Having regard to the above, the Commission sees no reason or justification for not applying the above principle in the case of the present party and of giving benefit to this party of the past poll performance of its members as members of the Indian National Congress. Applying the above principle, the present applicant party also becomes eligible for recognition as State Party in Arunachal Pradesh under paras 6(2) and 7 of the Symbols Order, as the applicant party has among its fold at least 40 members of the Arunachal Pradesh Legislative Assembly who were elected on the ticket of the Indian National Congress.

15. Accordingly, the Election Commission hereby recognises the applicant party, namely, Arunachal Congress, as a State Party in the State of Arunachal Pradesh under the Symbols Order.

16. As regards reservation of the symbol 'Rising Sun' as prayed for by it, the Commission is not inclined to accept this prayer of the applicant party. The objections raised on behalf of the State units of the Bharatiya Janta Party and Indian National Congress cannot be lightly brushed aside. Sufficient material has been brought on record to show that Sun (Donyi) is an object of great veneration among several tribal communities in the State of Arunachal Pradesh. The preference of the applicant party for this symbol, when they never contested any election on this symbol, also, prima facie, lends credence to the above belief. However, without deciding finally whether the symbol 'Rising Sun' has any religious

appeal or not in the State of Arunachal Pradesh, whose name itself signifies that it is the land of the rising sun, the Commission would not like to reserve this symbol for the applicant party on another ground. The Commission is considering a proposal to reserve exclusive symbols for every State party recognised by it. In other words, a symbol reserved for one State party will not be reserved for any other party in any other State. The symbol 'Rising Sun' is already reserved for the Dravida Munnetra Kazhagam in Tamil Nadu, Federal Party of Manipur in Manipur, Hill People Union in Meghalaya and Republican Party of India in Maharashtra. The Commission is considering to request these parties to choose some other symbols. Therefore, the Commission would not like to reserve this very symbol for the applicant party in Arunachal Pradesh and complicate the matter further.

17. In fact, the Commission indicated its mind not to reserve this symbol for the applicant party to its representatives at the hearing itself which was held on 27th February, 1997. They were asked to choose some other symbol and, for that purpose given an opportunity to suggest three symbols, in order of preference, anyone of which may be reserved for them by the Commission. They were also given a further opportunity that in case they want to opt for a symbol which is not already included in the Commission's approved list of free symbols, they may furnish drawings of those symbols for the Commission's approval. It was made clear to them that such symbols should not have any appeal on the ground of religion, caste, creed, language or any other ethnic considerations.

18. The applicant party has not so far given its preference as asked for in the matter. The question of reservation of symbol for the applicant party would, therefore, be considered further on hearing from the party in this regard.

**ORDERED ACCORDINGLY**

*Sd/-*  
**(Dr. M.S. Gill)**  
Chief Election  
Commissioner

*Sd/-*  
**(G.V.G. Krishnamurty)**  
Election  
Commissioner

New Delhi  
17th March, 1997

# **ELECTION COMMISSION OF INDIA**

**CORAM :**

**Hon'ble**  
**Sh. G.V.G. Krishnamurty**  
Election  
Commissioner

**Hon'ble**  
**Dr. M.S. Gill**  
Chief Election  
Commissioner

**Hon'ble**  
**Sh. J.M. Lyngdoh**  
Election  
Commissioner

In the matter of: Jammu & Kashmir People Conference - Withdrawal of Recognition as a State Party

*Election Symbols (Reservation and Allotment) Order, 1968 -paras 6,7 - failure of State party to fulfil prescribed criteria for continued recognition - further failure of party to respond to Election Commission's show-cause notice-recognition withdrawn.*

## **SUMMARY OF THE CASE**

The Jammu & Kashmir People Conference was a recognised State party in J&K and the symbol 'Lion' was reserved for it under the provisions of the Election Symbols (Reservation & Allotment) Order, 1968. The party did not contest election from any of the Parliamentary or Assembly constituencies in the State of Jammu and Kashmir at the general elections to the House of the People and State Legislative Assembly held in 1996. Thereupon, after due notice to the party and giving it an opportunity of a personal hearing, the Commission withdrew the recognition of the party as a State party in Jammu & Kashmir on its failure to fulfil the conditions for continued recognition in terms of paragraphs 6 & 7 of the Symbols Order. The party was not represented at the hearing and the records of the Commission otherwise also showed that the party had become non-functional.

## **ORDER**

The Jammu & Kashmir People Conference is a recognised State Party in the State of Jammu and Kashmir, for the purposes of elections to the House of the People, under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as 'Symbols Order'). The party is also recognised as State party in that State, for the purposes of elections to the State Legislative Assembly, under the relevant provisions of the Jammu and Kashmir Conduct of Elections Rules, 1965.

The symbol 'Lion' is reserved for the party in the State of Jammu and Kashmir.

2. The recognition of political parties as National Parties or State Parties is governed by the provisions of paragraphs 6 and 7 of the Symbols Order. For facility of reference the said paragraphs 6 and 7 are reproduced below:-

**"6. Classification of political parties-**

(1) For the purpose of this Order and for such other purposes as the Commission may specify as and when necessity therefore arises, political parties are either recognised political parties or unrecognised political parties.

(2) A political party shall be treated as a recognised political party in a State, if and only if either the conditions specified in clause (A) are, or the condition specified in clause (B) is, fulfilled by that party and not otherwise, that is to say-

(A) that such party-

(a) has been engaged in political activity for a continuous period of five years, and

(b) has, at the general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning returned -

either (i) at least one member to the House of the People for every twenty five members of that House or any fraction of that number elected from that State;

or (ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;

(B) that the total number of valid votes by all the contesting candidates set up by such party at the general election in the State to the House of the People, or as the case may be, to the Legislative Assembly for the time being in existence and functioning (excluding the valid votes of each such contesting candidate in a constituency as has not been elected and has not polled at least one-twelfth of the total number of valid votes polled by all the contesting candidates in that constituency) is not less than four per cent of the total number of valid votes polled by all the contesting candidates at such general election in that State (including the valid votes of those contesting candidates who have forfeited their deposits).

(3) For the removal of doubts it is hereby declared that the condition in clause (A)(b) of sub-paragraph (2) shall not be deemed to have been fulfilled by a political party if a member of the House of the People or the Legislative Assembly of the State becomes a member of that political party after his election to that House or, as the case may be, that Assembly.

7. Two categories of recognised political parties-

(1) If a political party is treated as a recognised political party in accordance with paragraph 6 in four or more States, it shall be known as, and shall have and enjoy the status of, a “National Party” throughout the whole of India: and if a political party is treated as a recognised political party in accordance with that paragraph in less than four States, it shall be known as, and shall have and enjoy the status of a “State Party” in the State or States in which it is a recognised political party.

(2) Notwithstanding anything contained in sub-paragraph (1), every political party which, immediately before the 15<sup>th</sup> day of June, 1989 is a National Party shall, on its registration under Section 29A of the Representation of the People Act, 1951, be a National Party and shall, subject to the other provisions of this Order, continue to be so until it ceases to be a National party on the result of any general election held after the said date.

(3) Notwithstanding anything contained in sub-paragraph (1), every political party which, immediately before the 15<sup>th</sup> day of June, 1989, is a State Party in a State, shall, on its registration under Section 29A of the Representation of the People Act, 1951, be a State party in that State and shall, subject to the other provisions of this Order, continue to be so until it ceases to be a State party in that State on the result of any general election held after the said date.

3. The perusal of the above quoted paragraphs 6 and 7 would show that the recognition of a political party as National or State Party depends on the fulfilment of the conditions mentioned in paragraph 6(2). If a political party becomes eligible for, and is granted, recognition as a National or a State Party on the fulfilment of the conditions mentioned in the said paragraphs, it will continue to enjoy that status so long as it continues to fulfil those conditions. Therefore, the poll performance of every recognised political party needs to be reviewed under the said paragraphs after every general election held in the State either to the Lok Sabha or to the State Legislative Assembly.

4. Even if there be any doubt on this point, that stands dispelled by the decision dated 23.11.95 of the Hon’ble Supreme Court in the case of

**Janata Dal (Samajwadi) Vs. The Election Commission of India (AIR 1996 SC 577).** In that case, the Commission had withdrawn the recognition of the Janata Dal (Samajwadi) as a National Party for having failed to fulfil any of the criteria for recognition, on the basis of its poll performance at the general elections to the House of the People and certain State Legislative Assemblies held in 1991. On appeal to the Hon'ble Supreme Court, the Hon'ble Supreme Court has held:-

**“It is true that there is no specific provision under the Symbols Order vesting power in the Election Commission after having recognised a political party as a National Party to declare that such political party has ceased to be a National Party, not being entitled to the exclusive use of the symbol allotted to it. But at that same time, it cannot be conceived that a political party having been recognised as a National Party or State Party as the case may be on having fulfilled the conditions prescribed in paragraph 6(2) shall continue as such in perpetuity although it has forfeited the right to be recognised as a National Party or a State Party. In paragraph 2(2) of the said Symbols Order, it has been specifically provided that the General Clauses Act, 1897 shall as far as may be applicable in relation to the interpretation of the said order as it applies in relation to the interpretation of a Central Act. Section 21 of the General Clause Act provides that where by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction, and conditions if any to add to, amend, vary or rescind any notification, orders rules or bye-laws so issued. As paragraph 2(2) of the order in clear and unambiguous term makes provision of the General Clauses Act applicable to the Symbols Order, it need not be impressed that provisions of Section 21 of the General Clauses Act, also become applicable vesting power in the Election Commission which**

had issued the aforesaid order dated 16.04.1991 recognising the appellant as a National Party to rescind the said order as appellant in the elections to the Legislative Assemblies of the States mentioned above ceased to fulfil the conditions prescribed in paragraph 6(2) of the Order read with 7(1) thereof”.

5. Thus, the law on the point is now conclusively settled by the above decision of the Hon'ble Supreme Court that a party once recognised cannot claim to enjoy continued recognition in perpetuity. It has to show the minimum electoral support for recognition or continued recognition as measured in terms of paragraph 6(2) of the Symbols Order, at every general election.

6. After the general elections to the Lok Sabha and the State Legislative Assembly of Jammu & Kashmir held in 1996, the poll performance of the Jammu & Kashmir People Conference was reviewed by the Commission. It was observed that the Party did not contest any of these general elections and did not field even a single candidate from any of the Parliamentary or Assembly Constituencies in Jammu & Kashmir.

7. The party has thus failed to fulfil any of the conditions laid down in the above quoted paragraph 6(2) of the Symbols Order for recognition as a State party in Jammu & Kashmir.

8. Before withdrawing the recognition of the party as a State party in Jammu & Kashmir, the Commission considered it appropriate to afford it an opportunity of making a representation as to why its recognition may not be withdrawn. Accordingly, a show cause notice was issued to the party on 27.3.1997 (*Annexure 'A'*) and the party was asked to make its representation on or before 30.4.1997.

9. The party did not make any representation to the Commission in response to the said notice, nor was anything heard from the party in the matter.

10. Despite the failure of the party to respond to the Commission's notice, the Commission decided to give the party a further opportunity of being heard before taking a decision so that the party may not have any grievance of not being given adequate opportunity to make a representation against the proposed action. The Commission, accordingly, fixed a hearing on 24.7.1997 and the party was informed about that hearing by the Commission's letter dated 23/25.6.1997. The party duly received the notice

for the hearing on 30.6.1997 vide acknowledgment receipt available in the records of the Commission.

11. Again, no representative of the party was present at the hearing held by the Commission on 24.7.1997, as scheduled, nor has anything been heard from the party at all. Incidentally, when the party was invited for the meeting held by the Commission with all recognised National and State Parties at New Delhi on 7.5.1997, the Chief Electoral Officer of Jammu & Kashmir had informed that the party had become non-functional; and none had represented it at that meeting too.

12. In view of the foregoing, the Commission is satisfied that the party has no representation to make or to say anything in relation to the proposed withdrawal of recognition of the party as a State party in Jammu and Kashmir. The very fact that the party did not contest the general elections to the House of the People and the State Legislative Assembly of Jammu & Kashmir in 1996 is so self-evident of its poll performance that it leaves little scope for making any representation in regard thereto.

13. Having regard to the above, the recognition given to the Jammu & Kashmir People Conference as a State Party in Jammu and Kashmir in terms of paragraphs 6 & 7 of the Election Symbols (Reservation and Allotment) Order, 1968, as well as under the relevant provisions of the Jammu and Kashmir Conduct of Elections Rules, 1965, is hereby withdrawn. Consequently, the party shall not be entitled to the use of symbol 'Lion', either for the purposes of elections to the House of the People or for the purposes of elections to the Jammu and Kashmir Legislative Assembly in the State of Jammu and Kashmir hereafter.

**Sd/-**  
**(G.V.G. Krishnamurthy)**  
Election Commissioner

**Sd/-**  
**(Dr. M.S. Gill)**  
Chief Election  
Commissioner

**Sd/-**  
**(J.M. Lyngdoh)**  
Election Commissioner

New Delhi  
30th July, 1997

**ANNEXURE 'A'**

**ELECTION COMMISSION OF INDIA**  
Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 56/Review/96/J.S.II/JPC/

Dated 27.3.97

To

The General Secretary  
Jammu & Kashmir People Conference  
General Office  
Old Secretariat Road  
SRINAGAR - 190001 (KASHMIR)

**SHOW CAUSE NOTICE**

WHEREAS, JAMMU AND KASHMIR PEOPLE CONFERENCE is a recognised State Party under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as 'Symbols Order');

AND WHEREAS, paragraph 7 (2) of the Symbols Order provides that a political party shall be treated as a recognised political party in a State, if and only if either the conditions specified in Clause (A) of that paragraph are, or the condition specified in Clause (B) thereof is, fulfilled by that party and not otherwise, that is to say :-

(A) That such party -

(a) has been engaged in political activity for a continuous period of five years; and

(b) has, at the general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning returned - either (i) at least one member to the House of the People for every twenty-five members of that House or any fraction of that number elected from that State;

or (ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;

(B) that the total number of valid votes by all the contesting candidates set up by such party at the general election in the State to the House of the People, or as the case may be, to the Legislative Assembly for the time being in existence and functioning (excluding the valid votes of each such contesting candidate in a constituency as has not been elected and has not polled at least one-twelfth of the total number of valid votes polled by all the contesting candidates in that constituency) is not less than four per cent of the total

number of valid votes polled by all the contesting candidates at such general election in the State (including the valid votes of those contesting candidates who have forfeited their deposits);

AND WHEREAS, under paragraph 7 of the Symbols Order, a party shall be recognised as a State Party if it is treated as a recognised political party in accordance with paragraph 6, referred to above, in less than four States;

AND WHEREAS, in pursuance of the provisions of the above referred paragraphs 6 (2) and 7 of the Symbols Order, a review of the poll performance of every political party is required to be made by the Election Commission after every general election to the House of the People or, as the case may be, to the State Legislative Assembly;

AND WHEREAS, the poll performance of the said party JAMMU AND KASHMIR PEOPLE CONFERENCE at the General Election to the Lok Sabha held in April-May, 1996 and the last General Election to the State Legislative Assembly of JAMMU AND KASHMIR held in 1996 has been reviewed by the Election Commission in terms of paragraphs 6 (2) and 7 of the said Symbols Order, as per the statement(s) annexed hereto;

AND WHEREAS, the poll performance of the said party at the aforesaid General Elections does not satisfy any of the criteria laid down for recognition of the said party as a State party in the State of JAMMU AND KASHMIR.

AND WHEREAS, the Election Commission proposes to withdraw the recognition granted to the said party as a State party in the State of JAMMU AND KASHMIR on the failure of the party to fulfil any of the criteria fixed for such recognition as aforesaid;

AND WHEREAS, before withdrawing such recognition from said party, the Election Commission proposes to afford to the said party an opportunity of making a representation to the Commission as to why such recognition may be withdrawn;

NOW, THEREFORE, the said party is required to show cause as to why the recognition of the said party as a State party in the State of JAMMU AND KASHMIR may not be withdrawn under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968. The representation of the party should reach the Commission, on or before the 30th April, 1997.

By order

**Sd/-**  
**(S.K. MENDIRATTA)**  
Director (Law) and  
Ex-Officio Principal Secretary

**ANNEXURE 'B'**

**POLL PERFORMANCE OF THE PARTY**

**General Elections, 1996 : House of the People / Legislative  
Assembly of JAMMU & KASHMIR**

<b>Name of Party</b>	<b>State</b>	<b>Seats</b>		<b>Votes Polled</b>	
		<b>Contested</b>	<b>Won</b>	<b>Votes</b>	<b>%</b>
<b>House of the People</b>					
Jammu & Kashmir Kashmir People Conference	Jammu & Kashmir	Nil	Nil	Nil	Nil
<b>Legislative Assembly</b>					
		Nil	Nil	Nil	Nil



# **ELECTION COMMISSION OF INDIA**

**CORAM:**

**Hon'ble**  
**Sh. G.V.G. Krishnamurty**  
Election  
Commissioner

**Hon'ble**  
**Sh. J.M. Lyngdoh**  
Election  
Commissioner

In the matter of: Marumalarchi Dravida Munnetra Kazhagam -  
Withdrawal of Recognition as State Party in the State  
of Tamil Nadu

Dated : 29th August, 1997

The case was called for hearing on 31.7.1997.

**PRESENT :**

For Marumalarchi : Shri V. Gopalsamy, General Secretary  
Dravida Munnetra  
Kazhagam

*Election Symbols (Reservation and Allotment) Order, 1968 -para 6 & 7 - failure of State party to fulfil prescribed criteria for continued recognition - 4% votes mean 4%, no provision for rounding off 3.60% to 4% for purposes of para 6 (2) (B).*

## **SUMMARY OF THE CASE**

The Marumalarchi Dravida Munnetra Kazhagam, which was a splinter group of the Dravida Munnetra Kazhagam, was granted recognition as a State party in Tamil Nadu, and the Symbol ' Umbrella' was reserved for it, on 3<sup>rd</sup> April, 1996, which was the last date for making nominations in the general elections to the House of the People and Tamil Nadu Legislative Assembly, then being held simultaneously. The party secured 4.5% votes in the parliamentary elections and 5.78 % votes in the assembly elections. At that time, the Symbols Order provided that a party shall be eligible to be recognised if it secured 4% votes, either in Parliamentary or in Assembly elections in a State. There was, however, a further stipulation in the Symbols Order that the votes polled by the defeated candidates of the party, who secured less than 1/12th of the votes polled in their respective constituencies, would not be taken into account for the purpose of calculation of 4% votes. By excluding the votes of such defeated candidates of the present party, its

tally of votes, both for the Parliamentary and Assembly elections, came down to less than 4%. It was contended by the party that as it polled 3.60% votes in the assembly elections, this percentage should be rounded off to 4% as the fraction exceeded one-half. The Commission did not agree with the contention of the party, holding that 4% votes as prescribed under paragraph 6 (2) (B) of the Symbols Order meant 4% and there was no provision for rounding off any fractions to the higher digits for the purposes of the calculation in terms of that para. The party's recognition as a State party in Tamil Nadu was consequently withdrawn by the Commission.

## **ORDER**

1. The Marumalarchi Dravida Munnetra Kazhagam is a recognised State Party in the State of Tamil Nadu under the provisions of Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as 'Symbols Order'). The symbol 'Umbrella' is reserved for the party in the above State.

2. The recognition of political parties as National Parties or State Parties is governed by the provisions of paragraphs 6 and 7 of the Symbols Order. For facility of reference, the said paragraphs 6 and 7 are reproduced below:-

**"6. Classification of political parties-**

(1) For the purpose of this Order and for such other purposes as the Commission may specify as and when necessity therefor arises, political parties are either recognised political parties or unrecognised political parties.

(2) A political party shall be treated as a recognised political party in a State, if only if, either the conditions specified in Clause (A) are, or the condition specified in Clause (B) is, fulfilled by that party and not otherwise, that is to say-

(A) that such party-

(a) has, been engaged in political activity for a continuous period of five years; and

(b) has, at the general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning returned - either (i) at least one member to the House of the People for every twenty five members of that House or any fraction of that number elected from that State; or (ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;

(B) that the total number of valid votes by all the contesting candidates set up by such party at the general election in the State to the House of the People, or as the case may be, to the Legislative Assembly for the time being in existence and functioning (excluding the valid votes of each such contesting candidate in a constituency as has not been elected and has not polled at least one-twelfth of the total number of valid votes polled by all the contesting candidates in that constituency) is not less than four per cent of the total number of valid votes polled by all the contesting candidates at such general election in that State (including the valid votes of those contesting candidates who have forfeited their deposits).

(3) For the removal of doubts it is hereby declared that the condition in clause (A)(b) of sub-paragraph (2) shall not be deemed to have been fulfilled by a political party if a member of the House of the People or the Legislative Assembly of the State becomes a member of that political party after his election to that House or, as the case may be, that Assembly.

7. Two categories of recognised political parties -

(1) If a political party is treated as a recognised political party in accordance with paragraph 6 in four or more States, it shall be known as, and shall have and enjoy the status of, a "National Party" throughout the whole of India: and if a political party is treated as a recognised political party in accordance with that paragraph in less than four States, it shall be known as, and shall have and enjoy the status of, a "State Party" in the State or States in which it is a recognised political party.

(2) Notwithstanding anything contained in sub-paragraph (1), every political party which, immediately before the 15th day of June, 1989 is a National Party, shall, on its registration under Section 29A of the Representation of the People Act, 1951, be a National Party and shall, subject to the other provisions of this Order, continue to be so until it ceases to be a National party on the result of any general election held after the said date.

(3) Notwithstanding anything contained in sub-paragraph (1), every political party which, immediately before the 15th day of June, 1989, is a State Party in a State, shall, on its registration under Section 29A of the Representation of the People Act, 1951, be a State party in that State and shall, subject to the other provisions of this Order, continue to be so until it ceases to be a State party in that State on the result of any general election held after the said date."

3. The perusal of the above quoted paragraphs 6 and 7 would show that the recognition of a political party as National or State Party depends

on the fulfilment of the conditions mentioned in paragraph 6(2). If a political party becomes eligible for, and is granted, recognition as a State Party on the fulfilment of the conditions mentioned in said paragraph, it will continue to enjoy that status so long as it continues to fulfil those conditions. Therefore, the poll performance of every recognised political party needs to be reviewed under the said paragraph after every general election held in the State either to the Lok Sabha or to the State Legislative Assembly.

4. Even if there be any doubt on this point, that stands dispelled by the decision dated 23.11.95 of the Hon'ble Supreme Court in the case of Janata Pal (Samajwadi) Vs. The Election Commission of India (AIR 1996 SC 577). In that case, the Commission had withdrawn the recognition of the Janata Dal (Samajwadi) as a National Party in similar circumstances for having failed to fulfil any of the criteria for recognition, on the basis of its poll performance at the general elections to the House of the People and certain State Legislative Assemblies held in 1991. On appeal to the Hon'ble Supreme Court, the Hon'ble Supreme Court has held:-

“It is true that there is no specific provision under the Symbols Order vesting power in the Election Commission after having recognised a political party as a National Party to declare that such political party has ceased to be a National Party, not being entitled to the exclusive use of the symbol allotted to it. But at that same time, it cannot be conceived that a political party having been recognised as a National Party or State Party as the case may be on having fulfilled the conditions prescribed in paragraph 6(2) shall continue as such in perpetuity although it has forfeited the right to be recognised as a National Party or a State Party. In paragraph 2(2) of the said Symbols Order it has been specifically provided that the General Clauses Act, 1897 shall as far as may be applicable in relation to the interpretation of the said order as it applies in relation to the interpretation of a Central Act. Section 21 of the General Clauses Act provides that where by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction, and conditions if any to add to, amend, vary or rescind any notification,

orders, rules or bye-laws so issued. As paragraph 2(2) of the order in clear and unambiguous term makes provision of the General Clauses Act applicable to the Symbols Order, it need not be impressed that provisions of Section 21 of the General Clauses Act, also become applicable vesting power in the Election Commission which had issued the aforesaid order dated 16.04.1991 recognising the appellant as a National Party to rescind the said order as appellant in the elections to the Legislative Assemblies of the States mentioned above ceased to fulfil the conditions prescribed in paragraph 6(2) of the Order read with 7(1) thereof”.

5. Thus, the law on the point is now conclusively settled by the above decision of the Hon'ble Supreme Court that a party once recognised cannot claim to enjoy continued recognition in perpetuity. It has to show the minimum electoral support for recognition or continued recognition, as measured in terms of paragraph 6(2) of the Symbols Order, at every general election.

6. Accordingly, after the general elections were held to the Lok Sabha and Tamil Nadu Legislative Assemblies, in April-June, 1996, the poll performance of the Marumalarchi Dravida Munnetra Kazhagam at those general elections was reviewed by the Commission. The statement at *Annexure 'A'* hereto shows the poll performance of the party at the aforesaid general elections to the Lok Sabha and Tamil Nadu Legislative Assembly.

7. The perusal of the Statement at *Annexure 'A'* would show that the party does not fulfil any of the conditions for recognition, as laid down in the above quoted paragraph 6(2) of the Symbols Order, in the State of Tamil Nadu at the aforesaid general elections. The party is thus no longer entitled to continued recognition as State Party in that State.

8. Before withdrawing recognition of the party as such State Party in Tamil Nadu, the Commission considered it appropriate to afford it an opportunity of making a representation to the Commission as to why its recognition as State Party in Tamil Nadu may not be withdrawn. Accordingly, a show cause notice was issued to the party on 27.3.1997 (*Annexure 'B'*) and the party was asked to make its representation on or before 30.4.1997.

9. The party submitted its reply to the said notice on 28.4.1997 and prayed that its recognition may not be withdrawn.

10. In order to afford all reasonable opportunities to the party to

present its case, the Commission decided to give a personal hearing to the representatives of the party on 31.7.1997. In pursuance of the Commission's notice dated 23.6.1997 for that hearing, Shri V.Gopalsamy, General Secretary of the party, appeared at the hearing and made his oral submissions.

11. Shri V. Gopalsamy submitted that the party was born out of split in the Dravida Munnetra Kazhagam in 1993 and got registration as a separate party under Section 29A of the Representation of the People Act, 1951 in June, 1994. The Party was granted recognition as a State Party in Tamil Nadu by the Commission on 3rd April, 1996, which was the last date for making nominations at the general elections to the House of the People and Tamil Nadu Legislative Assembly, then being held simultaneously, and the symbol 'Umbrella' was reserved for it on that date. He submitted that the party got hardly any time to popularize its symbol during the short period available before the poll which was taken on 27.4.96 / 2.5.96 for the said general elections. He further submitted that despite such handicap the party secured 4.5% votes for the Parliamentary elections and 5.78% votes for the Legislative Assembly elections. His first contention was that all the votes polled by the party should be taken into reckoning for the purpose of recognition in terms of para 6(2) (B) of the Symbols Order, including the votes polled by the defeated party candidates who secured less than 1/12th of the votes polled in their respective constituencies. He pointed out that, while reviewing the poll performance of the party by the Commission in terms of para 6(2) (B) of the Symbols Order, the votes polled by the aforesaid defeated candidates (who secured less than 1/12th of the votes polled in their respective constituencies) had been excluded from the grand tally of the votes secured by the party, but such votes had been included in the total votes polled in the State, for the purpose of working out the percentage of votes polled by the party. He next contended that even if the votes of the aforesaid defeated candidates were excluded from the grand tally of the votes secured by the party, the party had secured 3.6% votes at the Assembly elections, which should be rounded off to the next higher integer, namely, 4%, and that the party should, on that basis, be treated as having fulfilled the condition for recognition in terms of para 6(2) (B) of the Symbols Order. In support of his last submission, he sought to derive assistance from the provisions of Article 55 of the Constitution of India, which lays down the formula for working out the number of votes to be assigned to different categories of members of the electoral college for the Presidential election and provides that the fractions exceeding one-half be counted as one.

12. The Commission has carefully considered each of the above contentions of the party. It is true that the party was granted recognition on 3rd April, 1996. But it is worthy of note that the party, though registered on 14.6.1994, made a prayer for recognition and submitted the necessary

documentary evidence in support of its prayer for recognition, only on 27.3.96. It is also equally important to note that the recognition was given to the party, by way of concession, as the party was credited with the poll performance of its members, not as candidates of Marumalarchi Dravida Munnetra Kazhagam, but as candidates of Dravida Munnetra Kazhagam from which it had splintered off. In these circumstances, the party cannot legitimately complain about inadequacy of time for propagating its symbol.

13. The party also cannot validly claim that the votes polled by all its candidates should be taken into account for the purpose of calculating the percentage of votes polled by it under paragraph 6(2)(B) of the Symbols Order. The said para 6(2)(B), as quoted in para 2 hereinabove, clearly spells out that the votes polled by the party candidates, who are defeated and secure less than 1/12th of the valid votes polled in their respective constituencies, shall not be taken into account for the purposes of that para. This stipulation has always been there in the Symbols Order, right since its promulgation in 1968, and all recognitions, in the past, have been granted or withdrawn on the basis of the aforesaid stipulation in para 6(2)(B). Therefore, it is not possible to make any deviation from the aforesaid stipulation and the votes of the aforesaid defeated candidates, who secured less than 1/12th of the votes polled in their respective constituencies, cannot be taken into account under para 6(2)(B). Anyhow, even if the votes polled by such candidates are excluded, not only for the party's tally, but also from the grand total of the votes polled for the whole of the State, that too would not make any material difference in so far as the present party is concerned. The party secured 15,69,168 votes, in all, at the Assembly elections and, out of these, 5,90,996 votes were secured by those defeated candidates who polled less than 1/12th of the votes in their respective constituencies. Thus, the remaining party candidates secured 9,78,172 votes (excluding the said 5,90,996 votes) which worked out to 3.60% of the total (2,71,54,721) valid votes polled in the whole of the State of Tamil Nadu at that general election. If the aforesaid 5,90,996 votes are excluded also from the total (2,71,54,721) votes polled in the State, percentage of votes polled by the party with reference to the remaining (2,71,54,721 - 5,90,996 = 2,65,63,725) votes would work out to 3.68%, which is still less than 4%, required for recognition in terms of para 6(2)(B) of the Symbols Order. The contention of the party that the fraction exceeding one-half may be counted as one and 3.60% (or 3.68%) may be rounded off to 4% is not permissible under the Symbols Order. Reliance on the provisions of Article 55 of the Constitution is misplaced, because the provisions of that Article prescribe a special formula for working out the number of votes to be assigned to members of electoral college for the Presidential election and do not lay down a general rule or formula that all fractions exceeding one-half should be counted as one, in all cases.

Marumalarchi Dravida Munnetra Kazhagam - Withdrawal of Recognition as  
State Party in the State of Tamil Nadu

14. Shri Gopalsamy also urged on behalf of the party that it had spent enormous energy and money on the propagation of its symbol 'Umbrella', that the party had contested elections on this very symbol to local bodies in the State of Tamil Nadu and shown good performance in those elections, and, therefore, the recognition of the party may not be withdrawn as it would cause immense hardships to the party. These considerations are not germane for granting or withdrawing the recognition of a party under the Symbols Order. The Symbols Order applies only in relation to elections to the House of the People and State Legislative Assemblies and not to the elections to local bodies, which are conducted by the State Election Commissions - totally separate and independent authorities under the Constitution of India, and under totally different set of laws.

15. Shri Gopalsamy also contended that the party secured more than 10% votes at the bye-election to the Tamil Nadu Legislative Assembly from Pudukkottai Assembly Constituency in January, 1997 and that the same exceeded 4% votes required for recognition as a State Party.

16. This contention is also totally misconceived. A party requires, for recognition as State Party, 4% votes of the total votes polled in the entire State at a general election, and not 4% votes of the votes polled at a stray bye-election in some constituency.

17. In view of the above, the Commission is satisfied that the Marumalarchi Dravida Munnetra Kazhagam is no longer entitled to recognition as a State party, in the State of Tamil Nadu, under paragraphs 6 and 7 of the Election Symbols (Reservation and Allotment) Order, 1968. Accordingly, the party shall cease to be recognised as a State Party in the State of Tamil Nadu, and shall not be entitled to the exclusive use of the symbol 'Umbrella' earlier reserved for it in that State. It shall hereafter be a registered - unrecognised political party for the purposes of the said Symbols Order.

*Sd/-*  
**(G.V.G. Krishnamurthy)**  
Election  
Commissioner

*Sd/-*  
**(J.M. Lyngdoh)**  
Election  
Commissioner

**ANNEXURE 'A'**

**ELECTION COMMISSION OF INDIA**  
Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 56/Review/96/J.S.II/MDMK/2264-7

Dated 27.3.97

To

The General Secretary  
Marumalarchi Dravida Munnetra Kazhagam  
'THAYAGAM' No. 4, Ist Street  
Karpagam Avenue, Raja Annamalaipuram  
CHENNAI-600028

**SHOW CAUSE NOTICE**

WHEREAS, MARUMALARCHI DRAVIDA MUNNETRA KAZHAGAM is a recognised State Party under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as 'Symbols Order');

AND WHEREAS, paragraph 7 (2) of the Symbols Order provides that a political party shall be treated as a recognised political party in a State, if and only if either the conditions specified in Clause (A) of that paragraph are, or the condition specified in Clause (B) thereof is, fulfilled by that party and not otherwise, that is to say :-

(A) That such party -

(a) has been engaged in political activity for a continuous period of five years; and

(b) has, at the general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning returned - either (i) at least one member to the House of the People for every twenty-five members of that House or any fraction of that number elected from that State;

or (ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;

(B) that the total number of valid votes by all the contesting candidates set up by such party at the general election in the State to the House of the People, or as the case may be, to the Legislative Assembly for the time being in existence and functioning (excluding the valid votes of each such contesting candidate in a constituency as has not been elected and has not polled at least one-twelfth of the total number of valid votes polled by all the contesting candidates in that constituency) is not less than four per cent of the

Marumalarchi Dravida Munnetra Kazhagam - Withdrawal of Recognition as  
State Party in the State of Tamil Nadu

total number of valid votes polled by all the contesting candidates at such general election in the State (including the valid votes of those contesting candidates who have forfeited their deposits);

AND WHEREAS, under paragraph 7 of the Symbols Order, a party shall be recognised as a State Party if it is treated as a recognised political party in accordance with paragraph 6, referred to above, in less than four States;

AND WHEREAS, in pursuance of the provisions of the above referred paragraphs 6 (2) and 7 of the Symbols Order, a review of the poll performance of every political party is required to be made by the Election Commission after every general election to the House of the People or, as the case may be, to the State Legislative Assembly;

AND WHEREAS, the poll performance of the said party MARUMALARCHI DRAVIDA MUNNETRA KAZHAGAM at the General Election to the Lok Sabha held in April-May, 1996 and the last General Election to the State Legislative Assembly of TAMIL NADU held in 1996 has been reviewed by the Election Commission in terms of paragraphs 6 (2) and 7 of the said Symbols Order, as per the statement(s) annexed hereto;

AND WHEREAS, the poll performance of the said party at the aforesaid General Elections does not satisfy any of the criteria laid down for recognition of the said party as a State party in the State of TAMIL NADU.

AND WHEREAS, the Election Commission proposes to withdraw the recognition granted to the said party as a State party in the State of TAMIL NADU on the failure of the party to fulfil any of the criteria fixed for such recognition as aforesaid;

AND WHEREAS, before withdrawing such recognition from said party, the Election Commission proposes to afford to the said party an opportunity of making a representation to the Commission as to why such recognition may be withdrawn;

NOW, THEREFORE, the said party is required to show cause as to why the recognition of the said party as a State party in the State of TAMIL NADU may not be withdrawn under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968. The representation of the party should reach the Commission, on or before the 30th April, 1997.

By order

*Sd/-*  
**(S.K. MENDIRATTA)**  
Director (Law) and  
Ex-Officio Principal Secretary

ANNEXURE 'B'

**POLL PERFORMANCE OF POLITICAL PARTIES**

**General Elections, 1996 : House of the People / Legislative Assembly of TAMIL NADU**

Marumalarchi Dravida Munnetra Kazhagam - Withdrawal of Recognition as State Party in the State of Tamil Nadu

Name of Party	State	Seats		Votes Polled		Votes Counted for Recognition	
		Contested	Won	Votes	%	Votes	%
<b>House of the People</b>							
Marumalarchi Dravida Munnetra Kazhagam	Tamil Nadu	24	0	12,22,415	4.50	5,61,867	2.07
<b>Legislative Assembly</b>							
		177	0	15,69,168	5.78	9,78,172	3.60



# **ELECTION COMMISSION OF INDIA**

**CORAM :**

**Hon'ble**  
**Sh. G.V.G. Krishnamurty**  
Election  
Commissioner

**Hon'ble**  
**Sh. J.M. Lyngdoh**  
Election  
Commissioner

In the matter of : Jammu & Kashmir Panthers Party - Withdrawal of Recognition as a State Party

Dated : 29th August, 1997

The case was called for hearing on 30.7.1997.

**PRESENT:**

For Jammu & Kashmir Panthers Party : Prof. Bhim Singh (President)

*Election Symbols (Reservation and Allotment) Order, 1968 -paras 6 & 7 -failure of State party to fulfil prescribed criteria for continued recognition - stipulation of 4% votes referred to in para 6 (2) (B) applies both to parliamentary and assembly elections - no violation of Article 14 of the Constitution by the exclusion of votes of defeated candidates securing less than 1/12th of the voted votes - plea of party that elections in Jammu and Kashmir held in extraordinary conditions, rejected.*

## **SUMMARY OF THE CASE**

The Jammu & Kashmir Panthers Party was a recognised State party in Jammu & Kashmir and the symbol 'Bicycle' was reserved for it, at the time of the general elections to the Lok Sabha and J & K Legislative Assembly in 1996. The party secured 4.80% and 2.25% votes at the general elections to the Lok Sabha and the State Assembly respectively. Para 6(2) (B) of the Symbols Order then provided that a party shall be entitled to continued recognition if secured at least 4% votes at the general election, either to the Lok Sabha or to the State Legislative Assembly. However, in such computation of votes of the party, the votes polled by its defeated candidates who secured less than 1/12th of the votes polled in their respective constituencies were not taken into account. On such computation, the votes polled by the party came down to 1.75% and 1.25% of the votes polled for the Parliamentary and Assembly elections respectively. It was contended on behalf of the party that the aforesaid stipulation in regard to exclusion of

votes polled by the party candidates who had secured less than 1/12th of the votes in their respective constituencies applied under para 6(2) (B) only to elections to the State Legislative Assembly and not to elections to the House of the People. It was also contended that even the exclusion of above votes in respect of assembly elections was violative of Article 14 of the Constitution. The party also contended that the general elections in J&K were held in extraordinary conditions and that the poll performance of the party at those elections should not be a ground for withdrawal of its recognition. The Commission did not agree with any of the above contentions of the party and withdrew its recognition for having failed to fulfil the conditions laid down in paras 6 & 7 of the Symbols Order for recognition of the party.

## **ORDER**

The Jammu & Kashmir Panthers Party is a recognised State Party in the State of Jammu & Kashmir, for the purposes of elections to the House of the People, under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as 'Symbols Order'). The party is also recognised as State party in that State, for the purposes of elections to the State Legislature, under the relevant provisions of the Jammu and Kashmir Conduct of Elections Rules, 1965. The symbol 'Bicycle' is reserved for the party in the State of Jammu and Kashmir.

2. The recognition of political parties as National Parties or State Parties is governed by the provisions of paragraphs 6 and 7 of the Symbols Order. For facility of reference the said paragraphs 6 and 7 are reproduced below:-

“6. Classification of political parties -

(1) For the purpose of this Order and for such other purposes as the Commission may specify as and when necessity therefore arises, political parties are either recognised political parties or unrecognised political parties.

(2) A political party shall be treated as a recognised political party in a State, if and only if either the conditions specified in clause (A) are, or the condition specified in clause (B) is, fulfilled by that party and not otherwise, that is to say -

(A) that such party -

(a) has been engaged in political activity for a continuous period of five years: and has, at the general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning returned -

either (i) at least one member to the House of the People for every twenty five members of that House or any fraction of that number elected from that State; or (ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;

(B) that the total number of valid votes by all the contesting candidates set up by such party at the general election in the State to the House of the People, or as the case may be, to the Legislative Assembly for the time being in existence and functioning (excluding the valid votes of each such contesting candidate in a constituency as has not been elected and has not polled at least one-twelfth of the total number of valid votes polled by all the contesting candidates in that constituency) is not less than four per cent of the total number of valid votes polled by all the contesting candidates at such general election in that State (including the valid votes of those contesting candidates who have forfeited their deposits).

(3) For the removal of doubts it is hereby declared that the condition in clause (A)(b) of sub-paragraph (2) shall not be deemed to have been fulfilled by a political party if a member of the House of the People or the Legislative Assembly of the State becomes a member of that political party after his election to that House or, as the case may be, that Assembly.

7. Two categories of recognised political parties -

(1) If a political party is treated as a recognised political party in accordance with paragraph 6 in four or more States, it shall be known as, and shall have and enjoy the status of, a "National Party" throughout the whole of India: and if a political party is treated as a recognised political party in accordance with that paragraph in less than four States, it shall be known as, and shall have and enjoy the status of, a "State Party" in the State or States in which it is a recognised political party:

(2) Notwithstanding anything contained in sub-paragraph (1), every political party which, immediately before the 15th day of June, 1989 is a National Party shall, on its registration under Section 29A of the Representation of the People Act, 1951, be a National Party and shall, subject to the other provisions of this Order, continue to be so until it ceases to be a National party on the result of any general election held after the said date.

(3) Notwithstanding anything contained in sub-paragraph (1), every political party which, immediately before the 15th day of June, 1989, is a State Party in a State, shall, on its registration under Section 29A of the Representation of the People Act, 1951, be a State party in that State and

shall, subject to the other provisions of this Order, continue to be so until it ceases to be a State party in that State on the result of any general election held after the said date”.

3. The perusal of the above quoted paragraphs 6 and 7 would show that the recognition of a political party as National or State Party depends on the fulfilment of the conditions mentioned in paragraph 6(2). If a political party becomes eligible for, and is granted, recognition as a National or a State Party on the fulfilment of the conditions mentioned in said paragraphs, it will continue to enjoy that status so long as it continues to fulfil those conditions. Therefore, the poll performance of every recognised political party needs to be reviewed under the said paragraphs after every general election held in the State either to the Lok Sabha or to the State Legislative Assembly.

4. Accordingly, after the general elections to the Lok Sabha and the State Legislative Assembly of Jammu & Kashmir were held in 1996, the poll performance of the Jammu & Kashmir Panthers Party was reviewed by the Commission. The statement at *Annexure 'A'* hereto shows the poll performance of the party at the aforesaid general elections to the House of the People and the Jammu and Kashmir Legislative Assembly.

5. The perusal of the statement at *Annexure 'A'* would show that the party does not fulfil any of the conditions for recognition, as laid down in the above quoted paragraph 6(2) of the Symbols Order, in the State of Jammu and Kashmir at the abovesaid general elections. The party is thus no longer entitled to continued recognition as State party in that State.

6. Before withdrawing the recognition of the party as a State party in Jammu & Kashmir, the Commission considered it appropriate to afford it an opportunity of making a representation as to why its recognition may not be withdrawn. Accordingly, a show cause notice was issued to the party on 27.3.1997 (*Annexure 'B'*) and the party was asked to make its representation on or before 30.4.1997.

7. The party submitted its reply to the said notice on 30.4.1997 and prayed that its recognition may not be withdrawn.

8. In order to afford all reasonable opportunities to the party to present its case, the Commission decided to give the party an opportunity of being heard in person on 30.7.1997. In pursuance of the Commission's notice dated 23.6.1997 for that hearing, Prof. Bhim Singh, President of the party, appeared at the hearing and made his oral submissions.

9. The first submission of Prof. Bhim Singh was that the party had secured 4.80% votes at the general election to the House of the People held in 1996, and the party had thus fulfilled the criterion prescribed for recognition under para 6(2)(B) of the Symbols Order and that the Commission's notice dated 27th March, 1997 should be withdrawn. He contended that the stipulation in para 6(2)(B) that the votes polled by the party's defeated candidates who secured less than 1/12th of votes in their respective constituencies should not be taken into account, applies only to elections to the State Legislative Assembly and not to the elections to the House of the People. He also contended that the exclusion of any votes from the party's votes was violative of Article 14 of the Constitution, even in the case of Assembly elections. He further contended that once a party was recognised and it continued to enjoy the status of a political party and its activities were to the greater national interest, such party could not be de-recognised. He lastly submitted that the last general elections in the State of Jammu & Kashmir were held in abnormal and extraordinary circumstances and that the poll performance of the party at those general elections should not be a ground for withdrawal of the recognition.

10. Each of the above submissions and contentions of the party have been carefully examined by the Commission. The submission of the party that it had secured more than 4% votes at the last general election to the House of the People and that the notice issued to the party dated 27.3.1997 may be withdrawn, is not tenable. As would be observed from the *Annexure 'A'* hereto, the party polled only 1.75% votes at the general election to the House of the People and only 1.25% votes at the general election to the Jammu & Kashmir Legislative Assembly, for the purposes of para 6 (2) (B) of the Symbols Order. The party set up five candidates at the general election to the House of People and secured 99,599 votes, in all, at that general election. However, four of its candidates failed to secure even 1/12th of the votes polled in their respective constituencies and, therefore, their 63,269 votes do not count for the purpose of recognition in terms of the said para 6 (2) (B) of the Symbols Order. The contention of the party that the votes of such candidates (who have secured less than 1/12th of the votes polled in their respective constituencies) are to be excluded only at elections to the State Legislative Assembly and not at the elections to the House of the People is totally misconceived and untenable. It proceeds on an erroneous reading of the said para 6 (2) (B). That para unambiguously provides, to put in simple words, that a party should secure at least 4% votes at a general election held in the State, either to the House of the People or to the State Legislative Assembly, but for the purpose of calculation of such four per cent votes, the votes of those party candidates shall not be taken into account

who have been defeated and have secured less than 1/12th of the votes polled in their respective constituencies. These provisions apply to all general elections held in the State, whether to the House of the People or to the State Legislative Assembly. To say that these provisions apply only to the Assembly elections and not to Parliamentary elections would not only amount to misreading and misinterpreting the provisions of said para 6(2) (B), but also doing violence to the plain language of that para.

11. The party also contends that exclusion of the above said votes from the party's tally is violative of Article 14 of the Constitution. The party has, however, not explained how Article 14 is violated by such exclusion, when these provisions apply to all political parties and in relation to all general elections. On the contrary, if the contention of the party that the aforesaid votes may be excluded only at the Assembly elections but not at Parliamentary elections were to be accepted, in that event, it would be discriminatory and violative of the provisions of Article 14 of the Constitution.

12. There would have been some substance had the party contended that the votes of the above mentioned defeated candidates are excluded from the party's tally but not from the total votes polled in the State, for the purposes of calculations under para 6(2) (B) of the Symbols Order; but the party did not make any such contention. Anyhow, even if such a contention had been made by the party, it would not have made any material difference, in so far as its overall poll performance is concerned. As mentioned above, the party secured 99,599 votes, in all, at the Parliamentary elections, and, out of these, 63,269 votes were secured by those defeated candidates who polled less than 1/12th of the votes in their respective constituencies. Thus, the party's remaining candidates secured 36,330 votes which worked out to 1.75% of the total (20,75,880) valid votes polled in the whole of the State of Jammu & Kashmir at the said general election. If the aforesaid 63,269 votes are excluded also from the total (20,75,880) votes polled in the State, percentage of votes polled by the party with reference to the remaining  $(20,75,880 - 63,269 = 20,12,611)$  votes would work out to only 1.81%, which is still less than 4%, required for recognition in terms of para 6(2) (B) of the Symbols Order.

13. The next contention of the party is that once a party is recognised, its recognition should not be withdrawn, so long as it continues to enjoy the status of a political party and its activities are in the greater national interest. This contention also cannot be accepted. The continued status of an organisation as a political party and its activities in the greater national interest are considered relevant for its 'registration' under Section 29A of the Representation of the People Act, 1951, but are not sufficient by

themselves to grant it 'recognition' as a State party under the Symbols Order. Recognition or continued recognition of party depends on fulfilment of the above quoted conditions of paras 6 and 7 of the Symbols Order and not otherwise.

14. Even if there be any doubt on this point, that stands dispelled by the decision dated 23.11.95 of the Hon'ble Supreme Court in the case of Janata Dal (Samajwadi) Vs. The Election Commission of India (AIR 1996 SC 577). In that case, the Commission had withdrawn the recognition of the Janata Dal (Samajwadi) as a National Party for having failed to fulfil any of the criteria for recognition, on the basis of its poll performance at the general elections to the House of the People and certain State Legislative Assemblies held in 1991. On appeal to the Hon'ble Supreme Court, the Hon'ble Supreme Court has held:-

“It is true that there is no specific provision under the Symbols Order vesting power in the Election Commission after having recognised a political party as a National Party to declare that such political party has ceased to be a National Party, not being entitled to the exclusive use of the symbol allotted to it. But at the same time, it cannot be conceived that a political party having been recognised as a National Party or State Party as the case may be on having fulfilled the conditions prescribed in paragraph 6(2) shall continue as such in perpetuity although it has forfeited the right to be recognised as a National Party or a State Party. In paragraph 2(2) of the said Symbols Order it has been specifically provided that the General Clauses Act, 1897 shall as far as may be applicable in relation to the interpretation of the said order as it applies in relation to the interpretation of a Central Act. Section 21 of the General Clause Act provides that where by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction, and conditions if any to add to, amend, vary or rescind any notification, orders rules or bye-laws so issued. As paragraph

2(2) of the order in clear and unambiguous term makes provision of the General Clauses Act applicable to the Symbols Order, it need not be impressed that provisions of Section 21 of the General Clauses Act, also become applicable vesting power in the Election Commission which had issued the aforesaid order dated 16.04.1991 recognising the appellant as a National Party to rescind the said order as appellant in the elections to the Legislative Assemblies of the States mentioned above ceased to fulfil the conditions prescribed in paragraph 6(2) of the Order read with 7(1) thereof”.

15. Thus, the law on the point is now conclusively settled by the above decision of the Hon'ble Supreme Court that a party once recognised cannot claim to enjoy continued recognition in perpetuity. It has to show the minimum electoral support for recognition or continued recognition as measured in terms of paragraph 6(2) of the Symbols Order, at every general election.

16. The last submission of the party was that the last year's general elections to the House of the People and State Legislative Assembly in Jammu & Kashmir were held in extraordinary circumstances and that the party could not carry out its election campaign effectively because of the disturbed law and order situation prevailing in the State at the relevant point of time. It does not lie in the mouth of the present party to make such contention. It was this very party which approached the Supreme Court in November, 1995 by Writ Petition No. 763/95 ( Prof. Bhim Singh Vs. Chief Election Commissioner of India and Others) for holding general elections in the State of Jammu & Kashmir, contending that the conditions in the State were conducive to holding free and fair elections, when the Commission considered otherwise. The general elections were subsequently held in Jammu & Kashmir, in the months of April - June, 1996, to the House of the People, and in August - September, 1996, to the State Legislative Assembly, when the law and order situation in the State had vastly improved and the conditions were far more conducive to the holding of free and fair elections there, which saw 53.92% turn-out of voters. It is also worth noting that the Bahujan Samaj Party, then only a registered-unrecognised party for the purposes of elections in Jammu & Kashmir, made its maiden appearance in the electoral scene in the State of Jammu & Kashmir at the above general elections, and contesting elections under the very same conditions was able

to secure recognition, on the basis of its poll performance, as State Party in that State. It also cannot be lost sight of that the Jammu & Kashmir National Conference, which did not contest elections to the House of the People held in April-June, 1996, for reasons of its own political expediency, secured as high as 34.78% votes at the subsequent elections to the State Legislative Assembly held in August-September, 1996 and won 57 out of 87 seats in the State Assembly. Thus, the present party has to find reasons for its unsatisfactory performance at the polls, not in the law and order situation, but in the changes in the political scenario of the State and in the voters' inclinations at the time of elections.

17. It was also alleged, though a little meekly, by Prof. Bhim Singh that the Commission proposed to withdraw recognition of his party which had been actively participating in all elections, but the Jammu and Kashmir People Conference was still continuing as a recognised State party, though it had not participated in any of the elections held in 1996. The above allegation is not correct, as it is based on wrong assumption of facts. That party had also been served with a similar show cause notice on 27.3.1997, along with the notice to the present party, and that party has since been de-recognised by the Commission by its order dated 30.7.1997.

18. In view of the foregoing, the Commission is satisfied that the Jammu and Kashmir Panthers Party has failed to fulfil any of the criteria fixed for recognition as State party and is no longer entitled to continued recognition as State party in the State of Jammu and Kashmir. Accordingly, the recognition given to the Jammu & Kashmir Panthers Party as a State Party in Jammu and Kashmir in terms of paragraphs 6 and 7 of the Election Symbols (Reservation and Allotment) Order, 1968, as well as under the relevant provisions of the Jammu and Kashmir Conduct of Elections Rules, 1965, is hereby withdrawn. Consequently, the party shall not be entitled to the exclusive use of symbol 'Bicycle', either for the purposes of elections to the House of the People or for the purposes of elections to the State Legislature, in the State of Jammu and Kashmir hereafter. The said party shall hereafter be only a registered-unrecognised political party for the purposes of the said elections.

**Sd/-**  
**(G.V.G. Krishnamurty)**  
Election  
Commissioner

**Sd/-**  
**(J.M. Lyngdoh)**  
Election  
Commissioner

**ANNEXURE 'A'**

**ELECTION COMMISSION OF INDIA**  
Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 56/Review/96/J.S.II/(JPP)/2265

Dated 27.3.97

To

The President  
Jammu & Kashmir Panthers Party  
2, Rajinder Bazar  
JAMMU-TAWI (JAMMU & KASHMIR)

**SHOW CAUSE NOTICE**

WHEREAS, JAMMU AND KASHMIR PANTHERS PARTY is a recognised State Party under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as 'Symbols Order');

AND WHEREAS, paragraph 7 (2) of the Symbols Order provides that a political party shall be treated as a recognised political party in a State, if and only if either the conditions specified in Clause (A) of that paragraph are, or the condition specified in Clause (B) thereof is, fulfilled by that party and not otherwise, that is to say :-

(A) That such party -

(a) has been engaged in political activity for a continuous period of five years; and

(b) has, at the general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning returned - either (i) at least one member to the House of the People for every twenty-five members of that House or any fraction of that number elected from that State;

or (ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;

(B) that the total number of valid votes by all the contesting candidates set up by such party at the general election in the State to the House of the People, or as the case may be, to the Legislative Assembly for the time being in existence and functioning (excluding the valid votes of each such contesting candidate in a constituency as has not been elected and has not polled at least one-twelfth of the total number of valid votes polled by all the contesting candidates in that constituency) is not less than four per cent of the total number of valid votes polled by all the contesting candidates at such general

election in the State (including the valid votes of those contesting candidates who have forfeited their deposits);

AND WHEREAS, under paragraph 7 of the Symbols Order, a party shall be recognised as a State Party if it is treated as a recognised political party in accordance with paragraph 6, referred to above, in less than four States;

AND WHEREAS, in pursuance of the provisions of the above referred paragraphs 6 (2) and 7 of the Symbols Order, a review of the poll performance of every political party is required to be made by the Election Commission after every general election to the House of the People or, as the case may be, to the State Legislative Assembly;

AND WHEREAS, the poll performance of the said party JAMMU AND KASHMIR PANTHERS PARTY at the General Election to the Lok Sabha held in April-May, 1996 and the last General Election to the State Legislative Assembly of JAMMU AND KASHMIR held in 1996 has been reviewed by the Election Commission in terms of paragraphs 6 (2) and 7 of the said Symbols Order, as per the statement(s) annexed hereto;

AND WHEREAS, the poll performance of the said party at the aforesaid General Elections does not satisfy any of the criteria laid down for recognition of the said party as a State party in the State of JAMMU AND KASHMIR.

AND WHEREAS, the Election Commission proposes to withdraw the recognition granted to the said party as a State party in the State of JAMMU AND KASHMIR on the failure of the party to fulfil any of the criteria fixed for such recognition as aforesaid;

AND WHEREAS, before withdrawing such recognition from said party, the Election Commission proposes to afford to the said party an opportunity of making a representation to the Commission as to why such recognition may be withdrawn;

NOW, THEREFORE, the said party is required to show cause as to why the recognition of the said party as a State party in the State of JAMMU AND KASHMIR may not be withdrawn under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968. The representation of the party should reach the Commission, on or before the 30th April, 1997.

By order

**Sd/-**  
**(S.K. MENDIRATTA)**  
Director (Law) and  
Ex-Officio Principal Secretary

**ANNEXURE 'B'**

**POLL PERFORMANCE OF POLITICAL PARTIES**

**General Elections, 1996 : House of the People**

Name of Party	State	Seats		Voted Polled		Votes Counted for Recognition	
		Contested	Won	Voted	%	Votes	%
Jammu & Kashmir Kashmir Panthers Party	Jammu & Kashmir	5	0	99,599	4.80	36,330	1.75

**General Elections to Legislative Assembly of Jammu & Kashmir, 1996**

		45	1	55,885	2.25	31082	1.25
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# **ELECTION COMMISSION OF INDIA**

**CORAM :**

**Hon'ble**  
**Dr. M.S. Gill**  
Chief Election  
Commissioner

**Hon'ble**  
**Sh. J.M. Lyngdoh**  
Election  
Commissioner

In the matter of : Janata Party - Withdrawal of Recognition as a National Party.

Dated : 18th November, 1997

The case was called for hearing on 13.10.1997 and 10.11.1997

**PRESENT:**

For Janata Party : Dr. Subramanian Swamy, President  
Shri Arvind Chaturvedi, General Secretary

*Election Symbols (Reservation and Allotment) Order, 1968 - paras 6,7 - failure of National party to fulfil prescribed criteria for continued recognition as National party -pleas of party that its poll performance may be watched for three general elections, rejected - party's recognition as National party withdrawn, but party recognised as State Party in the State in which it fulfilled the prescribed criteria- request of the party not to include its reserved symbol as free symbol in other States, granted - apprehension of bias alleged against one of the Election Commissioners - Election Commissioner voluntarily recusing himself from the proceedings, though allegations denied.*

## **SUMMARY OF THE CASE**

The Janata Party was a recognised National party at the time of general elections to the House of the People in 1996 and to the Legislative Assemblies of several States in 1995, 1996 and 1997. The symbol 'Haldhar Within Wheel (Chakra Haldhar)' was reserved for the party in all States and Union Territories. The poll performance of the party at the aforesaid general elections showed that it was eligible to be recognised only in the State of Arunachal Pradesh on the results of the general election held to that State Assembly in 1995. In the course of the hearing granted to the party to show-cause why its recognition as a National Party should not be withdrawn, the President of the party made some insinuations and allegations against one of the Election Commissioners of being prejudiced against him and desired that the said member should recuse himself from the proceedings because

of the apprehension of bias in the mind of the party. The Election Commissioner concerned denied the allegations made by the party President, but nevertheless decided on his own to recuse himself from hearing the matter in the interest of justice.

As regards merits of the case, it was contended on behalf of the party that it had actively participated in the elections since 1977 and its recognition as National Party should not be withdrawn merely because of one general election in which its performance was not satisfactory. It was also contended that the performance of the party should be watched by the Commission for at least three consecutive general elections and the party given an opportunity of redeeming its position and performance. The party desired the Commission to amend the Symbols Order in the light of its submissions.

Rejecting the above contentions of the party, the Commission pointed out that its poll performance was not up to the prescribed standards, not in one general election alone, but in the series of general elections held in 1993, 1994, 1995, 1996 and 1997 to the House of the People and all the State Legislative Assemblies. Consequently, the Commission withdrew the status of National party from the Janata Party, but its recognition was continued as a State party in Arunachal Pradesh. The Commission also allowed the party to retain its symbol 'Haldhar Within Wheel (Chakra Haldhar)' in that State, and also accepted the prayer of the party not to include that symbol in the list of free symbols for any other State.

## **ORDER**

The question for consideration of the Election Commission of India is whether the Janata Party, a recognised National Party hitherto, has lost its status as a recognised National Party, on the basis of its poll performance at the last general elections to the existing House of the People and the existing State Legislative Assemblies held in 1997, 1996, 1995, etc., and , if so, whether it is entitled to be recognised as a State party in any State or Union Territory.

2. The Janata Party is a recognised National Party, under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as 'Symbols Order'). The symbol 'Haldhar within Wheel (Chakra Haldhar)' is reserved for the party in all States and Union Territories.

3. The recognition of political parties as National Parties or State Parties is governed by the provisions of paragraphs 6 and 7 of the

Symbols Order. For facility of reference the said paragraphs 6 and 7 are reproduced below :-

**"6. Classification of political parties -**

**(1) For the purpose of this Order and for such other purposes as the Commission may specify as and when necessity therefor arises, political parties are either recognised political parties or unrecognised political parties.**

**(2) A political party shall be treated as a recognised political party in a State, if and only if either the conditions specified in clause (A) are, or the condition specified in clause (B) is, fulfilled by that party and not otherwise, that is to say -**

**(A) that such party -**

**(a) has been engaged in political activity for a continuous period of five years: and**

**(b) has, at the general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning returned -**

**either (i) at least one member to the House of the People for every twenty five members of that House or any fraction of that number elected from that State;**

**or (ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;**

**(B) that the total number of valid votes by all the contesting candidates set up by such party at the general election in the State to the House of the People, or as the case may be, to the Legislative Assembly for the time being in existence and functioning (excluding the valid votes of each such contesting candidate in a constituency as has not been elected and has not polled at least one-twelfth of the total number of valid votes polled by all the contesting candidates in that constituency) is not less than four per cent of the total number of valid votes polled by all the contesting candidates at such general election in that State (including the valid votes of those contesting candidates who have forfeited their deposits).**

**(3) For the removal of doubts it is hereby declared that the condition in clause (A)(b) of sub-paragraph (2) shall not be deemed to have been fulfilled by a political party if a member of the House of the People**

or the Legislative Assembly of the State becomes a member of that political party after his election to that House or, as the case may be, that Assembly.

7. Two categories of recognised political parties -

(1) If a political party is treated as a recognised political party in accordance with paragraph 6 in four or more States, it shall be known as, and shall have and enjoy the status of, a "National Party" throughout the whole of India: and if a political party is treated as a recognized political party in accordance with that paragraph in less than four States, it shall be known as, and shall have and enjoy the status of, a "State Party" in the State or States in which it is a recognized political party.

(2) Notwithstanding anything contained in sub-paragraph (1), every political party which, immediately before the 15th day of June, 1989 is a National Party shall, on its registration under Section 29A of the Representation of the People Act, 1951, be a National Party and shall, subject to the other provisions of this Order, continue to be so until it ceases to be a National party on the result of any general election held after the said date.

(3) Notwithstanding anything contained in sub-paragraph (1), every political party which, immediately before the 15th day of June, 1989, is a State Party in a State, shall, on its registration under Section 29A of the Representation of the People Act, 1951, be a State party in that State and shall, subject to the other provisions of this Order, continue to be so until it ceases to be a State party in that State on the result of any general election held after the said date".

4. The perusal of the above quoted paragraphs 6 and 7 would show that the recognition of a political party as a National Party or State Party depends on the fulfillment of the conditions mentioned in paragraph 6(2). If a political party becomes eligible for, and is granted, recognition as a National or a State Party on the fulfillment of the conditions mentioned in said paragraphs, it will continue to enjoy that status so long as it continues to fulfil those conditions. Therefore, the poll performance of every recognized political party needs to be reviewed under the said paragraphs after every general election held either to the Lok Sabha or to a State Legislative Assembly.

5. Accordingly, after the general elections to the Lok Sabha and the State Legislative Assemblies of Assam, Haryana, Jammu and Kashmir, Kerala, Tamil Nadu, Uttar Pradesh, West Bengal and Pondicherry were held in 1996, and subsequently the general election to the Punjab Legislative

Assembly was held in 1997, the poll performance of the Janata Party at the aforesaid general elections was reviewed by the Commission. At the same time, the Commission also took into consideration the party's poll performance at the respective last general elections to the other existing State Legislative Assemblies held in 1995, 1994 and 1993. The statement at *Annexure 'A'* hereto shows the poll performance of the party at the aforesaid general elections to the House of the People and all the State Legislative Assemblies.

6. The perusal of the statement at *Annexure 'A'* would show that the party could fulfil the condition, laid down in the above quoted para 6(2) (A) (b) (ii) of the Symbols Order, for recognition only in the State of Arunachal Pradesh, as two of the candidates set up by the party were returned to the Arunachal Pradesh Legislative Assembly at the general election held to that Assembly in 1995. The party does not fulfil any of the conditions for recognition, as laid down in the above quoted paragraph 6(2) of the Symbols Order, in any other State or Union Territory. The party thus failed to fulfil the criterion laid down in para 7 of the Symbols Order, viz., recognition in four or more States / Union Territories, for recognition or continued recognition as a National Party.

7. Before withdrawing the recognition of the party as a National party, the Commission considered it appropriate to afford it an opportunity of making a representation as to why its said recognition may not be withdrawn. Accordingly, a show cause notice was issued to the party on 27.3.1997 and the party was asked to make its representation on or before 30.4.1997.

8. In reply, the party in its letter dated 22.4.1997 stated that the Commission's show-cause notice raised several important issues of deep constitutional significance which needed to be examined and argued at length. The party, therefore, requested that it may be given time to prepare a complete reply and that any date after 15th July, 1997 may be agreed to by the Commission. The Commission granted the request of the party and fixed a hearing on 24.7.1997.

9. The party submitted its reply, to the Commission's show - cause notice, by its letter dated 10.7.97, contending that it should not be de-recognised and divested of its symbol merely on the basis of its poll performance at the aforementioned general elections. The party also requested that the case may be fixed for hearing in mid-September, 1997, as the party's Counsel was not in a position to appear for hearing on 24th July, 1997. This request of the party for adjournment of the hearing,

scheduled to be held on 24th July, 1997, was also granted by the Commission, and it fixed the 19th August, 1997 as the new date for the hearing. The party, by its letter of 8th August, 1997, again requested for further adjournment of the hearing, scheduled to be held on 19th August, 1997, on the ground that the party President Dr. Subramanian Swamy and party's Counsel would be tied up in some other Court matters on that day. The party desired that the hearing may be held in the first week of October, 1997. This request of the party too was granted, and the Commission first decided to hold the hearing on 1st October, 1997, but subsequently rescheduled it to 13th October, 1997 because of its preoccupation with certain other matters.

10. When the matter was heard on 13th October, 1997 by Shri G.V.G.Krishnamurty and Shri J.M.Lyngdoh, Election Commissioners, [as the Commission had decided in terms of the provisions of Section 10 of the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 that such matters would be heard and decided, on behalf of the Commission, by the said two Election Commissioners], again a request was made by the party's General Secretary, Shri Arvind Chaturvedi, for further adjournment on the ground that the party President and the party's Counsel were unable to appear for certain personal reasons. The Commission noticed that the party had earlier also sought time and adjournments on one ground or the other, but, nevertheless, in the interest of justice, adjourned the hearing to 3.11.1997.

11. The party President, Dr. Subramanian Swamy, however, raised objection to the order passed by the two Election Commissioners on 13.10.1997 and stated, in his letter dated 24.10.1997 to the Chief Election Commissioner, that the observation made by the Commission that the party had requested for adjournment 'on one ground or another' and 'for personal reasons' reflected an unfair verdict against the party. He stated that the hearing scheduled to be held on 1st October, 1997 was adjourned by the Commission itself and not at the party's request. He also made some insinuations and allegations against Shri G.V.G.Krishnamurty, Election Commissioner, of being prejudiced against him (Dr. Swamy) and desired that Shri Krishnamurty should recuse himself from the present proceedings because of an apprehension of bias in their minds about him. He also requested that the hearing, as scheduled to be held on 3.11.97, may be adjourned to 5.11.97 or any date thereafter, as he would be busy on 3.11.97 and 4.11.97 before the Hon'ble Madras High Court.

12. The aforesaid letter was, wrong on facts. As it will be observed from the foregoing paragraphs, the party first asked for extension of time

for its reply from 30.4.97 to some date after 15th July, 1997, then it asked for adjournment of the hearings scheduled to be held on 24th July, 1997 and on 19th August, 1997, on the ground of personal inconvenience of party's President or its Counsel. It was only in the case of the hearing scheduled for 1st October, 1997 that the Commission postponed it to 13th October, 1997. Therefore, there was nothing in the Commission's order dated 13th October, 1997 which could be reasonably objected to by Dr. Subramanian Swamy. Despite such unreasonable objection, in order, however, to accommodate the party to the fullest, the Commission again adjourned the hearing, scheduled to be held on 3rd November, 1997, to 10th November, 1997.

13. In the next place, though Shri G.V.G.Krishnamurthy denied the insinuations and allegations made against him by Dr. Subramanian Swamy, he, nevertheless, decided to recuse himself from hearing the matter in the interest of justice, which, he felt, must not only be done but also seem to be done. Consequently, it was decided that the matter would be heard and decided by the Chief Election Commissioner and the other Election Commissioner, Shri J.M.Lyngdoh.

14. Accordingly, the matter was heard on 10th November, 1997 by the two of us, Shri G.V.G.Krishnamurthy having recused himself. The party President Dr. Subramanian Swamy appeared at the hearing, filed his written submissions and also made his oral submissions.

15. Whereas Dr. Subramanian Swamy, in his written submissions, contended that the Commission should rescind its show-cause notice, being beyond the law on the subject, he, in fairness to him, straightaway conceded in his oral submissions, that the Election Commission is undoubtedly possessed of the power under the Constitution and the Symbols Order to withdraw the recognition once granted to a political party, on the basis of its poll performance. In conceding this point, he must be obviously mindful of the following observations of the Supreme Court in the case of Janata Dal (Samajwadi) Vs. Election Commission (AIR 1996 SC 577), wherein the Hon'ble Court has held:

"It is true that there is no specific provision under the Symbols Order vesting power in the Election Commission after having recognized a political party as a National Party to declare that such political party has ceased to be a National Party, not being entitled to the exclusive use of the symbol allotted to it. But

at that same time, it cannot be conceived that a political party having been recognized as a National Party or State Party as the case may be on having fulfilled the conditions prescribed in paragraph 6(2) shall continue as such in perpetuity although it has forfeited the right to be recognised as a National Party or a State Party. In paragraph 2(2) of the said Symbols Order it has been specifically provided that the General Clauses Act, 1897 shall as far as may be applicable in relation to the interpretation of the said order as it applies in relation to the interpretation of a Central Act. Section 21 of the General Clauses Act provides that where by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction, and conditions if any to add to, amend, vary or rescind any notification, orders rules or bye-laws so issued. As paragraph 2(2) of the order in clear and unambiguous term makes provision of the General Clauses Act applicable to the Symbols Order, it need not be impressed that provisions of Section 21 of the General Clauses Act, also become applicable vesting power in the Election Commission which had issued the aforesaid order dated 16.04.1991 recognising the appellant as a National Party to rescind the said order as appellant in the elections to the Legislative Assemblies of the States mentioned above ceased to fulfil the conditions prescribed in paragraph 6(2) of the Order read with 7(1) thereof".

16. Dr. Subramanian Swamy, however, urged the Commission not to withdraw the party's recognition as a National Party keeping in view the fact the party has all-India political presence. Narrating the history of the party from its formation in 1977, Dr. Subramanian Swamy submitted that, despite several splits and various unfavourable election vicissitudes, the party actively participated in all the elections held since 1977 and had always

retained its status as a National Party, as it still had , in its rank and file, honest, patriotic, highly qualified intellectuals who could carry the country forward. He pleaded that in the interest of democracy and free and fair elections in the country, the Party's status as National party should not be withdrawn, merely because in one general election its performance was poor. He submitted that in view of the pre-eminent Constitutional position given to the concept of political parties by the Tenth Schedule to the Constitution of India, the party once recognised, on fulfilling the conditions prescribed in para 6(2) of the Symbols Order, should not be derecognised on the basis of its performance at one general election, but its performance should be watched by the Commission for at least three succeeding general elections and the party given an opportunity of redeeming its position and performance. He prayed the Commission to amend the relevant provisions in the Symbols Order to make a provision to the above effect and, then, decide his Party's case in the light of the amended provision, allowing it to continue to be a recognised National party for the next two general elections.

17. The above prayer of Dr. Swamy has only to be stated to be rejected. The case of the present party, albeit, all parties, has to be decided having regard to the existing provisions of the Symbols Order. It is on the basis of existing provisions of the Symbols Order that the present Party got its recognition, and retained it all these years, and it cannot now ask for the amendment of these provisions, as the same are presently not being found favourable to it. The poll performance of all parties has been reviewed by the Commission, by applying the existing yardsticks and criteria laid down in the Symbols Order, and the present party cannot be singled out for any preferential treatment, as that would be discriminatory and violative of Article 14 of the Constitution. Pertinent to add here that the Commission has, by its recent orders passed in the course of the last two months, already withdrawn the recognition of the J&K Peoples' Conference, J&K Panthers' Party, Indian Congress(Socialist), Marumalarchi Dravida Munnetra Kazhagam and Pattali Makkal Katchi, on the basis of their poll performance at the last general elections to the House of the People and the State Legislative Assemblies concerned, by applying the existing provisions of the Symbols Order. The present party, having failed to fulfil the existing conditions specified in the Symbols Order for recognition as a National party, cannot be permitted to retain its status as a National party for another two general elections, as prayed for by it, by amending the Symbols Order, and that too retrospectively.

18. Dr. Swamy submitted that the Commission has the power under the Constitution, Representation of the People Act, 1951 and the

Conduct of Elections Rules, 1961 to amend the Symbols Order, so as to promote the cause of free and fair elections, in the interest of democracy and in the light of its experience of nearly 30 years since the promulgation of the Symbols Order in 1968. Dr. Swamy is right in his above submission. Undoubtedly, there cannot be any dispute with regard of this proposition of law. The Symbols Order is a creation of the Commission and its constitutional validity is fully upheld by the Supreme Court in *Kanahiya Lal Omar Vs. R.K.Trivedi* (AIR 1986 SC 111). It is the Commission, and the Commission alone, which can amend the same in the light of its experience and exigencies of the situation. But the Commission has to see, while making any amendment, that it causes no prejudice to any party or places no party in an advantageous position vis-à-vis another similarly placed party, meting out a discriminatory treatment to that party.

19. Further, Dr. Subramanian Swamy has overlooked another highly noteworthy aspect. His party has failed to measure up to the required standard in the matter of its poll performance, not in one general election alone, but in a series of general elections held in 1993, 1994, 1995, 1996 and 1997 to the existing House of the People and all existing State Legislative Assemblies.

20. Dr. Subramanian Swamy also contended that the Commission had not been strictly applying the provisions of para 6(2) of the Symbols Order and that it had granted recognition to the Tamil Maanila Congress (Moopanar) as a State Party in Tamil Nadu, though this Party was a new Party and had not been functioning for five years, as envisaged in para 6(2)(A)(a).

21. Dr. Subramanian Swamy is wrong in placing reliance on the case of Tamil Maanila Congress (Moopanar). That was a totally different case. That was a case of split in the Indian National Congress, a recognised National Party, and the splinter group, formed as Tamil Maanila Congress (Moopanar), was recognised as a State Party in Tamil Nadu. Significantly, the splinter group was constituted of a sufficiently large number of Members of the House of the People and Tamil Nadu Legislative Assembly, which fully answered the tests laid down in para 6(2) of the Symbols Order for recognition as a State Party in Tamil Nadu. In fact, such recognition was granted by following that very principle which had earlier been applied repeatedly by the Commission in the case of several splits in the present party itself to which Dr. Swamy had himself adverted.

22. The next submission of Dr. Swamy was that even if the status of the present party as a National party was withdrawn, it should not be

divested of its symbol 'Haldhar within Wheel (Chakra Haldhar)' and it should be allowed to approach the electorate with the exclusive use of that symbol, with which the party had become identified during the last 20 years. He prayed that the said symbol should not be released as a free symbol and made available to candidates of other parties who had no connection with the present party or its objectives. He drew the analogy of a Company with a Trade Mark, continuing to have that Trade Mark, irrespective of its business prospects (AIR 1977 Delhi 321), and urged that the present party may also be allowed to retain its reserved symbol, as that would enable the party to redeem its position at the next elections and reclaim its status as a National party.

23. The Commission has considered sympathetically the above submission of Dr. Swamy. As mentioned earlier, the party had fulfilled the conditions for recognition as a State party in the State of Arunachal Pradesh at the last general election to the State Legislative Assembly in 1995. The Commission has, therefore, decided that the party be allowed to enjoy recognition in the State of Arunachal Pradesh as a State party, though it has lost its status as a National Party. The symbol 'Haldhar within Wheel (Chakra Haldhar)' shall continue to be reserved for the present party in the State of Arunachal Pradesh. Further, the Commission has also decided that the said symbol shall not be allotted to any other party, nor shall it be included in the list of free symbols for any other State or Union Territory. This would mean that the said symbol would not be available for allotment to any candidate set up by any other party as well as to any independent candidate. The present party will be allowed to use the symbol 'Haldhar within Wheel (Chakra Haldhar)' in all other States and Union Territories, where it decides to set up its candidates at any future elections. This will, however, be subject to two limitations, namely, firstly, that the party fulfils the requirements of paragraphs 10 and 13 of the Symbols Order in respect of each of the candidates set up by it in any constituency in any other State (i.e., other than the State of Arunachal Pradesh) or Union Territory, and, secondly, that the present party continues to be a recognised State Party in Arunachal Pradesh (or it becomes eligible for recognition as a State Party in any other State, at a subsequent general election).

**ORDER ACCORDINGLY**

*Sd/-*  
**(Dr. M.S.Gill)**  
Chief Election  
Commissioner

*Sd/-*  
**(J.M.Lyngdoh)**  
Election  
Commissioner

ANNEXURE 'A'

GENERAL ELECTIONS TO HOUSE OF THE PEOPLE, 1996

Party Category and Abbreviation	State Code	State Name	Seats Contested	Seats Won	FD in Seats	Votes Polled by Party	% of Votes Polled	Votes Counted	
								Votes for Recognition	Votes %
Janata Party	S01	Andhra Pradesh	9	0	9	10,122	0.03	0	0.00
	S04	Bihar	2	0	2	9,704	0.03	0	0.00
	S07	Haryana	6	0	6	15,960	0.21	0	0.00
	S08	Himachal Pradesh	1	0	1	1,797	0.09	0	0.00
	S10	Karnataka	5	0	5	38,182	0.20	0	0.00
	S11	Kerala	6	0	6	13,557	0.09	0	0.00
	S12	Madhya Pradesh	7	0	7	18,522	0.08	0	0.00
	S13	Maharashtra	17	0	17	2,27,214	0.80	71,460	0.25
	S18	Orissa	5	0	5	28,244	0.22	0	0.00
	S19	Punjab	1	0	1	2,694	0.03	0	0.00
	S22	Tamil Nadu	2	0	1	2,05,816	0.76	2,05,816	0.76
	S24	Uttar Pradesh	32	0	32	39,466	0.09	0	0.00
	U01	Andaman & Nicobar Islands	1	0	1	527	0.41	0	0.00
	U02	Chandigarh	1	0	1	834	0.32	0	0.00
	U05	Delhi	6	0	6	16,716	0.42	0	0.00
	U07	Pondicherry	1	0	1	1,823	0.40	0	0.00
	<b>Total - all States / UTs (Seats - Contested, Won, FD, Voted Polled):</b>			<b>102</b>	<b>0</b>	<b>101</b>	<b>6,31,178</b>		

**ANNEXURE 'II'**

**POLL PERFORMANCE OF POLITICAL PARTIES**

**General Elections, 1996 : Legislative Assemblies of ASSAM, HARYANA, KERALA, TAMIL NADU, WEST BENTAL, PONDICHERRY, JAMMU & KASHMIR AND UTTAR PRADESH**

Janata Party - Withdrawal of Recognition as a National Party

Name of Party	State	Seats		Votes Polled		Votes Counted for Recognition	
		Contested	Won	Votes	%	Votes	%
Janata Party	1. Assam	1	0	200	0.00	0	0.00
	2. Haryana	26	0	10,272	0.14	0	0.00
	3. Kerala	21	0	8,027	0.06	0	0.00
	4. Tamil Nadu	50	1	1,50,134	0.55	99,467	0.37
	5. West Bengal	1	0	552	0.00	0	0.00
	6. Pondicherry	6	0	692	0.15	0	0.00
	7. J & K	1	0	580	0.02	0	0.00
	8. Uttar Pradesh	31	0	73,531	0.13	46,398	0.08

## POLL PERFORMANCE OF POLITICAL PARTIES

### General Elections, 1993-95 : Legislative Assemblies

Name of Party	State	Seats		Votes Polled		Votes Counted for Recognition	
		Contested	Won	Votes	%	Votes	%
Janata Party	1. Tripura			NIL			
	<b>General Elections to Tripura Legislative Assembly, 1993</b>						
2. Meghalaya		0		841	0.10	0	0.00
	<b>General Elections to Meghalaya Legislative Assembly, 1993</b>						
3. Nagaland				NIL			
	<b>General Elections to Nagaland Legislative Assembly, 1993</b>						
4. Madhya Pradesh				NIL			
	<b>General Elections to Madhya Pradesh Legislative Assembly, 1993</b>						
5. Mizoram				NIL			
	<b>General Elections to Mizoram Legislative Assembly, 1993</b>						
6. Rajasthan				NIL			
	<b>General Elections to Rajasthan Legislative Assembly, 1993</b>						
7. N.C.T.D.		0		7,230	0.20	0	0.00
	<b>General Elections to National Capital Territory of Delhi Legislative Assembly, 1993</b>						

## POLL PERFORMANCE OF POLITICAL PARTIES

### General Elections, 1993-95 : Legislative Assemblies

Name of Party	State	Seats		Votes Polled		Votes Counted for Recognition	
		Contested	Won	Votes	%	Votes	%
<b>General Elections to Himachal Pradesh Legislative Assembly, 1993</b>							
8. Himachal Pradesh				NIL			
<b>General Elections to Goa Legislative Assembly, 1994</b>							
9. Goa				NIL			
<b>General Elections to Karnataka Legislative Assembly, 1994</b>							
10. Karnataka		1		97,682	0.49	65,851	0.33
<b>General Elections to Sikkim Legislative Assembly, 1994</b>							
11. Sikkim				NIL			
<b>General Elections to Bihar Legislative Assembly, 1995</b>							
12. Bihar			0	82,521	0.24	27,112	0.08
<b>General Elections to Andhra Pradesh Legislative Assembly, 1994</b>							
13. Andhra Pradesh			0	7,937	0.03	0	0.00
<b>General Elections to Arunachal Pradesh Legislative Assembly, 1995</b>							
14. Arunachal Pradesh			2	11,227	2.64	11,227	2.64
<b>General Elections to Gujarat Legislative Assembly, 1995</b>							
15. Gujarat			0	898	0.01	0	0.00

## POLL PERFORMANCE OF POLITICAL PARTIES

### General Elections, 1993-95 : Legislative Assemblies

Name of Party	State	Seats		Votes Polled		Votes Counted for Recognition	
		Contested	Won	Votes	%	Votes	%
<b>General Elections to Maharashtra Legislative Assembly, 1995</b>							
	16. Maharashtra	0	0	24,847	0.06	0	0.00
<b>General Elections to Manipur Legislative Assembly, 1995</b>							
	17. Manipur	0	0	1,611	0.14	0	0.00
<b>General Elections to Orissa Legislative Assembly, 1995</b>							
	18. Orissa	0	0	7,826	0.05	0	0.00

ANNEXURE 'IV'

**POLL PERFORMANCE OF POLITICAL PARTIES**

**General Elections, 1997 : Legislative Assembly of PUNJAB**

Name of Party	State	Seats		Votes Polled		Votes Counted for Recognition	
		Contested	Won	Votes	%	Votes	%
<b>General Elections to Punjab Legislative Assembly, 1997</b>							
Janata Party	Punjab	1	0	655	0.01	0	0.00



# **ELECTION COMMISSION OF INDIA**

**CORAM :**

<b>Hon'ble</b> <b>Sh. G.V.G. Krishnamurty</b> Election Commissioner	<b>Hon'ble</b> <b>Dr. M.S. Gill</b> Chief Election Commissioner	<b>Hon'ble</b> <b>Sh. J.M. Lyngdoh</b> Election Commissioner
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In re: Recognition of Bahujan Samaj Party as a National Party  
and

Reservation of Symbol for :

- (1) Bahujan Samaj Party,
- (2) Asom Gana Parishad,
- (3) Sikkim Sangram Parishad, and
- (4) Pattali Makkal Katchi.

Dated: 20th November, 1997

The case was called for hearing on 28th July, 1997 and 13th October, 1997

**PRESENT :**

For Bahujan Samaj Party : 1. Sh. Kapil Sibal, Sr. Advocate  
2. Sh. Manmohan, Advocate  
3. Sh. Kanshi Ram, President, B.S.P.

For Asom Gana Parishad : 1. Sh. Vijay Hansaria, Advocate  
2. Ms. Smita Shankar, Advocate  
3. Sh. Jitendra Bhatia, Advocate  
4. Sh. S.N. Medhi, Minister, Govt. of Assam  
5. Sh. Atul Bora, General Secretary  
6. Sh. Probin Sharma, M.P.

For Pattali Makkal Katchi : 1. Sh. M. Venkataraman, Advocate  
2. Sh. R. Ezhilmalai, Gen. Secretary

For Sikkim Sangram Parishad : 1. Sh. P.B. Gurang  
2. Sh. N.K. Pradhan

*Election Symbols (Reservation and Allotment) Order, 1968 - paras 5,6,7,18 - Recognition of Bahujan Samaj Party as National party on securing recognition in the fourth State - party praying for reservation of its symbol 'Elephant' for it as National party in all States - Some State parties opposing that prayer, as that symbol was also reserved for them in their States - Exercise of residuary powers by Election Commission under para 18 to reserve symbol*

*'Elephant' for Bahujan Samaj Party in all States, except those where it stood reserved for other State parties.*

## **SUMMARY OF THE CASE**

This is a unique case, the first of its kind, arising under the Election Symbols (Reservation and Allotment) Order, 1968. The Bahujan Samaj Party (BSP) was a recognised State party in 1996 in the States of Madhya Pradesh, Punjab and Uttar Pradesh and the symbol 'Elephant' was reserved for it in those States. On the results of the general election to the House of the People in 1996, the party became entitled to be recognised in the State of Jammu & Kashmir also. On such recognition in J & K, the party also became entitled to be recognised as a National party and for reservation of an exclusive symbol for it in all States and Union Territories. The party desired that its symbol 'elephant' may be reserved for it as a National party. But there was difficulty in allowing the prayer of the party to reserve that symbol for it, for the reason that the symbol 'Elephant' was also reserved for Asom Gana Parishad in Assam, Pattali Makkal Katchi in Pondicherry and Sikkim Sangram Parishad in Sikkim. All these three parties objected to the exclusive reservation of symbol 'Elephant' for the Bahujan Samaj Party. The Election Commission proposed that some modification in the symbol 'Elephant' may be made with the addition of mahout, howda or umbrella, etc. which may distinguish such modified symbol from the original symbol and yet retain its identity, and the same may be allotted either to above mentioned parties or to the Bahujan Samaj Party. But none was agreeable to that proposal. On the suggestion of the Commission, the above parties agreed to discuss the matter amongst themselves to reach at some amicable solution. Again, there was no agreement amongst them. The Commission then suggested that the symbol 'Elephant' may be reserved for BSP in all States and Union Territories, except Assam, Sikkim and Pondicherry where it may be reserved for Asom Gana Parishad, Sikkim Sangram Parishad and Pattali Makkal Katchi respectively. The Commission's suggestion was accepted by the Asom Gana Parishad and Pattali Makkal Katchi, but nothing was heard from Sikkim Sangram Parishad. Ultimately, the Commission, exercising its residuary powers under para 18 of the Symbols Order, reserved the symbol 'Elephant' for the Bahujan Samaj Party in all States, except Assam, Sikkim and Pondicherry where the above mentioned three parties were allowed to retain that symbol.

## **ORDER**

1. The Bahujan Samaj Party was a recognised State Party in the

Recognition of Bahujan Samaj Party as a National Party and  
Reservation of Symbol for BSP, AGP, SSP and PMK

States of Madhya Pradesh, Punjab and Uttar Pradesh and the symbol 'Elephant' was reserved for it in these three States under the provisions of the Election Symbols (Reservation & Allotment) Order, 1968 (hereinafter referred to as the 'Symbols Order').

2. The Asom Gana Parishad, Sikkim Sangram Parishad and Pattali Makkal Katchi were also recognised as State Parties in the States of Assam, Sikkim and Tamil Nadu respectively, and for those parties also the same symbol 'Elephant' was reserved in the said States.

3. After the general elections to the House of the People and various State Legislative Assemblies held in 1996-97, the poll performance of all political parties was reviewed in terms of paras 6 and 7 of the aforesaid Symbols Order. On the basis of above mentioned review, the Bahujan Samaj Party became eligible for recognition as a State Party in the State of Jammu & Kashmir also, besides the States of Madhya Pradesh, Punjab and Uttar Pradesh. With this, the party fulfilled the condition for recognition as a National Party (viz. recognition in four or more States) under the provisions of paras 6 and 7 of the Symbols Order.

4. On the basis of aforesaid review, it was further found that whereas, the Asom Gana Parishad and Sikkim Sangram Parishad had retained their status as recognised State Parties, the Pattali Makkal Katchi which was a State Party in Tamil Nadu did not fulfil the conditions for continued recognition as a State Party in that State, but fulfilled those conditions for recognition as a State Party in the Union Territory of Pondicherry, under the provisions of paragraphs 6 and 7 of the Symbols Order. An order withdrawing the recognition of Pattali Makkal Katchi as a State Party in the State of Tamil Nadu and according recognition to the said party as a State Party in the Union Territory of Pondicherry has already been issued separately on 29th August, 1997.

5. The Bahujan Samaj Party which has become eligible for recognition as a National Party, was not notified as such Party and granted such status, as the symbol 'Elephant' reserved for it in the States of Madhya Pradesh, Punjab and Uttar Pradesh could not be straightaway reserved for it in all other States and Union Territories, because the said symbol 'Elephant' was already reserved for the above mentioned three other State Parties namely, Asom Gana Parishad, and Pattali Makkal Katchi in the States of Assam, Tamil Nadu and Sikkim respectively. Pending formal notification of the Bahujan Samaj Party, as a National Party, for the reason above mentioned, the party was, however, granted recognition in the State of Jammu & Kashmir, for the purposes of general election to the State

Recognition of Bahujan Samaj Party as a National Party and  
Reservation of Symbol for BSP, AGP, SSP and PMK

Legislative Assembly which was held subsequent to the general election to the House of People, in May, 1996, and the symbol 'Elephant' was reserved for it in that State also under the provisions of the Jammu & Kashmir Conduct of Election Rules, 1967.

6. This was an unprecedented situation. The Commission, therefore, enquired from all the parties concerned whether they would willingly surrender their reserved symbol 'Elephant' and choose some other symbol in place of the same. For that purpose, a hearing was held on 28th July, 1997. However, none of the parties was willing to surrender its reserved symbol 'Elephant'. Each of the parties contended that it had, with the passage of time and due to enormous energies spent and expenditure incurred in popularising the symbol, become identified, among the electors, as the 'Elephant' party, and any change in its party symbol would be prejudicial to its interests. Whereas, the Bahujan Samaj Party contended that the party, now having become entitled for recognition as a National Party, had superior claim over its reserved symbol 'Elephant' under para 8(1) of the Symbols Order in comparison with other three parties, the others disputed that contention. They made a counter claim that they too had an equal right to use that symbol under para 8(2) of the said Symbols Order and urged the Commission to apply provisions of sub-paras (1) and (2) of para 8 harmoniously.

7. All the parties were, however, agreed that they had no proprietary right over that symbol and that the Commission could change or modify their symbol.

8. It was indicated to the parties that they could think of some modification in the symbol 'Elephant' with the addition of mahout, howda, umbrella, etc., which may distinguish such modified symbol from the original symbol and yet retain its identity.

9. Readily accepting the above suggestion, Shri Kipal Sibal, learned counsel for the Bahujan Samaj Party, urged the other three parties to accept such modified election symbol. The others, on the other hand, submitted that instead of asking three parties to change their symbols, it would be more appropriate and convenient to ask the Bahujan Samaj Party to accept a modified symbol. Ultimately, all the four parties, on a suggestion from the Commission, agreed to discuss the matter amongst themselves first to reach at some amicable solution and prayed for some time to be granted for the purpose.

10. The above prayer was granted. The parties were allowed time

up to 11.8.1997 to have such mutual consultations, amongst themselves, and to revert to the Commission.

11. The parties discussed the matter among themselves on 9th August, 1997, but could not come to any conclusion, as no consensus could be arrived at among themselves, and requested the Commission to give its verdict in the matter.

12. The counsel/representatives of the parties, were again heard on 13.10.1997. It was suggested by the Commission that it may be appropriate for the political parties concerned to have another round of discussions, on the following proposals, namely :-

(i) The Bahujan Samaj Party which has attained, according to them, the status of a National Party, may avail the facility of the reserved symbol 'Elephant' in all States and Union Territories, except in the States of Assam and Sikkim and Union Territory of Pondicherry. If the party wants to contest elections in the States of Assam and Sikkim or Union Territory of Pondicherry, it will have to choose another symbol for elections there;

(ii) Regarding the Asom Gana Parishad, the party may retain the symbol 'Elephant' in the State of Assam only, and if it intends to contest elections in any other State or Union Territory, it will have to choose another symbol for elections in such other State/Union Territory;

(iii) Similarly, the Sikkim Sangram Parishad may also retain the symbol 'Elephant' in the State of Sikkim only, and if the party intends to contest elections in any other State or Union Territory, it will have to choose another symbol for elections in such other State/Union Territory;

(iv) So far as the Pattali Makkal Katchi is concerned, it may also have the option to choose the symbol 'Elephant' in the Union Territory of Pondicherry, and if the party intends to contest election in any other State/ Union Territory it will have to choose another symbol for elections in such other State/Union Territory. The parties were given 15 days time to deliberate upon the above proposal.

The parties were given 15 days time to deliberate upon the above proposal.

13. In response thereto, Shri Atui Bora, General Secretary, Asom Gana Parishad and Shri R. Ezhilmalai, General Secretary of Pattali Makkal Katchi have sent to the Commission copies of the minutes of discussion held among Bahujan Samaj Party, Asom Gana Parishad and Pattali Makkal Katchi on 3.11.1997, wherein the three parties have agreed to the proposals

made by the Commission. However, the Pattali Makkal Katchi desired that the symbol 'Elephant' may be reserved for its exclusive use in Tamil Nadu and Pondicherry, and that in case this was not possible, they were ready to forego their claim for the symbol 'Elephant' in Pondicherry and that they may be allowed the use of the symbol 'Elephant' in Tamil Nadu. Nothing has been heard from the Sikkim Sangram Parishad. The party obviously, seems to be satisfied with the Commission's proposal which fully meets their request.

14. In so far as the request of the Pattali Makkal Katchi for the reservation of symbol 'Elephant' for it in Tamil Nadu is concerned, that party is now a recognised political party in the Union Territory of Pondicherry alone, and is only a registered-unrecognised political party in the State of Tamil Nadu and other States/Union Territories. Thus, the Pattali Makkal Katchi cannot claim any exclusive symbol for its use in the State of Tamil Nadu. Nor can it raise any objection to the reservation of any symbol by the Commission to any other party in that State, where it is not a recognised State Party. The Supreme Court has held in the case of Sadiq Ali Vs. Election Commission (AIR 1972 SC 187) that election symbol is not property, and political parties have thus no proprietary rights over election symbols.

15. The above proposal referred to the para 12, was made by the Commission having regard to the provisions of para 18 of the Symbols Order. That para reads as under :-

18. Powers of Commission to issue instructions - The Commission may issue instructions and directions -

- (a) for the clarification of any of the provisions of this Order;
- (b) for the removal of any difficulty which may arise in relation to the implementation of any such provisions; and
- (c) in relation to any matter with respect to the reservation and allotment of symbols and recognition of political parties, for which this Order makes no provision or makes insufficient provision, and provision is in the opinion of the Commission necessary for the smooth and orderly conduct of elections.

16. As pointed out above, the present case is unprecedented, where a State Party has gradually risen to the status of a National Party and the election symbol reserved for it, in the States in which it was earlier recognised as State Party, is precisely the same which is reserved for some other State Parties also in some other States. There is no express or specific provision

Recognition of Bahujan Samaj Party as a National Party and  
Reservation of Symbol for BSP, AGP, SSP and PMK

in the Symbols Order to deal with this kind of situation. Therefore, the Commission would be justified in invoking its residuary powers under the said para 18 of the Symbols Order to resolve the present controversy, in the interest of all the parties concerned and for ensuring smooth and orderly conduct of elections.

17. Accordingly, having regard to the above, and in exercise of the powers conferred by Article 324 of the Constitution read with rules 5 and 10 of the Conduct of Elections Rules, 1961, and paragraphs 6, 7, 8 and 18 of the Election Symbols (Reservation and Allotment) Order, 1968, and all other powers enabling the Election Commission in this behalf, the Commission hereby directs that:-

(I) (a) The Bahujan Samaj Party shall be recognised as a National Party;

(b) The party shall be allotted the symbol 'Elephant' for its exclusive use in the all the States/Union Territories, EXCEPT in the States of Assam and Sikkim and Union Territory of Pondicherry;

(c) If the party wants to contest elections in the States of Assam or Sikkim or Union Territory of Pondicherry, its candidates will have to choose another symbol from out of the list of free symbols specified by the Commission for the State/Union Territory concerned;

(II) The Asom Gana Parishad shall retain the symbol 'Elephant' in the State of Assam only, and if it intends to contest elections in any other State or Union Territory, its candidates will have to choose another symbol from out of the list of free symbols for elections in such other State/Union Territory;

(III) The Sikkim Sangram Parishad shall also retain the symbol 'Elephant' in the State of Sikkim only, and if it intends to contest elections in any other State or Union Territory, its candidates will have to choose another symbol from out of the list of free symbols for elections in such other State/Union Territory;

(IV) The Pattali Makkal Katchi, which is at present a recognised State Party in the Union Territory of Pondicherry only, shall have the symbol 'Elephant' reserved for it in that Union Territory (Pondicherry) alone, and if it intends to contest elections in any other State or Union Territory, its candidates will have to choose another symbol from out of the list of free symbols for elections in such other State/Union Territory;

(V) The Bahujan Samaj Party, Asom Gana Parishad, Pattal

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Makkal Katchi and Sikkim Sangram Parishad shall ensure that no cruelty is shown to the animal 'Elephant' in any manner, and no live demonstration of that animal is made in any of their election campaigns, being the election symbol reserved for them as aforesaid, and that Commission reserves the right to withdraw that symbol from the said party or parties, in case that animal is subjected to any cruelty.

**ORDERED ACCORDINGLY**

**Sd/-**  
**(G.V.G. Krishnamurty)**  
Election  
Commissioner

**Sd/-**  
**(Dr. M.S. Gill)**  
Chief Election  
Commissioner

**Sd/-**  
**(J.M. Lyngdoh)**  
Election  
Commissioner



Merger / Integration of All India Indira Congress (Tiwari) with the Indian National Congress  
Status of All India Indira Congress (Tiwari), if it still continues as a separate party

*group as State party in the State where it fulfils conditions under para 6 (2)  
- change of name of party on Sh. N.D.Tiwari joining another party.*

## **SUMMARY OF THE CASE**

The All India Indira Congress (Tiwari) was a recognised National party, and the symbol 'Lady Offering Flowers' was reserved for it under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968. It was granted recognition by the Election Commission on 12th March, 1996, treating it as a breakaway group of the Indian National Congress. On 12th December, 1996, the Commission was informed that the party had decided to merge in the Indian National Congress. However, another group claimed that there was no merger of the party in the Indian National Congress, though Sh. N.D.Tiwari, the President of the party, and some other office-bearers had left the party and joined the Indian National Congress in their individual capacity. After hearing both the groups, the Commission came to the conclusion that there was no valid merger of the All India Indira Congress (Tiwari) with the Indian National Congress and that the party continued to exist as a separate entity. But the Commission further observed that on the basis of its poll performance in the general elections to the House of the People and Legislative Assemblies held in 1996, the party was no longer entitled to be recognised as a National party and was eligible to be recognised only as a State party in Rajasthan. Accordingly, the Commission recognised it as a State party in Rajasthan, but the party had to change its name to All India Indira Congress (Socialist), as Sh. N.D.Tiwari, whose name earlier formed part of the party's name, was no longer a member of the party. Apart from the group recognised by the Commission as the All India Indira Congress (Socialist), another splinter group had also made a claim to be recognised as that party. However, the Commission did not accept the claim of that group.

## **ORDER**

The question for consideration of the Election Commission of India in the present case is three-fold :

- (i) whether the All India Indira Congress (Tiwari) [AIIC(T), for short] has merged or integrated with the Indian National Congress (INC), and ceased to exist as a separate party;
- (ii) if not, whether the AIIC(T) has lost its status as a National party; and

(iii) if so, whether it is entitled to be recognised as a State party in any State or Union Territory.

2. The AIIC(T) is a recognised National party, and the symbol “Lady Offering Flowers” is reserved for the party in all States and Union Territories under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as the ‘Symbols Order’). Its registered address, as per the records of the Commission, is 21, Janpath, New Delhi-110001. It may be recalled that the AIIC(T) was born out of a split in the Indian National Congress, a recognised National party, and the Commission granted recognition to it as a National party, by its order dated 12th March, 1996. Shri N.D. Tiwari was the President of the party and Shri P.R.Kumaramangalam was its General Secretary.

3. On 12th December, 1996, Shri P.R.Kumaramangalam intimated the Commission, vide his letter dated 11th December, 1996, that the General Body of the AIIC(T) met on 11th December, 1996 and passed a resolution unanimously to integrate the party with the Indian National Congress. A copy of that resolution was also enclosed with that letter, for information and appropriate action.

4. The above intimation from the AIIC(T) was examined by the Commission in the light of the principle laid down by the Supreme Court in the case of All Party Hill Leaders’ Conference (APHLC) Vs. Capt. W.A.Sangma (AIR 1977 SC 2155), relating to the merger of political parties. In that case also, the APHLC had intimated the Commission that the party had merged with the INC. The Commission accepted the fact of merger of the APHLC with the INC and removed the name of the APHLC from the list of recognised State parties in Meghalaya. On appeal against the Commission’s decision by the group which claimed that the party had not merged with the INC, the Supreme Court observed and held as follows :-

“49. ....It is submitted on behalf of the respondents that the Conference of these delegates is authorised to take decisions on ‘any issue’. Assuming that is so, such authority in absence of anything more cannot authorise a Conference of the delegates to write off the organisation or to sign its death warrant. “Any issue” on which decision may normally be taken by the Conference must relate to live matters of a living organ and not to its death wish. Without the nexus with the generality of membership decisions will derive no force or vigour and no party or conference can hope to succeed in their plans, efforts or struggle unless backed by the same. There is

no evidence authorising the Conference to dissolve itself by merger or otherwise, and so it is not possible to apply the rule of majority only in the Conference for such a decision affecting the entire body as an entity in the absence of a clear mandate from the general membership.....

53. The Commission fell into an error in holding that the Conference of the APHLC was the general body even to take a decision about its dissolution by a majority vote. The matter would have been absolutely different if in the general body of all members from different areas or their representatives for the purpose, assembled to take a decision about the dissolution of the party had reached a decision by majority. This has not happened in this case. At best the decision of the Conference on November 16, 1976 was only a step in that direction and could not be held as final until it was ratified by the general membership.....

55. It is not disputed that the APHLC with 40 members still claiming to continue its reserved symbol answers the test laid down in the Commission's directions for being recognised as a State political party under paragraph 6 of the Symbol Order. They had, on the date of entertainment of the dispute by the Commission, still the requisite membership fulfilling the test for recognition as a State political party. The Commission was, therefore, required to follow the provisions of the directions which it has laid down in the Symbols Order when the question of derecognition of a party was raised before it. It is not a dispute between two factions of the same party, each claiming to be the party so that the Commission has to allow the symbol to one of them. The claim of the respondents before the Commission was that the APHLC had ceased to function as a recognised political party in the State and Captain Sangma's group having merged with the INC requesting the Commission to scrap the APHLC out of existence with its reserved symbol so that the APHLC would be effaced from the political arena. The Commission was entirely wrong in its decision in view of its own directions embodied in the Symbols Order. The Commission could not be reasonably satisfied on the materials before it that under paragraph 6 read with paragraph 7 of the Symbols Order, the APHLC had ceased to be a recognised political party in the State. Even by application

of the directions which it has set out in the Symbols Order the Commission's decision is absolutely untenable.

“56. Even after a major chunk of the APHLC led by Captain Sangma had joined the INC. if those who still continued under the banner of the APHLC flag and symbol claimed to continue as APHLC and the directions in the Symbols Order did not authorise derecognition of the APHLC as a body represented by the remainder, as we have found, no case is made out for any interference by the Commission with regard to the reserved symbol. Thus the APHLC, as a recognised State political party in Meghalaya, stays and is entitled to continue with their reserved symbol “Flower”.

5. On the aforesaid examination of the intimation given by Shri Kumaramangalam, he was asked by the Commission's letter dated 24th December, 1996 whether the principle laid down by the Supreme Court in the case of APHLC (supra) that the merger of a political party with another political party should take place with the approval of the general membership of the party, had been followed by the AIIC(T) while taking the decision to integrate/merge it with the INC. He was also asked to furnish all relevant documents relating to the general body meeting stated to have held on 11th December, 1996, together with the copy of the notice and agenda circulated for the said general body meeting and the copy of the proceedings of that meeting. Simultaneously, the Commission also wrote to the INC for their comments with regard to the resolution of the AIIC(T) forwarded by Shri Kumaramangalam.

6. In reply, Shri Kumaramangalam stated in his letter dated 12.1.1997 that the decision to merge / integrate the AIIC(T) with the INC was taken after observing the principle laid down in the case of APHLC (supra). To support that statement, he furnished copy of a letter dated 5.12.96 purporting to be notice and indicating the agenda for the general body meeting held on 11.12.1996 and copies of two resolutions passed at that meeting. The INC stated, in its letter dated 14.1.1997 signed by Shri Ahmed Patel, Treasurer and Incharge Administration, that the INC had, in pursuance of the AIIC(T)'s resolution, integrated / merged the said party with the INC.

7. However on 3rd February, 1997, one Dr. Jageshwar Nath with four others, submitted a representation to the Commission, disputing the claim of merger of the AIIC(T) with the INC, and claimed that at the Workers' Meeting held on 24.1.1997 he had been elected as President of the AIIC(T).

He also requested that the address of the party, for the purpose of communication may be changed as F-2/60, Main Sangam Vihar, Ratiya Marg, New Delhi. In reply, they were advised by the Commission on 26.2.1997 to file a formal application, along with all relevant documents/information for the decision of the Commission. Shri Kumaramanglam was also asked to send his comments on the aforesaid representation of Dr. Jageshwar Nath.

8. Thereupon, Dr. Jageshwar Nath, with two others, filed a formal application on praying for a declaration that the AIIC(T) still continued as a separate political party. With the said application, he also filed copies of proceedings of the party's meeting held on 24th January, 1997, notice for the said meeting and attendance register, and also two Affidavits sworn by Shri Sheesh Ram Ola and Shri Satpal Maharaj, Union Ministers, and individual Affidavits of 25 other persons claiming to be office-bearers of the party.

9. Meanwhile, the Commission also received another letter, dated 15th March, 1997 from one Shri Prabhat Kumar Singh of Bhojpur District of Bihar, claiming that the AIIC(T) was still in existence and that he had been elected convener of the party in the Workers' Meeting held in January, 1997.

10. The communications of the aforesaid claimants were exchanged among all the three contending groups on 21st April, 1997 and they were asked to furnish their comments by 30th April, 1997.

11. Pertinent to add here that the Commission had, in the meanwhile, also reviewed the poll performance of the AIIC(T) at the general elections held after the registration and recognition of the party in March, 1996, to the House of the People and the Legislative Assemblies of the States of Assam, Haryana, Kerala, Tamil Nadu, West Bengal, Pondicherry, Jammu & Kashmir and Uttar Pradesh in 1996 and to the Punjab Legislative Assembly in February, 1997. The statement at Annexure 'A' hereto would show the poll performance of the party at the aforesaid general elections. A perusal of that statement would show that the party had fulfilled the conditions prescribed for recognition in para 6(2) of the Symbols Order, only in the States of Haryana and Rajasthan. Accordingly, a show-cause notice was also simultaneously served on all the three claimants on 21st April, 1997, asking them, not only to explain whether the party still existed as a separate party, but also to show-cause as to why its recognition as National Party may not be withdrawn in view of its poll performance, even if the party was found to be existing as a separate party.

12. The above referred notices to the three groups were responded to as follows:

(i) The notice to Shri P.R.Kumaramangalam was answered by M/s Bhasin and Company Advocates, stating that the AIIC(T) had already intimated the fact of its merger with the INC, accompanied with all documentary proof, and as the party had ceased to exist, the question of review of its status on the basis of its poll performance did not arise.

(ii) The notice served on Dr. Jageshwar Nath was replied to by one Shri Prem Chand Sharma claiming to be Working President of the AIIC(T). He reiterated the earlier contentions that party had not merged with the INC and that in its meeting held on 24th January, 1997, the party had elected its office-bearers, who included, among others, Shri Satpal Maharaj and Shri Sheesh Ram Ola, Union Ministers, as members of the Executive Committee. He also refuted the claim of Shri Prabhat Kumar Singh stating that his claim as Convener of the party was not sustainable. As regards the withdrawal of recognition of the party, he stated that the party was still entitled to recognition in the States of Haryana and Rajasthan on the basis of its poll performance at the aforementioned general elections.

(iii) Shri Prabhat Kumar Singh questioned the legality of merger/integration of the party with the INC, as, according to him, such issues were decided by the general body and that the general body was in favour of the party remaining intact. He further claimed that he had been nominated by the party as convener and authorized to arrange elections of office-bearers. He also claimed that the party was entitled to recognition in the States of Haryana and Rajasthan and that its recognition may not be withdrawn as its poll performance was yet to be watched in the next general elections in the remaining States.

13. Before taking any decision in the matter, the Commission considered it appropriate to afford an opportunity of hearing to all the contending groups.

14. At the hearing held on 1st August, 1997, none was, however, present on behalf of the group led by Shri N.D.Tiwari and Shri P.R.Kumaramanglam. The group led by Dr. Jageshwar Nath was represented by Shri R.M.Tiwari, Advocate. He prayed for adjournment as certain relevant documents were made available to him only a day before. The prayer was granted and the hearing was adjourned to 14.10.1997.

15. Again, at the hearing held on 14.10.1997, no one was present on behalf of the group led by Shri N.D.Tiwari and Shri Kumaramangalam,

despite the fact that a fresh notice had been issued to them in regard to the hearing to be held on 14.10.97 and it was specifically made clear to them that in case of default of appearance it would be presumed that they had nothing further to say in the matter and the same would be decided by the Commission without any further reference to them.

16. At this hearing, the group led by Dr. Jageshwar Nath was represented by Miss Anshu Aggarwal, Advocate, whereas Shri Prabhat Kumar Singh was represented by Shri Ganesh Pandey, Advocate. They made their oral submissions and, at their request, were also granted 15 days more time for filing their written submissions. The written submissions filed by them subsequently on 28.10.1997 and 3.11.1997 have also been taken on record.

17. We have carefully examined the relevant records of the case and the documentary evidence that has been placed on record by the parties concerned. We have also analysed the legal submissions and contentions raised on their behalf, both in their oral submissions as well as in their written submissions.

18. While formulating our view in the matter, we have to be guided by and follow, the principle laid down by the Supreme Court in the case of APHLC(supra). The Supreme Court has observed that the decision to merge a political party with another political party has to be taken by it by involving the general membership of the party, and not by a handful of its leaders or office-bearers, as the merger of the party amounts to wiping off its existence and signing its death warrant. We shall now proceed to examine whether the above principle as laid down by the Supreme Court has been followed in the present case of the AIIC(T).

19. In the instant case, there are three groups - one group led by Shri N.D.Tiwari and Shri P.R.Kumaramangalam claims that the AIIC(T) has merged with the INC and that it has ceased to exist as a separate party, whereas two opposing groups led by Dr. Jageshwar Nath and Shri Prabhat Kumar Singh refute that claim and make a counter claim that the party continues to exist and function as a separate entity under their leadership. It is evident from the records that it was the group led by Shri N.D.Tiwari and Shri Kumaramangalam that had made the initial claim that the AIIC(T) had merged with INC. Therefore, the onus of proof to establish their claim initially lies on that group. It is to be seen whether such onus has been discharged by that group to the satisfaction of the Commission. As mentioned above, none on behalf of that group was present at the hearings held by the Commission on 1.8.1997 and 14.10.1997 despite the receipt of the

Commission's repeated notices for those hearings. It is apparent that they had no interest left in the matter, as they had already joined the INC and some of them had even become certain office-bearers in the INC. In the above circumstances, the Commission would be right in presuming that group is no longer interested in pursuing or establishing its claim and that it has abandoned the same.

20. Nevertheless, we may like to see for ourselves whether the said onus of proof can be said to have been discharged by that group on the basis of documents furnished by it. That group has only furnished a copy of the notice, stated to have been issued on 5.12.96, for general body meeting to be held at the party office (21, Janpath, New Delhi) on 11.12.96, in the form of a letter, and copies of two resolutions said to have been passed at that meeting. The said notice is marked to the general body members, but no evidence, whatsoever, has been adduced to show as to whom that letter was issued and what was the mode of despatch of that letter to them. Not even a single name of a member of the general body, which must have consisted of thousands of members in the case of a National party spread out over the length and breadth of the country, to whom that notice was sent has been mentioned or brought on record. Nor has any record of any kind been produced to show as to who or how many participated in the general body meeting said to have been held by the party on 11.12.96. On the basis of such scanty records, we can hardly persuade ourselves to accept the claim of the group led by Shri Tiwari and Shri Kumaramangalam that the decision to merge the AIIC(T) with the INC has been taken with the approval of the general membership of the party, as was enjoined upon in the light of the Supreme Court's dictum in the case of APHLC(supra).

21. On the other hand, both the opposing groups led by Dr. Jageshwar Nath and Shri Prabhat Kumar Singh have specifically denied having received any notice from Shri Kumarmangalam or from anybody else about the meeting of the general body of the party stated to have been held on 11.12.1996. So much so that even Shri Sheesh Ram Ola and Shri Satpal Maharaj, two of the only four members of the party elected to the Lok Sabha and who are sitting Ministers in the Union Council of Ministers as representatives of that party, seem to have been kept out of the so-called general body meeting of the party on 11.12.1996. It has been averred on behalf of both the opposing groups of that meeting held, if any, on 11.12.1996 was not a general body meeting of the party but a meeting only of some individuals who decided among themselves to join the INC in their individual capacity. These averments and assertions of the opposing groups

have not been controverted by the group led by Shri Tiwari and Shri Kumaramangalam.

22. Having regard to the above, the only conclusion which can be arrived at is that the AIIC(T) has not merged with the INC and that and it continues to exist and function as a separate party. It is only some leaders of the AIIC(T) including its President, Working President and General Secretary, and their followers who have joined the INC, but the party has not fully merged/integrated with the INC enbloc. Thus, despite such desertions the party continues to exist; but it will have to change its name, as it cannot retain its present name of 'All India Indira Congress (Tiwari)' when Shri N.D.Tiwari has left the party and joined the INC. While changing its name, the party should, however, not replace the word 'Tiwari' with the name of any other living leader or office bearer of the party.

23. Having decided that the party continues to exist, the next question for consideration and decision of the Commission is whether the party is still a National party or has lost its status as a National party, and, if so, whether it is entitled to be recognised as a State party in any State or Union Territory.

24. As mentioned above, the Commission has reviewed the poll performance of the party at the general elections to the House of the People and the State Legislative Assemblies held in 1996-1997. The result of such review is reflected in *Annexure 'A'* hereto. The perusal of that Annexure would show that the party, before it got split on the merger issue, could fulfil the conditions laid down in paras 6 and 7 of the Symbols Order for continued recognition, only in the States of Haryana and Rajasthan. Both the groups which claim that the party continues to exist have not disputed the facts and figures as shown in the said Annexure and have on the other hand, accepted them as being correct. Thus, there cannot be any doubt that the party has failed to fulfil the conditions prescribed in paras 6 and 7 of the Symbols Order for recognition as a National party, namely, the recognition in four or more States. Consequently, the party has lost its status as a National party.

25. The question still remains whether it is entitled to be recognised as a State party in any State in the facts and circumstances of the present case. Pertinent to point out here that it is not a simple case of review of poll performance of a party, in terms of paragraphs 6 and 7 of the Symbols Order. It is also a case of split in the party on the issue of its merger with the INC, and what is to be seen and adjudged is the position of the group claiming to continue the party when a substantial chunk has left

the party and joined the INC. Therefore, the position of the remnant group is to be adjudged in the light of the decision of the Supreme Court in the above referred case of APHLC. The Supreme Court held in that case that:

“56. Even after a major chunk of the APHLC led by Captain Sangma had joined the INC, if those who still continued under the banner of the APHLC flag and symbol claimed to continue as APHLC and the directions in the Symbols Order did not authorise derecognition of the APHLC as a body represented by the remainder, as we have found, no case is made out for any interference by the Commission with regard to the reserved symbol. Thus the APHLC, as a recognised State political party in Meghalaya, stays and is entitled to continue with their reserved symbol “Flower”.

26. Therefore, we have to see whether the remnant group still answers the test prescribed in para 6(2) of the Symbols Order for recognition as a State party in any State. The group led by Dr. Jageshwar Nath has claimed, among others, the support of S/Shri Sheesh Ram Ola and Satpal Maharaj, who were elected to the House of the People at the general election in 1996 from the States of Rajasthan and Uttar Pradesh. They have not claimed the support of any of the three members of the party elected to the Legislative Assembly of Haryana. The group led by Shri Prabhat Kumar Singh has not claimed the support of any member of Parliament or of any State Legislative Assembly. Thus, the party can, on the basis of its above claim, be recognised only in the State of Rajasthan, and in no other State, because the election of even one member (Shri Sheesh Ram Ola) to the House of the People from the State of Rajasthan would be sufficient for the purpose of its recognition as a State party in Rajasthan, under para 6(2) (A) (a) (i) of the Symbols Order.

27. Having decided that the party continues to exist as a separate party and that it is entitled to be recognised as a State party only in the State of Rajasthan, connected question for decision of the Commission is also as to which of the two groups who claim to continue the party, namely, the group led by Dr. Jageshwar Nath and the group led by Shri Prabhat Kumar Singh, is to be recognised by the Commission as representing the party, for the purposes of the Symbols Order and the records of the Commission. As mentioned above, the party is to be recognised in the State of Rajasthan on the basis of the election of Shri Sheesh Ram Ola to the House of the People from Rajasthan. It is uncontroverted that Shri Sheesh Ram Ola is in the group led by Dr. Jageshwar Nath and he has filed his

Merger / Integration of All India Indira Congress (Tiwari) with the Indian National Congress  
Status of All India Indira Congress (Tiwari), if it still continues as a separate party

individual affidavit also to the same effect. Further, that group has also constituted a working committee and elected office-bearers to fill the void created by the joining of the INC by Shri N.D.Tiwari and his supporters. Both Shri Sheesh Ram Ola and Shri Satpal Maharaj, sitting Members of Parliament and Members of the Union Council of Ministers, are also part of the working committee so formed by the group led by Dr. Jageshwar Nath. On the other hand, Shri Prabhat Kumar Singh has not member of Parliament or of any State Legislature supporting him. His is a bare assertion, without any thing more at all, that he is the convener of the party. Therefore, the group led by Dr. Jageshwar Nath has a superior claim to represent the party.

28. Accordingly, the Commission hereby recognises the group led by Dr. Jageshwar Nath as representing the party. They will, however, have to hold regular organisational elections of the party, in accordance with its constitution within six months of the issue of this order. They will also intimate the change in the name of the party, for the approval of the Commission, within one month of the issue of this order.

**ORDERED ACCORDINGLY**

*Sd/-*  
**(G.V.G. Krishnamurty)**  
Election  
Commissioner

*Sd/-*  
**(J.M. Lyngdoh)**  
Election  
Commissioner

Merger / Integration of All India Indira Congress (Tiwari) with the Indian National Congress  
Status of All India Indira Congress (Tiwari), if it still continues as a separate party

**ANNEXURE 'A'**

**GENERAL ELECTIONS TO HOUSE OF THE PEOPLE, 1996**

Party Category and Abbreviation	State Code	State Name	Seats Contested	Seats Won	FD in Seats	Votes Polled	% of Votes Polled	Votes Counted for Recognition	
								Votes	%
All India	S01	Andhra Pradesh	25	0	24	1,61,346	0.53	1,28,164	0.42
Indira Gandhi	S03	Assam	12	0	12	3,24,096	3.44	1,17,410	1.25
	S04	Bihar	39	0	39	1,11,003	0.32	0	0.00
	S06	Gujarat	19	0	19	1,87,739	1.88	89,638	0.90
	S07	Haryana	8	0	8	1,71,005	2.25	0	0.00
	S08	Himachal Pradesh	2	0	2	4,435	0.22	0	0.00
	S09	Jammu & Kashmir	3	0	3	17,276	0.83	0	0.00
	S10	Karnataka	8	0	8	45,628	0.24	0	0.00
	S12	Madhya Pradesh	33	1	31	10,78,589	4.70	5,08,733	2.22
	S13	Maharashtra	33	0	33	87,892	0.31	0	0.00
	S14	Manipur	2	0	2	37,505	3.91	0	0.00
	S18	Orissa	8	0	8	53,642	0.41	0	0.00
	S19	Punjab	7	0	7	50,938	0.58	0	0.00
	S20	Rajasthan	17	1	16	4,64,159	3.58	3,47,009	2.68
	S22	Tamil Nadu	12	0	10	6,05,565	2.23	3,64,543	1.34
	S23	Tripura	1	0	1	4,928	0.38	0	0.00
	S24	Uttar Pradesh	76	2	71	13,87,661	3.02	9,10,055	1.98
	S25	West Bengal	7	0	7	18,377	0.05	0	0.00
	U02	Chandigarh	1	0	1	513	0.20	0	0.00
	U03	Dadra & Nagar Haveli	1	0	1	433	0.61	0	0.00
	U05	Delhi	7	0	7	90,250	2.25	0	0.00
<b>Total - all States / UTs (Seats - Contested, Won, FD, Voted Polled):</b>			<b>321</b>	<b>4</b>	<b>310</b>	<b>49,03,070</b>			

Merger / Integration of All India Indira Congress (Tiwari) with the Indian National Congress  
Status of All India Indira Congress (Tiwari), if it still continues as a separate party

## POLL PERFORMANCE OF POLITICAL PARTIES

**General Elections, 1996-97 : Legislative Assemblies of ASSAM, HARYANA, KERALA,  
TAMIL NADU, WEST BENGAL, PONDICHERRY, JAMMU & KASHMIR,  
UTTAR PRADESH AND PUNJAB**

Name of Party	State	Seats		Votes Polled		Votes Counted for Recognition	
		Contested	Won	Votes	%	Votes	%
All India Indira Congress (Tiwari)	Assam	108	2	3,37,668	3.71	2,20,443	2.42
	Haryana	62	3	2,42,638	3.20	1,65,065	2.18
	Kerala	8	0	8,549	0.06	0	0.00
	Tamil Nadu	46	0	2,09,942	0.77	89,459	0.33
	West Bengal	29	0	20,555	0.06	0	0.00
	Pondicherry	5	0	575	0.12	0	0.00
	Jammu & Kashmir	9	1	17,473	0.70	12,140	0.49
	Uttar Pradesh	37	4	7,35,327	1.33	6,83,836	1.23
	Punjab	0	0	0	0.00	0	0.00

# **ELECTION COMMISSION OF INDIA**

**CORAM :**

<b>Hon'ble</b> <b>Sh. G.V.G. Krishnamurty</b> Election Commissioner	<b>Hon'ble</b> <b>Dr. M.S. Gill</b> Chief Election Commissioner	<b>Hon'ble</b> <b>Sh. J.M. Lyngdoh</b> Election Commissioner
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In re: Formation of United Democratic Party by the Merger of Hill People Union, Public Demands Implementation Convention and Hill State People's Democratic Party.

Dated: 18th December, 1997

This case was called for hearing on 11th December, 1997.

**PRESENT :**

*For United Democratic Party :*

1. Sh. Adish Aggarwala, Advocate
2. Sh. R. Narsimhan, Advocate
3. Sh. E.K. Mawlong, President, UDP
4. Sh. H.A.D. Sawian, General Secretary, UDP

*For Hill People Union :*

Sh. A.H.S. Lyngdoh, (General Secretary, HPU)

*For Public Demands Implementation Convention :*

Sh. S.S. Lyngdoh, (General Secretary, PDIC)

*For Anti-merger group of Hill State People's Democratic Party :*

1. Sh. Vijay Hansaria, Advocate
2. Sh. Jatinder K. Bhatia, Advocate
3. Sh. H.S. Lyndgoh, President, HSPDP
4. Sh. T. Lyndgoh, General Secretary, HSPDP

*For Pro-merger group of Hill State People's Democratic Party :*

1. Sh. Adish Aggarwala, Advocate
2. Sh. R. Narsimhan, Advocate
3. Sh. E.K. Mawlong, President, UDP

*Election Symbols (Reservation and Allotment) Order, 1968 - paras 15,16 - merger of parties - principle to be followed - recognition of new party formed by the merger - reservation of symbol for the new party.*

## **SUMMARY OF THE CASE**

The Hill People Union, Public Demands Implementation Convention and Hill State People's Democratic Party were recognised State parties in Meghalaya, and the symbols 'Rising Sun', 'Spade' and 'Lion' were respectively reserved for them under the Election Symbols (Reservation and Allotment) Order, 1968. On 15.9.1997, an application was made to the Election Commission in terms of para 16 of the above Order that the above mentioned three parties had joined together on 11.9.1997 to form a new party by the name of 'United Democratic Party' and it was requested that the symbol 'Drum' may be reserved for the new party. Whereas, no voice of dissent was heard from any one in respect of the Hill People Union, certain dissenting notes were received by the Commission in respect of the other two parties in regard to their merger to form the United Democratic Party. Particularly, the Hill State People's Democratic Party seemed to have split on the merger issue into two factions. At the hearing held by the Commission on 11.12.1997, the representatives of Hill People Union, and Public Demands Implementation Convention submitted that there was no dispute in regard to merger of these two parties to form the United Democratic Party. But a dispute was raised in regard to the merger of the Hill State People's Democratic Party, as one of the splinter groups of that party contended that they continued to exist as a separate party.

On the basis of the records furnished and the submissions made by the representatives of the parties, the Commission decided that only the Hill People Union and Public Demands Implementation Convention had joined together to form the United Democratic Party, and that the Hill State People's Democratic Party continued to exist and function as a separate party. As a result, the United Democratic Party was recognised as a State party and the symbol 'Drum' was reserved for it, and the names of the Hill People Union and Public Demands Implementation Convention were removed from the list of recognised State parties in Meghalaya and their symbols 'Rising Sun' and 'Spade' were frozen in that State. The Hill State People's Democratic Party's recognition as State party continued unaffected.

## **O R D E R**

The question for consideration of the Election Commission is whether the Hill People Union, Public Demands Implementation Convention and Hill State People's Democratic Party, all recognised State parties in the State of Meghalaya, have merged together to form a new party by the name of the United Democratic Party.

Formation of United Democratic Party by the Merger of Hill People Union, Public Demands  
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2. The above question has arisen on the basis of an application dated 15.9.1997 filed in terms of para 16 of the Election Symbols (Reservation and Allotment) Order, 1968, (hereinafter referred to as the `Symbols Order'), by Shri H.A.D. Sawian, claiming to be the General Secretary of the said United Democratic Party. It was stated in that application that the Hill People Union, Public Demands Implementation Convention and Hill State People's Democratic Party, which all are recognised State parties in the State of Meghalaya and for whom the symbols `Rising Sun', 'Spade' and 'Lion' are respectively reserved under the Symbols Order, had merged together and formed a new party by the name of the United Democratic Party, in their joint meeting held on 11th September, 1997 at Shillong. The office bearers of Central Executive Committee of the said new party were also elected at the said meeting. Shri Sawian also submitted authenticated copy of the resolution adopted by the joint meeting of the three parties, along with the individual resolutions adopted by the three parties at their party conventions, and the text of the constitution as adopted by the new party. Simultaneously, the above mentioned three parties also sent authenticated copies of the resolutions passed by those parties and record of proceedings of the conventions where those resolutions were passed to pave way for the merger of those parties to form the United Democratic Party. It was requested that the symbol of `Drum' may be reserved for the new United Democratic Party.

3. Whereas, no voice of dissent was heard from any one in respect of the Hill People Union (HPU), certain dissenting notes were received by the Commission from a few office bearers of the Public Demands Implementation Convention (PDIC), and Hill State People's Democratic Party (HSPDP) in regard to their proposed merger to form the United Democratic Party. Particularly, the HSPDP seemed to have split on the merger issue into two factions. The Commission, therefore, decided to hear all the parties concerned before taking any decision in the matter.

4. Accordingly, the matter was heard by the full Commission on 11.12.1997, where the representatives of all the above mentioned parties, including the representatives of the anti-merger and pro-merger factions of the HSPDP, were present. They all made their detailed oral submissions. Significantly, all the learned counsels and representatives present on behalf of the HPU and PDIC submitted that there was no dispute with regard to the merger of these two parties to form the UDP. A dispute was raised, at the hearing, only in regard to the merger of HSPDP with the other two parties to form the UDP. It was contended on behalf of anti-merger group of HSPDP that it continued to exist as a separate party and that it had not

been dissolved to form the UDP by merging with the other two parties.

5. Before examining the matter further, it would be apt to take note of the principle laid down by the Supreme Court relating to merger of political parties in the case of All Party Hill Leaders' Conference Vs. Capt. W.A. Sangma (AIR 1977 SC 2155), as follows :-

"49. ....It is submitted on behalf of the respondents that the Conference of these delegates is authorised to take decisions on 'any issue'. Assuming that is so, such authority in absence of anything more cannot authorise a Conference of the delegates to write off the organisation or to sign its death warrant. "Any issue" on which decision may normally be taken by the Conference must relate to live matters of a living organ and not to its death wish. Without the nexus with the generality of membership decisions will derive no force or vigor and no party or conference can hope to succeed in their plans, efforts or struggle unless backed by the same. There is no evidence authorising the Conference to dissolve itself by merger or otherwise, and so it is not possible to apply the rule of majority only in the Conference for such a decision affecting the entire body as an entity in the absence of a clear mandate from the general membership.....

53. The Commission fell into an error in holding that the Conference of the APHLC was the general body even to take a decision about its dissolution by a majority vote. The matter would have been absolutely different if in the general body of all members from different areas or their representatives for the purpose, assembled to take a decision about the dissolution of the party had reached a decision by majority. This has not happened in this case. At best the decision of the Conference on November 16, 1976 was only a step in that direction and could not be held as final until it was ratified by the general membership.....

55. It is not disputed that the APHLC with 40 members still claiming to continue its reserved symbol answers the test laid down in the Commission's directions for being recognised as a State political party under paragraph 6 of the Symbols Order. They had, on the date of entertainment of the dispute by the Commission, still the requisite membership fulfilling the test for recognition as a State political party. The

Commission was, therefore, required to follow the provisions of the directions which it has laid down in the Symbols Order when the question of derecognition of a party was raised before it. It is not a dispute between two factions of the same party, each claiming to be the party so that the Commission has to allow the symbol to one of them. The claim of the respondents before the Commission was that the APHLC had ceased to function as a recognised political party in the State and Captain Sangma's group having merged with the INC requesting the Commission to scrap the APHLC out of existence with its reserved symbol so that the APHLC would be effaced from the political arena. The Commission was entirely wrong in its decision in view of its own directions embodied in the Symbols Order. The Commission could not be reasonably satisfied on the materials before it that under paragraph 6 read with paragraph 7 of the Symbols Order the APHLC had ceased to be a recognised political party in the State. Even by application of the directions which it has set out in the Symbols Order, the Commission's decision is absolutely untenable.

56. Even after a major chunk of the APHLC led by Captain Sangma had joined the INC, if those who still continued under the banner of the APHLC flag and symbol claimed to continue as APHLC and the directions in the Symbols Order did not authorise derecognition of the APHLC as a body represented by the remainder, as we have found, no case is made out for any interference by the Commission with regard to the reserved symbol. Thus the APHLC, as a recognised State political party in Meghalaya, stays and is entitled to continue with their reserved symbol "Flower".

6. The Commission has carefully considered the oral submissions made by the learned counsel and representative of the parties concerned, in the light of the above principle as laid down by the Supreme Court. The Commission has also perused and examined the documents furnished by these parties, which are relevant to the present proceedings. On such examination and consideration, the position which emerges in regard to the three parties is as follows.

#### **Hill People Union**

7. The party has submitted authenticated copies of the resolution, record of proceedings and attendance register of the meeting of the Special

General Council of the party held on 27.6.1997, at which it was unanimously resolved to merge with PDIC and HSPDP to form UDP. Special General Council was specifically called for the above purpose and consists of all members of Central Executive Committee, Presidents and Secretaries of all circle units, and members of respective District Branches. This resolution was infact re-affirmation of the party's earlier resolutions passed in 1995 and 1996, agreeing in principle to the unity of the above mentioned parties. There is no voice of dissent whatsoever in the party about the proposed merger move. All the 10 members of the party in the Meghalaya Legislative Assembly have joined the United Democratic Party.

8. Thus, the Commission is satisfied, on the materials placed before it, that the Hill People Union has validly decided to merge with the other parties to form the United Democratic Party.

#### **Public Demands Implementation Convention**

9. This party has also furnished authenticated copies of the resolution, record of proceedings and attendance sheets of the meetings of the Central Executive Committee and Special Convention of the party held on 2nd July, 1997 and 22nd July, 1997 respectively, where the decision about the merger was taken. However, a fax message was received on 8th October, 1997 from one Shri Shining Star Lyngwa, claiming to be the Assistant General Secretary, and one Smt. Phira Rani, an ordinary member, stating that they have not agreed to dissolve the party and that a detailed letter would follow. These two persons then sent a letter, signed by five persons who claimed to be the oldest members of the party, stating therein that in the meeting held on 22nd July, 1997 there was no intention as to the dissolution or merger of the party with other parties. No documentary evidence was, however, produced in support of their claim. On the other hand, two of these signatories, S/Shri Shining Star Lyngwa and Horel Mawthoh, had attended the meeting on 22nd July, 1997 where merger issue was unanimously decided, as per records produced by the pro-merger group. These persons kept quiet up to 7th October, 1997 and then chose to write to the Commission. Apparently this shows that it was an after-thought on the part of these persons. Significantly, when the Commission decided to give personal hearing to both the groups of the party and they were asked to present their case before the Commission on 11.12.1997. Shri Shining Star Lyngwa sent a letter informing therein that in the party meeting held on 2.12.1997 under the chairmanship of Shri M. Mukhim, both the groups have reached an amicable settlement and that the faction led by Shri Lyngwa has agreed to the total amalgamation of PDIC with UDP. Shri Lyngwa also requested to withdraw his petition filed before the Commission.

10. As per the constitution of the party, the highest authority of the party is the Party Convention and all residual powers of the party are vested in the Convention. Since the decision to join together with the other two parties was taken by the Party Convention specially convened for the purpose, the resolution submitted by the party to this effect is in order.

11. Therefore, in the case of PDIC also, the Commission is satisfied that the party has validly merged with the HPU to form UDP.

### **Hill State People's Democratic Party**

12. In so far as the present party is concerned, from the very beginning, there appears to have been a dispute in the rank and file of the party on the merger issue. The party has four members in the Meghalaya Legislative Assembly, and of them, two members, namely, Shri E.K.Mawlong and Shri C. Lyngdoh, are supporting the merger move, whereas the other two, namely, Shri H.S. Lyngdoh and Shri T. Lyngdoh, are opposed to that move. In the hearing held on 11.12.1997, the learned counsel for the anti-merger group submitted that the party held its annual general conference on 20.8.1997 to hold elections of its office bearers, but the elections could not be completed because of the stalemate. It was contended that no decision, with regard to the merger of the party with the other parties or its dissolution to form the UDP, was taken at that general conference. He further submitted that the Central Executive Committee of the party decided in its meeting on 2.9.1997 that the party would maintain its separate identity. He further stated that the party subsequently held another convention of general council on 26.9.1997, which was attended by 221 out of 261 general council members, where the decision of the party to maintain its separate identity was reconfirmed. He also claimed that the party was represented in all the seven Autonomous District Councils in Meghalaya and all the members representing the party in those Councils were maintaining their separate identity as members of the party.

13. The learned counsel of the pro-merger group did not dispute the fact that two members of the party were still continuing as members of HSPDP in the Meghalaya Legislative Assembly and maintaining separate identity. He though, claimed that the members representing the party in two of the seven Autonomous District Councils were with his group and had joined the UDP, but by necessary implication conceded the fact that the party members in the remaining five Autonomous District Councils had not joined the UDP and were still maintaining their separate identity as HSPDP members.

14. In the above scenario that merges, it cannot be said that the HSPDP has merged wholly with the HPU and PDIC to form the UDP. Even this conclusion cannot be drawn that the general membership of the party, has decided, by majority vote, to merge with other parties and dissolve itself. Consequently, the HSPDP still continues to exist and function as a separate party.

15. Having regard to the above position in respect of all the three parties, namely, HPU, PDIC and HSPDP, the conclusions which can be drawn by the Commission are that :-

- (i) the Hill People Union and Public Demands Implementation Convention have wholly merged to form the United Democratic Party and have, as a result, ceased to exist as separate parties;
- (ii) the Hill State Peoples' Democratic Party has not merged with the above mentioned two parties to form the United Democratic Party, though some of its members have joined the new party, but in their individual capacities. Consequently, that party still continues to exist and function as a separate party under its original name, namely, Hill State Peoples' Democratic Party.

16. In view of the above, the Election Commission, hereby directs, under para 16 of Election Symbols (Reservation and Allotment) Order, 1968, and all other powers enabling it in this behalf, as follows:-

- (i) The names of Hill People Union and Public Demands Implementation Convention shall be removed from the list of recognised State parties in the State of Meghalaya, as they have ceased to exist as separate parties and have merged together to form the United Democratic Party. The symbols 'Rising Sun' and 'Spade' reserved respectively for them shall also be removed from the said list.
- (ii) The United Democratic Party, which has been formed by the merger of the Hill People Union and Public Demands Implementation Convention, which were previously recognised as State parties in Meghalaya, shall hereafter be recognised as a State party in Meghalaya and the symbol 'Drum' shall be reserved for this new party in that State.

Formation of United Democratic Party by the Merger of Hill People Union, Public Demands  
Implementation Convention and Hill State People's Democratic Party

- (iii) The Hill State Peoples' Democratic Party and its reserved symbol 'Lion' shall continue to be included in the list of recognised State parties in Meghalaya.

**ORDERED ACCORDINGLY**

**Sd/-**  
**(G.V.G. Krishnamurthy)**  
Election Commissioner

**Sd/-**  
**(Dr. M.S. Gill)**  
Chief Election  
Commissioner

**Sd/-**  
**(J.M. Lyngdoh)**  
Election  
Commissioner



# **ELECTION COMMISSION OF INDIA**

## **CORAM:**

<b>Hon'ble</b> <b>Sh. G.V.G. Krishnamurty</b> Election Commissioner	<b>Hon'ble</b> <b>Dr. M.S. Gill</b> Chief Election Commissioner	<b>Hon'ble</b> <b>Sh. J.M. Lyngdoh</b> Election Commissioner
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In re: Rashtriya Janata Dal - Application for its Recognition as a National Party

Dated: 19th December, 1997

This case was called for hearing on 11th December, 1997.

## **PRESENT :**

*For Rashtriya Janata Dal*

1. Sh. Jagat Singh, Advocate
2. Sh. Pradeep Maheshwari, Advocate
3. Sh. Ram Deo Bhandari, General Secretary, RJD
4. Sh. Jibon Singh, General Secretary, RJD

*Election Symbols (Reservation and Allotment) Order, 1968 -paras 6,7, 18 - splinter group of a recognised party getting itself registered as a separate party - not entitled for recognition on the basis of past poll performance of its members as candidates of the original party from which it broke away - new policy laid down for uniform application in future - party must contest general election, after its registration, and fulfil prescribed criteria under para 6 at such general election for recognition - allotment of a common symbol for the newly registered party, as one time exception, in view of new policy being laid down for the first time.*

## **SUMMARY OF THE CASE**

The Rashtriya Janata Dal (RJD) was born out of a split in the Janata Dal, a National party, and it got itself registered as a separate party under Section 29A of the Representation of the People Act, 1951, on 8.8.1997. At the time of its formation, the party had 16 members in the then existing Lok Sabha (which was subsequently dissolved on 4.12.1997), 8 members in the Rajya Sabha, and 155 members in the Bihar Legislative Assembly. On 20.10.1997, RJD prayed to the Election Commission for recognition as a National party and reservation of the symbol 'Hurricane Lamp' for it, under the Election Symbols (Reservation and Allotment) Order, 1968. The party

contended that on the basis of the strength of its Legislature Wing, the party fulfilled the conditions for recognition under the Symbols Orders in the States of Bihar, J&K, Manipur and NCT of Delhi.

Examining the above prayer of RJD, the Election Commission observed that, in the past, it had given recognition to splinter groups of some of the parties, whereas the splinter groups of some other parties had been denied such recognition, and that there was no uniformity in these past decisions of the Commission. The Commission further observed that the grant of recognition to splinter groups was not in accordance with the scheme of the Symbols Order, nor with the express provisions of that Order. The Symbols Order envisages that a political party, howsoever formed, should contest a general election either to the House of the People or to a State Legislative Assembly, after its registration, and then show the minimum poll performance as laid down in that Order for recognition as a National or State party. The Commission also observed that the past performance of members forming the splinter groups was not relevant under para 6(3) of the Symbols Order and such members should not be allowed to carry with them, wherever they go, the mandate given to them at the previous elections, as it was not their individual performance but the performance of the parties which had set them up at the previous elections. The Commission, therefore, laid down a very significant policy to be followed in future in all such cases that the recognition to a splinter group, registered as a new party, will be granted only on the basis of its own poll performance at the general elections which it contests after the registration and not on the basis of poll performance of its members at the previous elections as candidates of some other parties.

However, as this was the first occasion that such a policy decision had been taken by the Commission, it allowed to the Rashtriya Janata Party, as a special case and one time exception, the facility of having a common symbol "Hurricane Lamp" for its candidates in all States and UTs at the then ensuing general elections to the House of the People and certain Legislative Assemblies. But the party was not granted formal recognition, either as a National party or as a State party in any State.

## **ORDER**

This is an application of the Rashtriya Janata Dal, a registered -unrecognised political party, praying for its recognition as a National party and reservation of an exclusive symbol for it, under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as the "Symbols Order")

2. The Rashtriya Janata Dal (RJD, for short) got itself registered with the Election Commission as a political party under Section 29A of the Representation of the People Act, 1951, on 08.08.1997. In its application for registration, the party stated that it was formed on 05.07.1997, but there was no indication therein as to how it came to be formed. However, that party stated in its application that it had, among its members, 16 MPs belonging to the then existing Lok Sabha (since dissolved on 04.12.1997), 8 MPs belonging to Rajya Sabha and 135 MLAs of Bihar.

3. On 21.10.1997, the party made the present application. In this application, the party stated, for the first time, that it was formed as a result of split in the Janata Dal, a recognised National party, as the real Janata Dal activists decided, at a National convention on 05.07.97 at New Delhi, to split and form a new political party in the name of Rashtriya Janata Dal for upholding the principles of social justice, communal harmony and secularism and to strengthen the unity and integrity of the country. The party prayed that it may be granted recognition as a National party and the symbol "Hurricane Lamp" may be reserved for it, as, the party contended, it fulfilled the requirements of paragraph 6 of the Symbols Order for recognition in the States of Bihar, J & K and Manipur and the National Capital Territory of Delhi. In support of the above prayer, the party submitted individual affidavits of 16 members of the then existing Lok Sabha, 127 MLAs of Bihar and of 21, 15 and 19 defeated candidates at the last general elections to the Legislative Assemblies of Jammu & Kashmir, Manipur and NCT of Delhi respectively, who all had contested those elections on the ticket of Janata Dal, from whom the party claimed to have split.

4. It was also mentioned in that application that the Rashtriya Janata Dal, being a break-away group of the Janata Dal, had been recognised as a separate party by the Speakers of the Lok Sabha and Bihar Legislative Assembly and the Chairmen of the Rajya Sabha and Bihar Legislative Council.

5. The Commission decided to afford the party an opportunity of being heard, before taking a decision on its above prayer. Accordingly, the matter was heard by the full Commission on 11.12.97, where the representatives of the party were heard at length. They mainly reiterated the submissions made in their aforesaid application dated 21.10.97.

6. Before examining the above prayer of the party for recognition as a National party, it would be appropriate to have a look at the provisions governing the grant of recognition to parties, either as a National party or State party, in the Symbols Order. Relevant provisions are contained in

paras 6 and 7 of that Order. Those paras (as existing before recent amendments thereto which will have prospective effect) are reproduced below:-

"6. Classification of political parties -

(1) For the purpose of this Order and for such other purposes as the Commission may specify as and when necessity therefor arises, political parties are either recognised political parties or unrecognised political parties.

(2) A political party shall be treated as a recognised political party in a State, if and only if either the conditions specified in clause (A) are, or the condition specified in clause (B) is, fulfilled by that party and not otherwise, that is to say -

(A) that such party -

(a) has been engaged in political activity for a continuous period of five years: and

(b) has, at the general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning returned -

either (i) at least one member to the House of the People for every twenty five members of that House or any fraction of that number elected from that State;

or (ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;

(B) that the total number of valid votes by all the contesting candidates set up by such party at the general election in the State to the House of the People, or as the case may be, to the Legislative Assembly for the time being in existence and functioning (excluding the valid votes of each such contesting candidate in a constituency as has not been elected and has not polled at least one-twelfth of the total number of valid votes polled by all the contesting candidates in that constituency) is not less than four per cent of the total number of valid votes polled by all the contesting candidates at such general election in that State (including the valid votes of those contesting candidates who have forfeited their deposits).

(3) For the removal of doubts it is hereby declared that the condition in clause (A)(b) of sub-paragraph (2) shall not be deemed to

have been fulfilled by a political party if a member of the House of the People or the Legislative Assembly of the State becomes a member of that political party after his election to that House or, as the case may be, that Assembly.

7. Two categories of recognised political parties -

(1) If a political party is treated as a recognised political party in accordance with paragraph 6 in four or more States, it shall be known as, and shall have and enjoy the status of, a "National Party" throughout the whole of India: and if a political party is treated as a recognized political party in accordance with that paragraph in less than four States, it shall be known as, and shall have and enjoy the status of, a "State Party" in the State or States in which it is a recognized political party.

(2) Notwithstanding anything contained in sub-paragraph (1), every political party which, immediately before the 15th day of June, 1989, is a National Party shall, on its registration under Section 29A of the Representation of the People Act, 1951, be a National Party and shall, subject to the other provisions of this Order, continue to be so until it ceases to be a National party on the result of any general election held after the said date.

(3) Notwithstanding anything contained in sub-paragraph (1), every political party which, immediately before the 15th day of June, 1989, is a State Party in a State, shall, on its registration under Section 29A of the Representation of the People Act, 1951, be a State party in that State and shall, subject to the other provisions of this Order, continue to be so until it ceases to be a State party in that State on the result of any general election held after the said date".

7. A closer look at the above provisions in the Symbols Order would show that the condition precedent for recognition of a political party, as laid down in the above quoted paras 6 and 7, is that the party seeking recognition should itself contest a general election, either to the House of the People or a State Legislative Assembly, and should show the minimum poll performance as measured in terms of para 6 (2) of the Symbols Order. The political party is defined in para 2 (1) (h) of the Symbols Order to mean an association or body of individual citizens of India registered with the Commission as a political party under Section 29A of the Representation of the People Act, 1951. In other words, a political party should first get registered with the Commission under the said Section 29A of the Representation of the People Act, 1951, then contest a general election, either to the House of the People or a State Legislative Assembly, and show the

aforementioned minimum poll performance, before it can make a claim for recognition either as a State party or a National party under the Symbols Order.

8. Obviously, this condition precedent is not satisfied by the present applicant party. In fairness to the learned representatives of the party who appeared before the Commission on 11.12.97, they straightaway conceded this point, as, it is the party's own case, that it was formed on 05.07.97 and was registered on 08.08.97 and it has not contested any general election after its formation and registration.

9. They also took due note of the provisions of para 6(3) of the Symbols Order, as reproduced above, which expressly debar a political party from getting benefit of the poll performance of any Members of Parliament or State Legislatures who join that party but who, at the time of their election, were members of another party and were returned on the ticket of that earlier party.

10. Confronted with these legal hurdles coming in the way of their recognition as a State or National party under the provisions of paras 6 and 7 of the Symbols Order, and having realized that their claim for recognition as a National party under the said paras could not be sustained as a matter of right, the learned representatives of the party submitted that the Commission had granted recognition to some other parties, like, All India Indira Congress (Tiwari), Tamil Maanila Congress, etc. which were also the break-away groups of another National party, Indian National Congress, and prayed that the present applicant party may also be granted recognition on the same principle or, alternatively, it may be granted a common symbol for contesting the coming elections to the House of the People.

11. The Commission has carefully examined the above submissions of the learned representatives of the applicant party. It is true that the Commission has, in the past, granted recognition to certain break-away or splinter groups of the recognised National and State parties as separate National or State parties, by giving such break away or splinter groups the benefit of the past poll performance of their members who contested elections on the ticket of their original parties from which they had splintered off, like, All India Indira Congress (Tiwari), Tamil Maanila Congress, Samata Party, Janata Dal (Samajwadi), Indian Congress (Socialist). It is, however also true that in the past the Commission has not granted this very benefit and recognition to several political parties on the ground that those parties had not fulfilled the conditions precedent for recognition as laid down in paras 6 and 7 of the Symbols Order. For instance, in the disputes relating

to the All India Anna Dravida Munnetra Kazhagam, Pattali Makkal Katchi, Janata Dal (Ajit), Jharkhand Mukti Morcha, etc., the splinter groups were not given any recognition. The Janata Dal (Ajit) had made a specific plea, as in the present case, that the party had a number of Lok Sabha Members on the basis of which the party fulfilled the criteria for recognition. The prayer was not granted as it was held that the party had not fulfilled the said criteria after its formation and registration, like the present case. Likewise, the Samajwadi Party, which was formed as a break away group of the Janata Party, was refused recognition by strictly applying the provisions of paragraphs 6 (2) and 6 (3) of the Symbols Order, though that party also had a large number of MLAs of Uttar Pradesh in its fold.

12. The Commission has now, again, studied carefully all such relevant cases decided by it in the past. Such study has been an agonizing experience, because, unfortunately, there has been no consistency and uniformity in the approach and application of law, even in the cases falling more or less in the same pattern. In some cases, the provisions of the above referred paras 6(2) and 6(3) of the Symbols Order have been applied with full vigour and whereas, in others, different and divergent approaches seem to have been made to circumvent the legal obstacles created by those provisions, even though the material factors in the latter cases were no different from those of the former. We have now given our due consideration to the whole issue and the inconsistent and conflicting stand that the Commission has taken on this issue in the past and have decided to lay down a uniform policy to be followed hereafter in all such cases, which would not only remove uncertainties in the minds of political parties as to the fate of splinter or break-away groups, but also dispel any misgivings that may have arisen in their minds because of the inconsistent and contradictory views taken by the Commission in such cases in the past. On such consideration of the matter, we see no reason as to why the provisions of paras 6(2) and 6(3) of the Symbols Order should be not applied strictly and why the Commission should make any dilution thereof or deviation or departure therefrom in any case, specially when those provisions have been made by the Commission itself and given them a mandatory effect. When the Commission has expressly laid down a principle in those paras that the benefit of past poll performance of an MP or an MLA would not be available to a party which such MP or MLA joins after his election, there is no reason or justification for giving a go-bye to such wholesome and laudatory principles, embodied in the Symbols Order for bringing sanity and sanctity to the functioning of the body politic.

13. The above principle is based on highly important considera-

tions. The Constitution of India has adopted, for the governance of the country, democracy and parliamentary system of government. In any democracy, political parties play a dominant and vital role. It is the sacred and solemn duty of the Election Commission, which has been entrusted with the task of holding free and fair elections to Parliament and State Legislatures under the Constitution of India, to see and ensure that a healthy political system prevails and flourishes in the country. In a healthy political system, the political parties approach electors, who are the ultimate rulers, and woo them, with their manifestos, policies and programmes. The electors express their choice for such parties, and give them the mandate to represent them, by voting for them in preference to the others. It is on the basis of such mandate manifested in the form of votes that the political parties gain recognition as State and National parties under the Symbols Order. In other words, it is the trust bestowed by electors in political parties which gives them recognition as National or State parties. If a political party having gained recognition on the basis of such trust and mandate, splits - very often, not on any ideological differences among its members but because of the personal aspirations or clash of personal egos of their party leaders or managers - it may virtually amount to betrayal of the faith and trust reposed by the electorate in it. Further, the electorate has given the party a public mandate, in the electoral field, which has earned it recognition under the Symbols Order, and not a private mandate to the individual candidates set up by it, to be appropriated (or misappropriated !) by them and carried by them, as their individual asset, wherever or to whichever party or splinter group they go-over by deserting their parent organisation. Instant recognition of such splinter or break-away groups of the well established and organised political parties by the Election Commission may be seen by the electors as encouraging such splits and putting a seal of approval on such undesirable activities which not only disturb, but some times even destroy, the democratic fabric of the political system and the stability of the governments at the Centre and in the States. The Commission would not like to be a party to such acts whereby political defections for private ends or gains become a national sport. Viewed from this highly significant angle, the splinter or break-away groups of the recognised political parties should not, straightaway or automatically, be granted recognition by the Commission, merely on the ground that such groups have certain number of MPs or MLAs in their fold, sufficient in terms of para 6 (2) of the Symbols Order. What would have been the electoral fate of such MPs or MLAs, had they contested elections, not as a unified party, but as splinter groups, is anybody's guess.

14. In the next place, recognition of such splinter or break-away groups would mean proliferation of recognised parties, putting considerable financial burden on the exchequer, much to the dismay and dislike of the general public and the electorate. To take a practical example, in a small State with a sixty-member Legislative Assembly, only two MLAs are enough for recognition as a State party in terms of para 6(2) of the Symbols Order. A recognised National or State party, say, with 20 MLAs in the Assembly can, theoretically speaking, split, and further split, into ten factions, each enjoying the support of two MLAs, and each such faction may claim recognition as a separate State party. Can any right thinking authority or person countenance such an absurd proposition, which, undoubtedly, would be the logical end result, once the prayer of the present applicant party is accepted as legally tenable under paras 6 and 7 of the Symbols Order? Recognition of every political party costs heavily to the exchequer, because a recognised political party gets several concessions, at government cost, like free telecasts/broadcasts on TV/AIR during elections, free supply of copies of electoral rolls, government accommodation for its office at nominal rent, etc., etc.

15. Therefore, the Commission has now, unanimously, decided, as a policy matter, that the provisions of paras 6 and 7 of the Symbols Order would be strictly applied hereafter, and a political party which is formed as a result of split in a recognised National or State party, would not be straightaway recognised merely on the ground that it is a break-away or splinter group of a recognised party and that such group enjoys the support of certain MPs and MLAs. Such new party shall hereafter have to get itself registered under Section 29A of the Representation of the People Act, 1951, contest a general election on its own manifesto, policies and programmes and obtain a mandate from the electorate for its recognition in terms of paragraphs 6 and 7 of the Symbols Order.

16. Having regard to such policy the prayer of the present applicant party for recognition as a National party under paras 6 and 7 of the Symbols Order cannot be maintained or sustained. Accordingly, that prayer is hereby rejected.

17. Though we have rejected the prayer of the applicant party for grant of recognition to it as a National party, which would have entitled it to the reservation of an exclusive election symbol under the Symbols Order, the alternative prayer of the party to allow it to have a common symbol on the basis of which it may contest the coming general election to the House of the People deserves to be considered sympathetically. It cannot be disputed

that the present applicant party has a substantial following, which consists of a large number of sitting and former MPs and MLAs of Bihar. The Speakers of the House of the People and Bihar Legislative Assembly and Chairmen of the Council of States and Bihar Legislative Council have also recognised the party as a separate party, in their Houses, having regard to the size of their Legislature groups in those Houses under the Tenth Schedule to the Constitution of India. Asking such a party to go to the electorates of different constituencies with different election symbols would not only be unfair to the party, but also to those electorates, as that would cause confusion in their minds. This may defeat the very purpose of the symbols system, evolved by the Commission since the time of the first general elections in the country after it achieved independence 50 years ago. The symbols system in elections was adopted because an overwhelmingly large percentage of electors was then illiterate and still continues to be so. The symbols system helps electors in identifying, with ease and without confusion, the political party of their choice. Therefore, in the interest of free and fair elections and the healthy growth of democracy where the electors exercise their franchise without confusion, it would be desirable that a political party of the size and proportion as that of the present applicant party is permitted to approach the electorates in different constituencies with a common symbol.

18. It is true that unrecognised political parties are not normally allotted any common symbol for contesting elections. But all unrecognised political parties cannot claim to be treated at par or on the same footing. The Symbols Order already provides for certain distinctions being drawn, even amongst the unrecognised parties, in the matter of allotment of symbols to the candidates set-up by such parties. Para 12 of the Symbols Order which governs the allotment of symbols to candidates set-up by unrecognised parties already provides for a preferential treatment being given to the candidates of unrecognised political parties, which were previously recognised as State or National parties, or if such candidates are sitting MPs or MLAs. Moreover, an unrecognised political party, which does not have any MPs or MLAs in its fold, cannot claim validly a parity with another unrecognised political party which has, among its members, a large number of MPs or MLAs who, but for the above mentioned technicality, answer the test laid down in the Symbols Order for recognition under paras 6 and 7 of the Symbols Order. The distinction sought to be drawn by the Commission in favour of the present applicant party can also be justified on the ground that the party is already recognised by the other highly important Constitutional authorities, namely, the Speakers of the House of the People and Bihar Legislative Assembly and the Chairmen of the Council of States and Bihar Legislative Council.

19. The above apart, the present party is, quite significantly, the ruling party in the State of Bihar.

20. Having regard to all the above material considerations and peculiar facts and circumstances of the present case, and particularly the fact that general election to constitute the 12th Lok Sabha is on the anvil and that the Commission has, in the past, in respect of certain political groups, not applied the provisions of paras 6(2) and 6(3) of the Symbols Order with full vigour and has given them recognition, the Commission feels that it would not be fair, at this juncture, to make a total and complete departure from the past, and leave the present applicant party to fight ensuing elections on different symbols in different constituencies. Therefore, the Commission is, unanimously, of the view that, despite the rejection of the applicant party's prayer for recognition as a National party, the party may be given the limited concession of contesting forthcoming general election to the House of the People (for constituting the 12th Lok Sabha) on a common symbol in the State of Bihar. Accordingly, the Commission hereby directs that the symbol "Hurricane Lamp" will be allotted to the candidates duly set-up by the present applicant party, after fulfilling the requirements of para 13 of the Symbols Order in respect of each such candidate, in any Parliamentary Constituency in the State of Bihar. In order to remove any confusion in the minds of electors, the said symbol "Hurricane Lamp" will not be allotted to any other candidate in the State of Bihar, even in those constituencies where the present applicant party does not set up any candidate. Such limited concession will also be available to the party, if it duly sets up any candidate in any other Parliamentary or Assembly Constituency in any other State/Union Territory, where general elections or bye-elections are held simultaneously with the ensuing general election to the House of the People. The party will have to give intimation of all such Parliamentary and Assembly constituencies to the Commission, and to the Chief Electoral Officer of the State concerned, within three days after the date of issue of the notification calling the election.

21. The Commission would, however, like to make it clear to the present applicant party that the aforementioned limited concession of allotment of common symbol "Hurricane Lamp" will be available to its candidates only for the purposes of the above mentioned ensuing elections to the House of the People and State Legislative Assemblies, and not at any other elections to be held thereafter. The question of the present applicant party's recognition and allotment of symbol would be dependent upon its poll performance, at these ensuing general elections, to be measured in terms of paras 6 and 7 of the Symbols Order.

22. For the removal of doubt, the Commission would also like to clarify that the above directions are being issued by the Commission, in exercise of its plenary powers of superintendence, direction and control, inter alia, of all elections to Parliament and State Legislatures conferred on it by Article 324 of the Constitution read with para 18 of the Symbols Order. That para expressly empowers the Commission to issue instructions and directions, inter alia, for the removal of any doubt or difficulty which may arise in relation to the implementation of any provisions of that Order and in relation to any matter with respect to the allotment of symbols for which that Order makes no provision or makes insufficient provision and provision is in the opinion of the Commission necessary for smooth and orderly conduct of elections. The Symbols Order has been held by the Supreme Court as a compendium of the Commission's instructions and directions. [Sadiq Ali Vs. Election Commission and Others - AIR 1972 SC 187].

**ORDERED ACCORDINGLY**

*Sd/-*  
**(G.V.G. Krishnamurthy)**  
Election Commissioner

*Sd/-*  
**(Dr. M.S. Gill)**  
Chief Election  
Commissioner

*Sd/-*  
**(J.M. Lyngdoh)**  
Election Commissioner

# **ELECTION COMMISSION OF INDIA**

**CORAM :**

<b>Hon'ble</b> <b>Sh. G.V.G. Krishnamurty</b> Election Commissioner	<b>Hon'ble</b> <b>Dr. M.S. Gill</b> Chief Election Commissioner	<b>Hon'ble</b> <b>Sh. J.M. Lyngdoh</b> Election Commissioner
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In re: West Bengal Trinamool Congress - Application for its Recognition as a State Party in West Bengal

Dated: 30th December, 1997

*Election Symbols (Reservation and Allotment) Order, 1968 - paras 6,7, 18 - splinter group of a recognised party getting itself registered as a separate party - not entitled for recognition on the basis of past poll performance of its members as candidates of the original party from which it broke away - new policy laid down for uniform application in future - party must contest general election, after its registration, and fulfil prescribed criteria under para 6 at such general election for recognition - allotment of a common symbol for the newly registered party, as one time exception, in view of new policy being laid down for the first time-party allowed to propose a new symbol and give its design.*

## **SUMMARY OF THE CASE**

The West Bengal Trinamool Congress was a splinter group of the Indian National Congress. It was registered as a separate political party on 26.12.97 under Section 29A of the Representation of the People Act, 1951. After its registration, the party applied to the Election Commission for recognition as a State party in West Bengal under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968, on the plea that it had amongst its members two members of the 11th Lok Sabha which was dissolved on 4.12.1997.

The Commission did not accept the prayer of the party for its recognition as a State party, for the reasons given by the Commission in its order dated 19.12.1997 in the case of the Rashtriya Janata Dal (RJD). On the analogy of RJD, this party was also granted the facility of a common symbol for its candidates in West Bengal at the then ensuing general election to the House of the People, as a special case. At the request of the party, the Commission approved a new symbol "Flowers and Grass" of the design submitted by the party for allotment to its candidates.

*{Note: Apart from the West Bengal Trinamool Congress, Election Commission extended similar facility of a common symbol to 6 (six) other parties also which claimed to be splinter groups of certain recognised National or State parties, namely (i) Himachal Vikas Congress, (ii) Rashtriya Janata Dal, (iii) Indian National Lok Dal, (iv) Biju Janata Dal, (v) All India Rashtriya Janata Party, and (vi) Akhil Bhartiya Loktantrik Congress Party.}*

## **ORDER**

This is an application of the West Bengal Trinamool Congress, a registered-unrecognised political party, praying for its recognition as a State party in West Bengal and reservation of an exclusive symbol for it, under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as “Symbols Order”).

2. The West Bengal Trinamool Congress got itself registered with the Election Commission as a political party under Section 29A of the Representation of the People Act, 1951, on 26.12.1997. In its application for registration, the party stated that it was formed on 28.11.1997, but there was no indication therein as to how it came to be formed. Subsequently, the party submitted two individual affidavits of Ms. Mamata Banerjee and Shri Ajit Kumar Panja, Members of the 11th Lok Sabha, (since dissolved on 4.12.1997), who stated that they had joined the present applicant party.

3. On 26.12.1997, the party made the present application. In this application, the party prayed that it may be granted recognition as a State party in West Bengal, as, the party contended, it fulfilled the requirements of paragraph 6 of the Symbols Order for recognition in the said State, in support of the above prayer, the party relied on the aforesaid two individual affidavits of the former members of the last (11th) Lok Sabha, who had contested the last general election to that House on the ticket of the Indian National Congress, a recognised National party.

4. The Commission has recently considered similar requests of two other parties, namely, Rashtriya Janata Dal and All India Rashtriya Janata Party, who also claimed to have split from two recognised National parties, Janata Dal and Bharatiya Janata Party, respectively, and claimed recognition as National party and State party in the State of Gujarat on similar grounds. The Commission has, by its detailed orders dated 19.12.1997 in those cases, and for the elaborate reasons stated therein, rejected the prayers of those parties for recognition, as the Commission held that the parties were not entitled to recognition, as a matter of right, under the

provisions of paras 6 and 7 of the Symbols Order, because the parties had not contested any general election after their formation and registration, which was a condition precedent for recognition under those paras.

5. Further, the Commission, after having carefully examined all the relevant provisions of the Symbols Order and having looked into all the past precedents in such cases, has, by its said orders dated 19.12.1997, now, unanimously, decided, as a matter of policy, that the provisions of paras 6 and 7 of the Symbols Order would be strictly applied hereafter, and a political party which is formed as a result of split in a recognised National or State party, would not be straightaway recognised merely on the ground that it is a break-away or splinter group of a recognised party and that such group enjoys the support of certain MPs and MLAs. Such new party shall hereafter have to get itself registered under Section 29A of the Representation of the People Act, 1951, contest a general election on its own manifesto, policies and programmes and obtain a mandate from the electorate for its recognition in terms of paragraphs 6 and 7 of the Symbols Order.

6. Having regard to the above legal position and the above policy, the prayer of the present applicant party for recognition as a State party in West Bengal, under paras 6 and 7 of the Symbols Order cannot be maintained or sustained. Accordingly, that prayer is hereby rejected.

7. In the above referred cases of the Rashtriya Janata Dal and All India Rashtriya Janata Party, though the Commission rejected the prayer of those parties for grant of recognition as National or State party, the Commission, nevertheless, considered sympathetically their alternative prayer to allow them to have a common symbol on the basis of which they may contest the coming general election to the House of the People. The Commission observed that those parties had a substantial following, which consisted of a large number of sitting and former MPs and MLAs, who, but for the technical objection that they had not contested elections on the ticket of those very parties, answered the test laid down in the Symbols Order for recognition under paras 6 and 7 of the Symbols Order. Having regard to all material considerations and peculiar facts and circumstances of those cases, and particularly the fact that the general election to constitute the 12th Lok Sabha is on the anvil and that the Commission has, in the past, in respect of certain political groups, not applied the provisions of paras 6(2) and 6(3) of the Symbols Order with full vigour and given them recognition, the Commission felt that it would not be fair, at this juncture, to make a total and complete departure from the past, and leave those parties to fight ensuing elections on different symbols in different constituencies. Therefore,

the Commission, despite the rejection of the prayer of those parties for recognition as a National or State party, has given them the limited concession of contesting forthcoming general election to the House of the People (for constituting the 12th Lok Sabha) on a common symbol.

8. On the same analogy, the Commission has decided to extend to the present applicant party also, a similar limited concession. allowing it to contest the ensuing general election to the House of the People on a common symbol in the State of West Bengal. The party has given the preference for the following symbols, namely, (1) Two leaves, (2) Flaming Torch, and (3) Grass root (Trinamool). The first two symbols cannot be allotted to the candidates of the present applicant party, as the first symbol is already reserved for certain recognised State parties (like. All India Anna Dravida Munnetra Kazhagam, Tripura Upajati Juba Samiti, Kerala Congress (M), United Goans Democratic Party) and the second symbol is the reserved symbol of a National party (Samata Party). The symbol 'Grass root (Trinamool)', is not included in the list of free symbols, approved by the Commission. Nevertheless, the Commission has acceded to the request of the present applicant party to allot a symbol, outside the list of free symbols, approved by the Commission. The party has furnished six drawings of a symbol, which the party has called as the 'Grass root (Trinamool)'. The Commission has approved the fifth drawing, which shows two flowers and grass. In order to bring conformity between the approved drawing of the symbol and its nomenclature, the Commission has decided that the nomenclature of the symbol shall be "FLOWERS AND GRASS".

9. Accordingly, the Commission hereby directs that the symbol "Flowers and Grass" will be allotted to the candidates duly set-up by the present applicant party, after fulfilling the requirements of para 13 of the Symbols Order in respect of each such candidate, in any Parliamentary Constituency in the State of West Bengal in order to remove any confusion in the minds of electors, the said symbol "Flowers and Grass" will not be allotted to any other candidate in the State of West Bengal even in those constituencies where the present applicant party does not set up any candidate.

10. As in the case of the above referred two parties, the Commission would like to make it clear to the present applicant party also that the aforementioned limited concession of allotment of common symbol "Flowers and Grass" will be available to its candidates only for the purposes of the above mentioned ensuing general election to the House of the People, and not at any other elections to be held thereafter. The question of the present

applicant party's recognition and allotment of symbol would be dependent upon its poll performance, at the above mentioned ensuing general election to the House of the People, to be measured in terms of paras 6 and 7 of the Symbols Order.

11. For the removal of doubt, the Commission would also like to clarify that the above directions are being issued by the Commission, in exercise of its plenary powers of superintendence, direction and control, inter alia, of all elections to Parliament and State Legislatures conferred on it by Article 324 of the Constitution read with para 18 of the Symbols Order. That para expressly empowers the Commission to issue instructions and directions, inter alia, for the removal of any doubt or difficulty which may arise in relation to the implementation of any provisions of that Order and in relation to any matter with respect to the allotment of symbols for which that Order makes no provision or makes insufficient provision and provision is in the opinion of the Commission necessary for smooth and orderly conduct of elections. The Symbols Order has been held by the Supreme Court as a compendium of the Commission's instructions and directions [Sadiq Ali Vs. Election Commission and Others — AIR 1972 SC 187].

**ORDERED ACCORDINGLY**

**Sd/-**  
**(G.V.G. Krishnamurty)**  
Election  
Commissioner

**Sd/-**  
**(Dr. M.S. Gill)**  
Chief Election  
Commissioner

**Sd/-**  
**(J.M. Lyngdoh)**  
Election  
Commissioner



# **ELECTION COMMISSION OF INDIA**

**CORAM :**

**Hon'ble  
Dr. M.S. Gill  
Chief Election  
Commissioner**

**Hon'ble  
Sh. J.M. Lyngdoh  
Election  
Commissioner**

In the matter of : **Shiv Sena - Organisational Elections**

Dated: 30th December, 1997

The case was called for hearing on 24.12.1997 and 30.12.1997

**PRESENT :**

*For Shiv Sena Party*

1. Sh. Adhik Shirodkar, Advocate & M.P.
2. Sh. Subhash Desai, General Secretary
3. Sh. Madhukar Sarpotdar
4. Sh. Satish Pradhan, M.P.
5. Sh. Suresh Prabhu, and
6. Sh. Mohan Rawale

*Representation of the People Act, 1951 - Section 29 A (5) - party giving undertaking in its constitution to follow principles of democracy, but not making provision for periodic organisational elections - party made to amend the constitution and hold periodic organisational elections.*

## **SUMMARY OF THE CASE**

The Shiv Sena is a recognised State party in the State of Maharashtra and the symbol 'Bow & Arrow' is reserved for it under the provisions of the Election Symbols (Reservation and Allotment), Order, 1968. The party was registered under Section 29A of the Representation of the People Act, 1951, on 19.10.1989, on the strength of a provision in its party constitution to the effect that it shall, inter alia, bear true faith and allegiance to the principles of democracy. In 1996, the Election Commission stressed upon all political parties that they must hold their organisational elections, by the end of March, 1997, to ensure inner party democracy, as per their party constitutions and the undertaking given by them under their constitutions to bear true faith and allegiance to the principles of democracy, at the time of their registration. The Shiv Sena, in response to the Commission's communication, stated that their party constitution did not contain any

provision for organisational elections and that all office bearers of the party were to be nominated by the founder and pramukh of the party, Shri Balasaheb Thackeray. The Commission, however, took the view that a recognised political party which enjoyed the facility of exclusive symbol and also other facilities at State cost should have elected office bearers in accordance with the basic premise of democracy, which essentially meant periodic elections. On a notice from the Election Commission, a delegation of the Shiv Sena representatives appeared before the Commission on 24.12.97. The delegation submitted that, in deference to the wishes of the Commission and keeping in view the highest regard that the party holds for the Commission, they had conducted their party elections on 20.12.97, whereby they had elected a Rashtriya Karyakarini consisting of 14 members for a term of 5 years. It was also stated that a sub-committee consisting of 3 members had been set-up for recommending necessary changes or amendments to the party constitution and for framing the rules for the inner party elections. The resolutions passed by the party in this behalf on 20.12.97 showed, however, that Shri Balasaheb Thackeray shall be Shiv Sena Pramukh for life or till the time he desired. The Commission considered this resolution of the party as contradictory to the other resolution electing the office-bearers, including Sh. Thackeray, for 5 years. On 30.12.97, the Shiv Sena delegation again appeared before the Commission and stated that the election of Sh. Balasaheb Thackeray, as President of the party, shall also be for a period of 5 years and not for life. Even a letter to that effect from Sh. Balasaheb Thackeray was produced before the Commission. The Commission considered this to be substantial compliance of its direction to the party to hold organisational elections and granted time up to 30.4.1998 to the party to affect necessary changes in its constitution.

## **ORDER**

The Shiv Sena is registered as a political party with the Election Commission of India under Section 29A of the Representation of the People Act, 1951. The party is also recognised as a State party in the State of Maharashtra and the symbol 'Bow and Arrow' is reserved for it in that State under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968.

2. The party was registered on 19.10.1989 on the strength of Article IV of its constitution to the effect that it shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy and would uphold the sovereignty, unity and integrity of India.

3. The Commission has been stressing upon all parties, particularly those recognised as National or State parties, that they must ensure inner party democracy, in keeping with the commitment and undertaking that they gave to the Commission at the time of their registration that they would, inter alia, uphold the principles of democracy. Accordingly, the Commission urged upon all recognised National and State parties to hold their organisational elections by the end of March, 1997. Some of the parties wanted some more time for completion of their organisational elections, because of certain difficulties, and the Commission granted them the required relaxation. The Commission noted with satisfaction that, out of 43 recognised National and State parties, 42 such parties held their organisational elections, wherever due. The only exception was the Shiv Sena. This party stated that their party constitution did not contain any provision for organisational elections and that all office bearers of the party were to be nominated and no one is envisaged to be elected to his office in the party.

4. The Commission, after careful examination of the matter, felt that all recognised parties to whom the Commission extends the facility of exclusive symbol and several other facilities should have elected office bearers in accordance with the basic premise of democracy which essentially means periodic elections. The views of the Commission were informally brought to the notice of the delegations of the Shiv Sena which met the Commission from time to time in connection with certain electoral matters. As the Commission did not get any positive response from the party in regard to the holding of its organisational elections, the Commission decided to ascertain its views formally and, for that purpose, issued a notice on 9.12.1997 to it, to convey its views before the Commission on a formal basis on 24.12.1997.

5. In response to the said notice dated 9.12.1997, a delegation of the Shiv Sena representatives consisting of S/Shri Subhash Desai, Madhukar Sarpotdar, Adhik Shirodkar, Satish Pradhan, Suresh Prabhu, appeared before the Commission on 24.12.1997. At first, the delegation contended that they were not bound as per law to effect changes in their constitution and desired that the provisions of law under which the Commission was requiring them to make changes in their constitution may be spelled out to them. However, in fairness to them, they did not press that point and submitted that notwithstanding this, in deference to the wishes of the Commission and keeping in view the high regard that Shiv Sena has for the Commission, they had conducted their party elections on 20.12.1997.

6. To substantiate their statement about the holding of party elections on 20.12.1997, the Shiv Sena representatives submitted to the Commission the text of the resolutions that were passed by the party, conducting their organisational elections, in their meeting held on 20.12.1997 in Mumbai. Those resolutions and the minutes of that meeting, inter alia, showed that a Rashtriya Karyakarini, consisting of the following fourteen members, was elected for a term of five years:-

1. Sh. Balasaheb Thackeray
2. Sh. Manohar Joshi
3. Sh. Dattaji Salvi
4. Sh. Wamanrao Mahadik
5. Sh. Subhash Desai
6. Sh. Sudhir Joshi
7. Sh. Madhukar Sarpotdar
8. Sh. Liladhar Dake
9. Sh. Pramod Navalkar
10. Sh. Satish Pradhan
11. Sh. Sharad Acharya
12. Sh. Dattaji Nalawade
13. Sh. Uddhav Thackeray
14. Sh. Raj Thackeray

7. Those resolutions further showed that a sub-committee consisting of three members had also been set up for recommending necessary changes, amendment to the constitution of the party and framing of rules and regulations for the inner party elections.

8. They also submitted the text of two further resolutions that were passed in that meeting. Resolution No. 1 of those resolutions reads as follows:-

*“Resolution No. 1:*

Resolved that Shri Balasaheb Thackeray, the founder of Shiv Sena, shall be Shiv Sena Pramukh for life or till the time he desires.”

9. The Commission observed that the above quoted resolution No.1, which states that Shri Balasaheb Thackeray, has been elected as Shiv Sena Pramukh for life contradicted and negated the action generated by the other resolutions, mentioned in para 6 above, electing the office bearers, including Shri Thackeray, for five years. Since the delegation could not fully clarify the contradictory effects of the above resolutions, read together, a short adjournment was sought by them and the hearing was adjourned to

30.12.1997, when the Shiv Sena would come back with the necessary clarifications.

10. On 30.12.1997, the Shiv Sena delegation consisting of S/Shri Subhash Desai, Satish Pradhan, Madhukar Sarpotdar, Mohan Rawale and Adhik Shirodkar appeared before the Commission and submitted that the resolution adopted by the party on 20.12.1997 to the effect that Shri Balasaheb Thackeray would continue to be the Pramukh for life shall not be implemented and that only the elections held on 20th December, 1997 shall be effective and that these elections stipulate that the President and Rashtriya Karyakarini will have a tenure of 5 years. To substantiate this submission, they submitted a letter dated 29.12.1997 from Shri Bal Thackeray which, inter alia, states that the resolutions moved by Shri Manohar Joshi, the Hon'ble Chief Minister of Maharashtra & seconded by Shri Leladhar Dake, the Hon'ble Minister for Law & Industries of the State of Maharashtra & unanimously adopted by the electorate college of Shiv Sena on 20th December, 1997, to the effect that Shri Balasaheb Thackeray will continue to be Shiv Sena Pramukh for life shall not be implemented and that only the elections held on 20th December, 1997 shall be implemented. These elections stipulate that President & Rashtriya Karyakarini will have a tenure of five years. They further submitted that a sub-committee had already been setup by their party on 20.12.1997 to amend the various provisions of their party constitution to bring about inner party democracy, and that the party may be given time till 30.4.1998 to complete their task.

11. The representatives of Shiv Sena further stated that with the Lok Sabha elections being round the corner and all their energies being directed towards that end, they were making a reasonable request for time till 30.4.1998 to make the necessary changes in their constitution and the same may be considered sympathetically by the Commission.

12. The Election Commission has given due consideration to the submissions made by the representatives of the Shiv Sena at the hearings on 24.12.1997 and 30.12.1997. The Commission feels that there is considerable merit in Shiv Sena's plea that when the elections to the Lok Sabha are on the anvil, a period of four months would be required to effect the necessary changes in the constitution of the party to bring about inner party democracy.

13. The Commission while taking note of the fact that the Shiv Sena by deciding not to give effect to its resolution passed on 20.12.1997, electing Shri Balasaheb Thackeray as Shiv Sena Pramukh for life and setting

up a sub-committee to amend the provisions of the constitution to bring inner party democracy, have substantially complied with the directions issued by the Commission in this regard to all parties. The Commission would like to record its appreciation of the cooperative stance taken by the Shiv Sena on this issue and welcomes the party's unequivocally committing itself to bring about inner party democracy with its elected office bearers at all levels in the party's hierarchy and effecting amendments to its existing constitution.

14. In view of this, the Commission allows the Shiv Sena, time till 30.4.1998 to effect the necessary changes in its constitution.

**Sd/-**  
**(Dr. M.S. Gill)**  
Chief Election Commissioner

**Sd/-**  
**(J.M. Lyngdoh)**  
Election Commissioner

# **ELECTION COMMISSION OF INDIA**

**CORAM:**

**Hon'ble**  
**Dr. M.S. Gill**  
Chief Election Commissioner

**Hon'ble**  
**Sh. J.M. Lyngdoh**  
Election Commissioner

In re: Nagaland People's Council — Withdrawal of Recognition as a State Party.

Dated: 16th September, 1998

**PRESENT :**

*For Nagaland People's Council*

1. Sh. Vijay Hansaria, Advocate
2. Sh. Shurhozelia, President, Nagaland People's Council
3. Sh. Huska Sumi, Working President, Nagaland People's Council
4. Sh. Chubatemjen Ao, Secretary General, Nagaland People's Council

*Election Symbols (Reservation and Allotment) Order, 1968 - paras 6,7 - failure to fulfil prescribed conditions for continued recognition - boycott of elections, not a relevant ground for any sympathetic consideration or concession - parties should carry forward democratic process rather than negate the same by boycotts.*

## **SUMMARY OF THE CASE**

The Nagaland People's Council was a recognised State party in Nagaland and the symbol "Cock" was reserved for it under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968. The party failed to fulfil the requirements of para 6 (2) of the Symbols Order for its continued recognition as a State party on the basis of its poll performance at the general elections to the House of the People and the Legislative Assembly of Nagaland held in February, 1998. In response to the Election Commission's notice to show cause as to why its recognition may not be withdrawn, the party submitted that the results of the Lok Sabha and Assembly elections held in February, 1998 should not be taken into consideration as these elections were boycotted by the party and the majority of the people of Nagaland, along with several other political parties. The party also stated that the ground reality in the State of Nagaland at the relevant point of time did not permit the party to participate in the elections. The Commission, however, did not accept that contention of the party,

holding that if a party chooses to boycott the elections and not to participate in the democratic process for any reasons, the Commission cannot encourage any such move or course of action of the party, as any sympathetic consideration and concession shown by the Commission towards such a party would send a wrong signal to the Indian polity and may frustrate the Commission's efforts to strengthen democracy and democratic institutions in the country. The Commission observed that if political parties boycotted elections they would have to suffer the consequences which legally flow. The Commission pointed out that similar view was taken by the Commission in the past in the cases of Shiromani Akali Dal (Badal) and Shiromani Akali Dal (Mann) which had boycotted elections in Punjab in 1992, and in the case of Jammu & Kashmir People's Conference which did not participate in the 1996- elections in J & K. The Commission also observed that political parties, particularly recognised political parties, should always act so as to carry forward the democratic process rather than negate the same and that the Commission has to curb the tendency of boycott of elections by any political party. Accordingly, the recognition of the party as State party in Nagaland was withdrawn by the Commission.

## **ORDER**

1. The Nagaland People's Council is a recognised State Party in Nagaland under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as 'Symbols Order'). The symbol 'Cock' is reserved for the party.

2.1 The recognition of political parties as National Parties or State Parties is governed by the provisions of paragraphs 6 and 7 of the Symbols Order. For facility of reference, the said paragraphs 6 and 7 are reproduced below :-

“6. Classification of political parties - (1) For the purposes of this Order and for such other purposes as the Commission may specify as and when necessity therefor arises, political parties are either recognised political parties or unrecognised political parties.

[(2) A political party shall be treated as a recognised political party in a State, if, and only if either the conditions specified in clause (A) are, or the condition specified in clause (B) is, fulfilled by that party, and not otherwise, that is to say -

(A) that such party -

(a) has been engaged in political activity for a continuous period of five years; and

(b) has, at the last general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly of the State, returned -

either (i) at least one member to the House of the People for every twenty-five members of that House or any fraction of that number elected from that State;

or (ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;

(B) that the total number of valid votes polled by all the contesting candidates set up by such party at the last general election in the State to the House of the People, or as the case may be, to the Legislative Assembly of the State, is not less than six per cent of the total number of valid votes polled by all the contesting candidates at such general election in the State.

(2A) Notwithstanding anything contained in clause (B) of sub-paragraph (2), a political party shall be treated as a recognised political party in a State, if, at the general election to the House of the People or, as the case may be, to the Legislative Assembly of the State, in existence and functioning at the commencement of the Election Symbols (Reservation and Allotment) (Amendment) Order, 1997, the total number of valid votes polled by all the contesting candidates set up by such party (but excluding the valid votes of each such candidate in a constituency as has not been elected and has not polled at least one-twelfth of the total valid votes polled by all the contesting candidates in that constituency) is not less than four per cent of the total number of valid votes polled by all the contesting candidates at such general election in that State (including the valid votes of those contesting candidates who have forfeited their deposits).

(3) For the removal of doubts it is hereby declared that the condition in clause (A) or (B) of sub-paragraph (2) shall not be deemed to have been fulfilled by a political party if a member of the House of the People or the Legislative Assembly of the State becomes a member of that political party after his election to that House or, as the case may be, that Assembly.

7. Two categories of recognised political parties - (1) If a political party is treated as a recognised political party in accordance with paragraph 6 in four or more States, it shall be known as, and shall have and enjoy the status of, a "National Party" throughout the whole of India, but only so

long as that political party continues to fulfil thereafter the conditions specified in paragraph 6 for such recognition in four or more States on the results of any subsequent general election either to the House of the People or to the Legislative Assembly of any State.

(2) If a political party is treated as a recognised political party in accordance with paragraph 6 in less than four States, it shall be known as, and shall have and enjoy the status of, a "State Party" in the State or States in which it is so recognised, but only so long as that political party continues to fulfil thereafter the conditions specified in paragraph 6 for such recognition as a State Party on the results of any subsequent general election to the House of the People or, as the case may be, to the Legislative Assembly of the State, in the said State or States."

2.2 The perusal of the above quoted paragraphs 6 and 7 would show that the recognition, and also the continued recognition, of a political party as National or State Party depends on the fulfilment of the conditions mentioned in paragraph 6(2) or, as the case may be, para 6(2A). If a political party becomes eligible and is granted recognition as a National or a State party on the fulfilment of the conditions mentioned in the said paragraph at a general election, it will continue to enjoy that status so long as it continues to fulfil those conditions at the subsequent general elections. Therefore, the poll performance of every recognised political party needs to be reviewed under the said paragraphs after every general election held in a State either to the Lok Sabha or to the State Legislative Assembly.

3. After the general elections to the House of the People from Nagaland and Legislative Assembly of Nagaland held in February, 1998, the poll performance of the Nagaland People's Council was reviewed by the Commission. The records of the Commission show that the party did not field any candidate at the general elections either to the House of the People from Nagaland or to the Legislative Assembly of Nagaland, held in February, 1998. The party, consequently, did not return any candidate to the Lok Sabha or to the Legislative Assembly of Nagaland, nor was any vote polled for the party at the aforesaid general elections. The perusal of the records of the Commission would, therefore, show that the party does not fulfil the conditions for recognition as laid down in the above quoted paragraph 6(2) of the Symbols Order in the State of Nagaland. The party is thus no longer entitled to continued recognition as State party in that State.

4.1 Before withdrawing the recognition of the party as a State Party in Nagaland, the Commission considered it appropriate to afford it an opportunity of making a representation as to why its recognition may not

be withdrawn. Accordingly, a show-cause notice was issued to the party on 26-05-1998 (*Annexure 'A'*) by registered post and the party was asked to make its representation on or before 30-06-1998, which date was later on extended up to 31.07.1998, at the request of the party.

4.2 In reply to the Commission's show-cause notice dated 26th May, 1998, the Party stated in its letter dated 29th July, 1998 that the results of the Lok Sabha and Assembly elections held in Nagaland in February, 1998 should not be taken into consideration for the purposes of review as the said elections were boycotted by the party and majority of the people of Nagaland. The party stated that not only the Nagaland People's Council but also the Bharatiya Janata Party and Nationalist Democratic Movement (a registered party) also did not participate in the elections. The party pleaded that non-participation of the Nagaland People's Council in the aforesaid elections was not wilful and that it was due to inevitable and compelling circumstances. The ground realities in the State of Nagaland at the relevant point of time did not permit Nagaland People's Council to participate in the elections. The party also submitted that para 6 of the Symbols Order provided for conditions for recognition of a political party by the Commission but these conditions were not applicable for withdrawal of recognition already granted to a political party. The party further stated that there was no provision in the Symbols Order for withdrawal of recognition in the event of non-participation of a recognised political party in a particular election. The party also made a mention of the fact that it had secured a very high percentage of votes at the past elections to the House of the People and the Legislative Assembly of Nagaland, held in the years 1964 to 1995. The party also stated that even though the Jammu and Kashmir National Conference and the Shiromani Akali Dal did not contest the elections held in Jammu and Kashmir and Punjab in 1991 and 1992 respectively, the Commission did not take any action to de-recognise those parties. The party also requested for a personal hearing.

5. The request of the party for a personal hearing was accepted by the Commission and a hearing was accordingly fixed on 1st September, 1998. The party was informed about the said hearing vide Commission's notice dated 13th August, 1998. Apart from the notice for the said hearing being sent to the party in the normal course by registered post, a copy thereof was also served on the party through the Chief Electoral Officer, Nagaland on 18.08.1998.

6.1 At the hearing held on 1-9-1998, Shri Vijay Hansaria, learned counsel for the party, submitted that the Election Symbols (Reservation &

Allotment) Order, 1968 was not a mandatory rule, made by legislation, but an executive order of the Commission itself. He stated that para 6 of the Symbols Order had been provided to gauge the mass support which a political party enjoyed and the Commission should not, therefore, exercise the power of de-recognition of a political party under the said para when a political party did not contest the election. He submitted that the Naga Ho Ho, which is an Apex body and a respectable Non-Governmental Organisation in the State of Nagaland, gave a call on 18-12-1997 to defer the elections in the State of Nagaland, taking into consideration the activities of the underground elements in the State. The underground organisations had sent warnings to Nagaland People's Council, Bharatiya Janata Party and the Nationalist Democratic Movement that no political party should participate in the elections and if they did so they would be declared as anti-Naga. The learned Counsel stated that leaders of all recognised parties and other major political parties in the State were called to Delhi on 27-1-1998 by the Union Government to meet the then Home Minister. While the discussions were so going on, notifications for holding the elections were issued by the Election Commission on the 28th January, 1998 and the party had no time to negotiate with the underground elements and also Naga Ho Ho and other Non-Governmental Organisations to withdraw their call for poll boycott. He added that the party did not want to contest the elections against the wishes of the people, and more so in view of the threats of the underground elements, which could not be lightly dismissed as empty threat if the past killings and violence perpetrated by such elements against those who defied them were kept in view.

6.2 When the learned counsel for the party raised the point that the Shiromani Akali Dal in Punjab and Jammu & Kashmir National Conference in J&K, had also boycotted the elections held in 1991-92 but were not de-recognised by the Commission, the Commission pointed out to the learned counsel that no elections were held in J&K in the year 1991 and as such the question of de-recognition of J&K National Conference did not arise. As regards the Shiromani Akali Dal, it was pointed out to the learned counsel that the Shiromani Akali Dal (Badal) and Shiromani Akali Dal (Simranjit Singh Maan), which boycotted the elections in 1992, were duly de-recognised by the Commission under the Symbols Order after reviewing their poll performance at those elections. The learned counsel thereupon withdrew his submission on this point.

6.3 In fairness to him, the learned counsel also did not press the point regarding the power of the Election Commission to derecognise a recognised party, when his attention was drawn to the Supreme Court's

decision in *Janata Dal (Samajwadi) Vs. Election Commission* (AIR 1996 SC 577) which conclusively sets at rest any controversy with regard to the Commission's power in this behalf.

6.4 The Commission also gave a patient hearing to Shri Shurhozelia, President, Shri Huska Sumi, Working President and Shri Chubatemjem Ao, Secretary General of the party. They all reiterated the position as mentioned by the learned counsel and stated that in view of the ground realities and the then prevailing situation in Nagaland, it would have been totally unwise to confront with Naga Ho Ho and other Non Governmental Organisations, and further added that it was for such non-participation on their part in elections that the peace was still prevailing in that State. They contended that but for the threats of the underground elements and the boycott call given by the Naga Ho Ho, the political situation was such that they would have come to power. They stated that it was a sacrifice made by the party in the interests of peace in the State and urged the Commission not to withdraw recognition of the party, as that would amount to double punishment.

7.1 The Commission is fully aware of the said history of Nagaland and has its full sympathy for the people of the State. Therefore, the Commission has given its greatest consideration to all arguments and submissions placed before it by the learned counsel and also the learned representatives of the Party. But, at the same time, the Commission is duty bound to establish a strong democratic system in the State of Nagaland and make it vibrant.

7.2 The Election Commission is entrusted with the sacred duty of conducting elections to Parliament and to the Legislature of every State by the Constitution of India (Vide Article 324). The constitutional mandate to the Commission is that it should hold elections regularly, as and when the same become due. In the case of Nagaland, the State Legislative Assembly's term was up to and including 17.03.1998 and the general election to constitute a new Legislative Assembly had to be held well before the expiration of the term of the then existing Assembly, so that the new Assembly could replace the existing Assembly when its term expired. In the case of that State, there was a further constitutional constraint in that under the provisions of clause (1) of Article 174 of the Constitution six months shall not intervene between the last sitting of the Assembly in one session and the date appointed for the first sitting in the next session. The then existing State Assembly had last met on 6.9.1997 and the new House had to meet latest by 5.3.1998. Keeping these constitutional requirements in view, the Commission decided

to hold the general election to the State Assembly in February, 1998, and for that purpose, the notification calling the general election was issued on 28.1.1998. The Commission was aware of the demands being made in certain quarters for the postponement of the election in Nagaland, but in view of the aforesaid constitutional constraints, it had no option but to hold the election at the aforesaid time, which the Commission considered to be best suited, and the Commission could not postpone the polls due to its limitations under the Constitution. When such requests for postponement were made to the Commission, it left no one in any manner of doubt that the elections would have to be held according to the time schedule announced by it, as otherwise the Commission would have been accused of failing in its duty to conduct the elections according to the constitutional scheme and it could have led to the break down of the constitutional machinery in the State. It never gave any indication or encouragement to those who were trying for postponement of the poll. The Commission is not concerned with any other authority giving any assurance or indication about the deferment of elections, which the Constitution did not permit. If the present party or any one else in the State of Nagaland had any grievance or apprehension about the conditions not being conducive to the conduct of free and fair elections in Nagaland, it could have approached the Commission for strengthening the law and order machinery by such re-inforcement as would have made the conditions conducive for free and fair elections, instead of following any course of action which was opposed to the requirements and scheme of the Constitution. If a party chooses to boycott the election and not to participate in the democratic process, the Commission cannot encourage any such move or course of action of that party. Any sympathetic consideration or concession shown towards such a party by the Election Commission would send wrong signals to the Indian polity and may frustrate the Commission's efforts to strengthen democracy and democratic institutions in the country. The Commission's responsibility is to help, in every possible manner, those political organisations, which strive to strengthen democracy, and it cannot have any sympathy for those organisations which boycott, or become party to calls of boycott of, elections. If any political party or organisation boycotts elections, it has to suffer the consequences which legally flow. Such political party cannot validly complain before the Commission that its poll performance should not be considered, for the purposes of its recognition, or continued recognition, under the Symbols Order, at an election which it, by its own volition, boycotted.

7.3 It may be pertinent to point out here that the conditions under which the elections were held in the State of Punjab in 1992 or in the State of J&K in 1996 were no less, if not more, serious than the situation obtaining

at the time of the elections in Nagaland in February, 1998. Those States had also been in high turmoil for considerably long periods and in those States also threats from underground elements, even from across the borders, were given, so as to stop the election process. In those States, whichever party chose to boycott the election, had to suffer the legal consequences under the Symbols Order. For example, as pointed out above, Shiromani Akali Dal (Badal) and Shiromani Akali Dal (Simranjit Singh Maan) were de-recognised by the Commission, as their poll performance at the general election in 1992 did not measure up to the required standard laid down in paras 6 and 7 of the Symbols Order, because of their boycott of those elections. Similarly, J&K People's Conference has also lost recognition, because it did not participate in the 1996 - elections in Jammu and Kashmir. The said Shiromani Akali Dals had also raised similar pleas, as those by the present party, that their poll performance at the elections in 1992 should not be a ground for withdrawal of their recognition, as those elections were held in extraordinary circumstances. The Commission did not accept such contention. It may be further relevant to point out that the said parties, aggrieved by the Commission's Order, approached the Punjab and Haryana High Court, but the High Court also did not appreciate their contentions and upheld the Commission's Order. One of those parties even went to the Supreme Court by way of Special Leave Petition but the Supreme Court also did not intervene in the matter.

7.4 In view of the above, the Commission does not see any reason or justification for taking a different view in the present case, from the one it has taken in the above referred cases of Shiromani Akali Dals and J&K People's Conference. It cannot apply different standards in the case of parties similarly placed. There has to be consistency in the Commission's decisions which lay down the law for future guidance of the parties in the conduct of their political functioning. If a party exercises its option and chooses not to participate in elections but boycotts it, on any ground whatsoever, and fails to fulfil the conditions for recognition, and if even then it is still permitted by the Commission to retain its recognition and its reserved symbol, the whole sanctity of the symbol system and Symbols Order would be lost and become meaningless.

7.5 The party submitted that the withdrawal of its recognition by the Commission would amount to imposition of double punishment on it, inasmuch as it had already lost its opportunity of gaining power in the State by its non-participation in elections. The Commission does not agree with such submission. It has lost the opportunity of gaining power in the State, if at all, because of its own choosing. In so far as the Commission is

concerned, it could be viewed as non-cooperation with the Election Commission in its effort to promote and strengthen democracy in the State. Incidentally, even if the party's recognition as State Party is withdrawn, the Symbols Order will give them the benefit of common symbol for their candidates at the future elections, for at least six years, under the recently amended provisions of para 12 of the Symbols Order. Its candidates would have preference over all other candidates of other registered parties and independents in the matter of allotment of symbol to them.

7.6 In the current political situation in the country, parties, big or small, often threaten to promote a boycott of the democratic process. In rare instances they actually carry out the threat and boycott the electoral process. It is the view of the Commission that political parties, particularly, recognised political parties, should always act so as to carry forward the democratic process rather than negate the same. The Commission has, therefore, consistently and firmly tried to curb this tendency of boycott of elections by any political party. The major problems in the political domain in the country have to be resolved in the political arena itself. It has to be resolved democratically through the electoral process. The Commission is heartened by the fact that its stand has been accepted by the highest Court in the land. Therefore, through its stand in the instant case, the Commission once again reiterates its position and sends a clear signal to all parties that the democratic electoral process would not be allowed to be thwarted through boycott, whatever be the reasons for the same. While taking this stand, the Commission shall, of course, continue to exert to create conditions for free and fair elections and to bring about a level playing field between contesting parties and candidates.

8. Having regard to the above, the Commission is satisfied that the Nagaland People's Council is no longer entitled to continued recognition as a State Party in the State of Nagaland under paragraphs 6 and 7 of the Symbols Order. Accordingly, the party shall cease to be recognised as a State Party in Nagaland. It shall not be entitled to the exclusive use of the symbol 'Cock' earlier reserved for it in the State of Nagaland. It shall hereafter be a registered- unrecognised political party for the purposes of the Election Symbols (Reservation and Allotment) Order, 1968, till its poll performance is again reviewed at the next general election as and when held.

**Sd/-**  
**(Dr. M.S. Gill)**  
Chief Election Commissioner

**Sd/-**  
**(J.M. Lyngdoh)**  
Election Commissioner

**ANNEXURE 'A'**

**ELECTION COMMISSION OF INDIA**  
Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 56/Review/NPC/98,J.S.III/4102-4103

Dated 26.5.1998

To

The General Secretary  
Nagaland People's Council  
Burma Camp, Dimapur-797112  
NAGALAND

**SHOW CAUSE NOTICE**

WHEREAS, NAGALAND PEOPLE'S COUNCIL is a recognised State Party under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as 'Symbols Order');

AND WHEREAS, paragraph 7 (2) of the Symbols Order provides that a political party shall be treated as a recognised political party in a State, if and only if either the conditions specified in Clause (A) of that paragraph are, or the condition specified in Clause (B) thereof is, fulfilled by that party and not otherwise, that is to say :-

(A) That such party -

(a) has been engaged in political activity for a continuous period of five years; and

(b) has, at the general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning returned - either (i) at least one member to the House of the People for every twenty-five members of that House or any fraction of that number elected from that State;

or (ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;

(B) that the total number of valid votes by all the contesting candidates set up by such party at the general election in the State to the House of the People, or as the case may be, to the Legislative Assembly for the time being in existence and functioning (excluding the valid votes of each such contesting candidate in a constituency as has not been elected and has not polled at least one-twelfth of the total number of valid votes polled by all the contesting candidates in that constituency) is not less than four per cent of the total number of valid votes polled by all the contesting candidates at such general

election in the State (including the valid votes of those contesting candidates who have forfeited their deposits);

AND WHEREAS, under paragraph 7 of the Symbols Order, a party shall be recognised as a State Party if it is treated as a recognised political party in accordance with paragraph 6, referred to above, in less than four States;

AND WHEREAS, in pursuance of the provisions of the above referred paragraphs 6 (2) and 7 of the Symbols Order, a review of the poll performance of every political party is required to be made by the Election Commission after every general election to the House of the People or, as the case may be, to the State Legislative Assembly;

AND WHEREAS, the poll performance of the said NAGALAND PEOPLE'S COUNCIL at the General Election to the Lok Sabha held in April-May, 1996 and the last General Election to the State Legislative Assembly of NAGALAND held in February-March, 1998 has been reviewed by the Election Commission in terms of paragraphs 6 (2) and 7 of the said Symbols Order, as per the statement(s) annexed hereto;

AND WHEREAS, the poll performance of the said party at the aforesaid General Elections does not satisfy any of the criteria laid down for recognition of the said party as a State party in the State of NAGALAND.

AND WHEREAS, the Election Commission proposes to withdraw the recognition granted to the said party as a State party in the State of NAGALAND on the failure of the party to fulfil any of the criteria fixed for such recognition as aforesaid;

AND WHEREAS, before withdrawing such recognition from said party, the Election Commission proposes to afford to the said party an opportunity of making a representation to the Commission as to why such recognition may not be withdrawn;

NOW, THEREFORE, the said party is required to show cause as to why the recognition of the said party as a State party in the State of NAGALAND may not be withdrawn under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968. The representation of the party should reach the Commission, on or before the 30th June, 1998.

By order

*Sd/-*  
**(K.J. RAO)**  
Secretary

**ANNEXURE 'B'**

**POLL PERFORMANCE OF POLITICAL PARTIES**

**General Elections, 1998 : House of the People / Legislative  
Assembly of NAGALAND**

Name of Party	State	Seats		Votes Polled	
		Contested	Won	Votes	%

**House of the People, 1998**

Nagaland People's Council	Nagaland	Did not contest
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**Legislative Assembly of Nagaland, 1998**

Did not contest



# **ELECTION COMMISSION OF INDIA**

**CORAM :**

<b>Hon'ble</b> <b>Sh. G.V.G. Krishnamurty</b> Election Commissioner	<b>Hon'ble</b> <b>Dr. M.S. Gill</b> Chief Election Commissioner	<b>Hon'ble</b> <b>Sh. J.M. Lyngdoh</b> Election Commissioner
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- In re: 1. Dispute Case No. 4 of 1996 - Shri S. Muthuswamy Vs. Ms. J. Jayalalitha under paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968, and
2. Dispute Case No. 2 of 1997 - Shri S. Thirunavukkarasu and Shri Rajan Chellappa Vs. Ms. J. Jayalalitha under paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968

relating to All India Anna Dravida Munnetra Kazhagam

Dated: 17th November, 1998

*Election Symbols (Reservation and Allotment) Order, 1968 - para 15 - split in a party - petitioner claiming to be leader of a splinter group, joining another party - his petition liable to be dismissed - another petitioner representing another splinter group seeking to withdraw his petition - withdrawal allowed.*

## **SUMMARY OF THE CASE**

The All India Anna Dravida Munnetra Kazhagam (AIADMK) is a recognised State party in Tamil Nadu and Pondicherry and the symbol "Two Leaves" is reserved for it under the provisions of the Election Symbols (Reservation and Allotment), Order, 1968. On 2.9.1996, a dispute was raised before the Election Commission in terms of para 15 of the Symbols Order by one Sh. S. Muthuswamy, alleging that there was a split in the party and claiming that he had been elected as the General Secretary of the party on 21.8.96 in place of Ms. J. Jayalalitha. At the hearing held on 22.7.1997, the counsel for the petitioner submitted that there was a further split in the group of the AIADMK led by Ms. J. Jayalalitha on 3.6.1997 and that one of the splinter groups led by Sh. S. Thirunavukkarasu had joined hands with the petitioner's group. It was also submitted before the Commission that some litigation was going on before various civil courts, Madras High Court and Supreme Court relating to the aforesaid developments in the party. An

adjournment was sought to place the relevant papers before the Commission.

On 1.9.97, two more petitions were filed before the Commission raising the issue of further split in AIADMK. In these two petitions, it was claimed that Shri S. Thirunavukkarasu should be declared as General Secretary of the party and his group as the real AIADMK. When the matter was further heard by the Commission on 4.12.1997, Sh. S. Muthuswamy, petitioner in the first case, sought to withdraw his petition stating that he and his supporters had a change of mind and had decided on 27.11.97 to return to the parent party led by Ms. J. Jayalalitha. This prayer was opposed by one Sh. S. Doraiswamy. Sh. Muthuswamy, however, contended that Sh. Doraiswamy had no locus standi to oppose his application for withdrawal of his petition.

While the above disputes were still pending determination by the Commission, general elections were held to the House of the People and to the Legislative Assemblies of certain States in January-March, 1998. During that period, the Commission received a communication dated 23.1.1998 from the deputy general secretary of another registered party (MGR Anna DM Kazhagam) in which Sh. S. Thirunavukkarasu was shown as the general secretary of that party. Subsequently, the Commission observed from its records, that Sh. Thirunavukkarasu had contested election to the House of the People from 32- Pudukottai Parliamentary Constituency in Tamil Nadu as a candidate of the said MGR Anna DM Kazhagam.

In the light of these facts, the Commission issued notice to Sh. S. Thirunavukkarasu and his co-petitioner asking them to show cause as to why their petitions should not be dismissed. The petitioners did not respond to the Commission's notice and nor to a reminder sent by the Commission in this behalf. In view of the above, the Commission held that Sh. Thirunavukkarasu had taken not only the membership but also the leadership of MGR Anna DM Kazhagam and was no more a member of AIADMK or any of its splinter groups. The Commission observed that a person could not belong to, much less claim to lead, two different political parties simultaneously. Accordingly, the Commission dismissed Sh. Thirunavukkarasu's petition. The Commission also allowed Sh. S. Muthuswamy to withdraw his petition, as prayed for by him.

## **ORDER**

The All India Anna Dravida Munnetra Kazhagam (AIADMK) is a recognised State party in Tamil Nadu and Pondicherry with the symbol "Two Leaves" reserved for it in the said State and Union Territory under

the provisions of the Election Symbols (Reservation and Allotment) Order, 1968.

2. On 2.9.1996, a petition under paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968 ('Symbols Order' for short) was filed by one Shri S. Muthuswamy alleging that there was split in the party and claiming that at the General Council meeting held on 21.8.1996, the petitioner was elected as the General Secretary of the party. He prayed for a direction that the group headed by him be declared as the real AIADMK and the reserved Symbol "Two Leaves" be allotted to the group headed by him. He also sought an interim relief, freezing the reserved symbol "Two Leaves", pending a final decision on the petition.

3. A copy of the petition filed by Shri S. Muthuswamy was sent to the respondent Ms. J. Jayalalitha, who is the General Secretary of the party as per the Commission's record asking her to file her reply in the matter. Ms. J. Jayalalitha filed her reply on 7.10.1996. In the reply, it was stated that the petitioner stood expelled from the party on 25.7.1996 and, therefore, he had no locus standi to move the petition claiming split in the party. She further stated that the petitioner had no worthwhile support in the organisational wing of the party and no support at all in the legislative wing. She, therefore, submitted that the petition deserved to be rejected.

4. Shri S. Muthuswamy, in his rejoinder, reiterated that the group led by him may be recognised as the real AIADMK.

5. The Commission held a hearing on 22.7.1997 in the matter. Shri Raju Ramachandran, Senior Advocate, along with Shri P.K. Manohar, Shri J. Ramachandran and Shri B.C. Sharma, Advocates, appeared for the petitioner, and Shri R. Muthukumarswamy, Shri A. Jinaseeman and Shri K.V. Viswanathan, Advocates appeared for the respondent. During the hearing, the learned Senior Counsel for the petitioner stated that the group of AIADMK led by Ms. J. Jayalalitha had further split into two factions on 3.6.1997 and that one of the splinter groups, led by Shri Thirunavukkarasu had joined hands with the petitioner's group. He further stated that the parties involved, had approached various Civil Courts as also the Madras High Court and Supreme Court, for certain reliefs. He submitted that all these developments should be brought on record in the present proceedings and, for that purpose, he prayed for time and adjournment of the proceedings for three weeks.

6. The Commission observed that these developments relating to the party had material bearing on the proceedings of this case and it was

the duty of the parties to have brought them on record. Therefore, the Commission granted the prayer for adjournment of the hearing, for filing additional statements and relevant documents. The petitioner's counsel was directed to file all relevant additional statements/documents by 16.8.1997, with an advance copy to the respondent's counsel. The respondent's counsel was granted time up to 31.8.1997 to file his reply thereto.

7. The counsel for the petitioner filed copy of an order dated 17.6.1997 of the Madras High Court whereby the High Court allowed an application (Application No.356 of 1997 in C.S. No. 322 of 1997) filed by Ms. J. Jayalalitha and granted injunction against the defendant, Shri S. Thirunavukkarasu from holding General Council Meeting of AIADMK and also declared as void, ab initio, the meeting held by him on 3.6.1997. The appeal filed by Shri Thirunavukkarasu against the said order of the Single Judge granting interim injunction was rejected by an order dated 27.8.1997 of a Division Bench of the Hon'ble High Court. The Counsel for the petitioner also filed copies of orders passed by the Chairman of Rajya Sabha and Speakers of Tamil Nadu and Pondicherry Legislative Assemblies, recognising the group of AIADMK led by Shri Thirunavukkarasu as AIADMK-II and AIADMK (Thirunavukkarasu) for the purpose of functioning in the respective Houses. In response to that, the respondent also filed an affidavit, along with proceedings of the Madras High Court. Correspondence received from both the parties were exchanged between them.

8. In the meanwhile, two more petitions were filed before the Commission on 1.9.1997, raising the issue of further split in the AIADMK. One was filed by Shri S. Thirunavukkarasu and the other by Shri Rajan Chellappa. Contentions in both the applications were that there was split in the AIADMK and that Shri S. Thirunavukkarasu was elected as the General Secretary of the party in place of Ms. J. Jayalalitha. Relief sought in both the petitions was for recognising the group led by Shri S. Thirunavukkarasu as the real AIADMK and for allotment of the reserved symbol "Two Leaves" to the said group. It was alleged that the undemocratic style of functioning of Ms. J. Jayalalitha had led to the split in the party.

9. Copies of the above petitions were also sent to Ms. J. Jayalalitha and also to Shri S. Muthuswamy for their reply by 10.11.1997. The period for filing reply was subsequently extended up to 5.12.1997 at the request of Counsel for Ms. J. Jayalalitha. Ms. J. Jayalalitha filed her reply on 5.12.1997 stating that Shri S. Thirunavukkarasu was expelled from the party in May, 1997 and, therefore, he had no locus standi to file an application under paragraph 15 of the Symbols Order. She further stated that on merits

also the petitions were without substance as Shri S. Thirunavukkarasu enjoyed only token support in legislative and organisational wings.

10. The Commission decided to hear all the parties together in both the dispute matters, the same being interconnected, and accordingly fixed a hearing on 23.12.1997 in both the cases, i.e. the petitions filed by Shri S. Muthuswamy (dispute case No.4 of 1996) and the petitions of Shri S. Thirunavukkarasu and Shri Rajan Chellappa (dispute case No.2 of 1997).

11. On 4.12.1997, Shri S. Muthuswamy, petitioner in dispute case No.4 of 1996, filed an application stating that he and his supporters had a change of mind and at their meeting held on 27.11.1997, they had decided to return to the parent party led by Ms. J. Jayalalitha. Shri S. Muthuswamy, therefore, sought to withdraw the petition filed by him on 2.9.1996. Simultaneously, one Shri S. Doraiswamy, filed an application on 4.12.1997 requesting that Shri S. Muthuswamy may not be permitted to withdraw his petition and that the petition may be disposed of along with the petitions filed by Shri S. Thirunavukkarasu and Shri Rajan Chellappa. In his reply statement filed on 23.12.1997, Shri S. Muthuswamy submitted that Shri Doraiswamy had no locus standi to oppose his application for withdrawal of his petition and reiterated his prayer for withdrawal.

12. At the hearing on 23.12.1997, Ms. J. Jayalalitha was represented by Shri R. Muthukumaraswamy, Advocate, along with Shri A. Jenasenan and Shri K.V. Viswanathan, advocates. Shri Mahesh Aggarwal, Advocate, appeared for Shri S. Thirunavukkarasu and Shri Rajan Chellappa. Shri S. Muthuswamy was represented by Shri P.K. Manohar, Advocate. Shri Muthukumaraswamy submitted that the group led by Shri S. Muthuswamy had already returned to the parent organisation headed by Ms. J. Jayalalitha. Shri P.K. Manohar also stated similarly. Shri Mahesh Aggarwal, however, sought further time for filing rejoinder to the reply affidavit filed by Ms. J. Jayalalitha. The hearing was then adjourned at the common request of the learned counsel for the parties.

13. Shortly thereafter, general elections to the House of the People and to the Legislative Assemblies of certain States were held in January-March, 1998. When these general elections were announced by the Commission on 1st January, 1998, a request was made on behalf of Shri Thirunavukkarasu for an interim order, though neither Shri S. Thirunavukkarasu nor Shri Rajan Chellappa had filed any rejoinder, for which their own counsel had himself sought time at the hearing on 23.12.1997. Around the same time, the Commission received a communication dated 23.1.1998 from Deputy General Secretary of 'MGR

Anna DM Kazhagam', a separate registered unrecognised party. In that communication, Shri S. Thirunavukkarasu was shown as the General Secretary of the said party. After the aforesaid general elections, it was observed from the records that Shri S. Thirunavukkarasu had contested the general election to the House of the People from 32-Pudukottai Parliamentary Constituency in the State of Tamil Nadu as a candidate set-up by the said MGR Anna DM Kazhagam. These developments showed that Shri S. Thirunavukkarasu was no longer a member, much less the leader, of the AIADMK or any of its groups. In these circumstances, the petitions filed by Shri S. Thirunavukkarasu and Shri Rajan Chellappa, for a direction that the group headed by Shri S. Thirunavukkarasu was the real AIADMK, could not be said to survive, as Shri S. Thirunavukkarasu himself now did not belong to the said group.

14. In the light of these facts, the Commission issued notices on 15.6.1998, both to Shri S. Thirunavukkarasu and Shri Rajan Chellappa, asking them to show cause as to why their petitions should not be dismissed. Copies of the notices were also endorsed to the respective counsel of the parties. The petitioners were asked to file their reply by 15.7.1998.

15. There was no response at all from either of the petitioners. However, the Commission, on its own, considered it desirable to allow them further time up to 20.8.1998 for filing their reply. This time, the communication dated 27.7.1998, in this regard, along with a copy of the earlier notice dated 15.6.1998, was served on the petitioners through Chief Electoral Officer, Tamil Nadu. The Chief Electoral Officer informed the Commission vide his letters dated 12.8.1998 and 21.9.1998 that the Commission's letter dated 27.7.1998 was served on the petitioners, Shri S. Thirunavukkarasu on 4.8.1998 and Shri Chellappa on 19.9.1998.

16. Again, neither of the petitioners has so far filed any reply to the Commission's show cause notice.

17. This evidently shows that both of them are not interested in pressing or pursuing their petitions. As mentioned above, Shri S. Thirunavukkarasu contested the General Election to the House of the People held in January-March, 1998 from 32-Pudukottai Parliamentary Constituency in the State of Tamil Nadu as a candidate set up by MGR Anna DM Kazhagam, a separate registered-unrecognised political party. Further, in the communication dated 23.1.1998 received from the Deputy General Secretary of the said MGR Anna DM Kazhagam, Shri S. Thirunavukkarasu has been shown as the General Secretary of the said party. These facts have to be treated as accepted by Shri S.

Dispute Case No. 4 of 1996 - Shri S. Muthuswamy Vs. Ms. J. Jayalalitha  
Dispute Case No. 2 of 1997 - Shri S. Thirunavukkarasu and Shri Rajan Chellappa Vs. Ms. J. Jayalalitha

Thirunavukkarasu in the absence of any denial by him in reply to the Commission's show cause notice dated 15.6.1998, served on him twice. The above facts lead to the obvious conclusion that Shri S. Thirunavukkarasu has taken not only the membership but also the leadership of MGR Anna DM Kazhagam, and is no longer a member of the AIADMK or any of its splinter groups, as a person cannot belong to and claim to lead, two different political parties simultaneously. This, in turn, leads to the further obvious conclusion that the splinter group of AIADMK headed by Shri S. Thirunavukkarasu has ceased to be in existence now. Therefore, the petitions filed by Shri S. Thirunavukkarasu and Shri Rajan Chellappa for a declaration that the splinter group of AIADMK headed by Shri S. Thirunavukkarasu is the real AIADMK and that symbol "Two Leaves" be allotted to the said group, do not survive for consideration any longer.

18. In view of the above, the petitions filed by Shri S. Thirunavukkarasu and Shri Rajan Chellappa are hereby dismissed. Further, the petition of Shri Muthuswamy is also allowed to be withdrawn, as prayed for by him.

**ORDERED ACCORDINGLY**

**Sd/-**  
**(G.V.G. Krishnamurthy)**  
Election Commissioner

**Sd/-**  
**(Dr. M.S. Gill)**  
Chief Election  
Commissioner

**Sd/-**  
**(J.M. Lyngdoh)**  
Election Commissioner



# **ELECTION COMMISSION OF INDIA**

## **CORAM :**

<b>Hon'ble</b> <b>Sh. G.V.G. Krishnamurty</b> Election Commissioner	<b>Hon'ble</b> <b>Dr. M.S. Gill</b> Chief Election Commissioner	<b>Hon'ble</b> <b>Sh. J.M. Lyngdoh</b> Election Commissioner
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In re: Amalgamation of Indian Congress (Socialist) and Nationalist Congress Party

Dated: 4th August, 1999

This case was called for hearing on 23rd & 24th July, 1999

## **PRESENT :**

*For Indian Congress (Socialist) :*

1. Sh. Ashok Desai, Senior Advocate
2. Sh. P. Shisodia, Advocate
3. Sh. P. Jalan, Advocate
4. Sh. Sarat Chandra Sinha
5. Sh. T.P. Peethambaran Master
6. Sh. S. Swaran Singh
7. Sh. Arjun Pandey

*For Nationalist Congress Party :*

1. Sh. D.N. Dwivedi, Senior Advocate
2. Sh. A. Sharan, Advocate
3. Sh. Prakash Sinha, Advocate
4. Ms. Anuradha Bindra, Advocate
5. Sh. Sharad Pawar
6. Sh. P.A. Sangma
7. Sh. Tariq Anwar
8. Sh. P.C. Mohan

*For anti-merger group of Indian Congress (S) :*

1. Shri Sanjay Kumar Sharma

*For Indian National Congress :*

1. Shri Kapil Sibal, Senior Advocate
2. Shri Marazlan Patrawala, Advocate
3. Ms. Niti Dikshit, Advocate
4. Shri Siddhartha Dave, Advocate

*Election Symbols (Reservation and Allotment) Order, 1968 - paras 16, 18 - amalgamation of parties - meaning of 'merger' and 'amalgamation' explained, both synonymous interchangeable terms - Indian Congress (Socialist) merging with Nationalist Congress Party, even before registration of the latter party -para 16, not squarely attracted, as no new party formed — but Election Commission empowered to adjudicate under Article 324 and para 18 - Nationalist Congress Party, entitled to recognition as State party, because Indian Congress (Socialist) was a recognised State party, but not entitled to symbol 'Charkha' of Indian Congress (Socialist).*

*Flags of parties - Election Commission to review designs of party flags so as to avoid similarity and confusion.*

## **SUMMARY OF THE CASE**

The Indian Congress (Socialist) was a recognised State party in the Union Territory of Andaman and Nicobar Islands and the symbol "Charkha" was reserved for it under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968. The Nationalist Congress Party was another party registered under Section 29A of the R.P. Act, 1951, but not recognised in any State. On 10.7.1999, the General Secretary of the Indian Congress (Socialist) filed an application before the Election Commission, stating that the party had amalgamated with the Nationalist Congress Party, but had decided to retain its symbol 'Charkha' and its flag for the new unified party. It was further stated in that application that the above decision of the Indian Congress (Socialist) to amalgamate with the Nationalist Congress Party was approved by the AICC(S) on 6.6.1999, and was later on approved on the same day by the plenary session of the party held at New Delhi.

On 13.7.1999, the General Secretary of the Nationalist Congress Party also filed an application stating that the Indian Congress (Socialist) had amalgamated with the Nationalist Congress Party at its national convention on 10.6.1999. On the other hand, the Commission had received a communication on 12.6.1999 from one Prof. Ramnath Saha, claiming to be a member of the working committee of the Indian Congress (Socialist) and stating that there was no merger or amalgamation of the Indian Congress (Socialist) and the Nationalist Congress Party and that the former party continued to exist as a separate entity and had elected him as the provisional president of the party at the meeting of the working committee on 6.6.1999. On 17.6.1999, yet another person, one Shri N.I. Pawar (Batliwala) also sent a letter opposing the amalgamation of the two parties and requesting Commission to hear him before deciding the issue.

On 15.7.1999, the Indian National Congress, a recognised National party, also sent a letter stating that it too should be heard, if the Nationalist Congress Party had applied for the allotment of the symbol 'Charkha' and tri-colour flag.

All the above mentioned parties were heard by the Commission on 23.7.99 and 24.7.99 urgently in view of the then ensuing general elections to the House of the People and certain State Legislative Assemblies. The counsel for the Indian National Congress, inter-alia, contended that para 16 of the Symbols Order did not apply to the present case of amalgamation of the Indian Congress (Socialist) [IC (S)] with the Nationalist Congress Party (NCP), as NCP was registered with the Election Commission as political party under Section 29 A of the R.P. Act, 1951 only on 5.7.1999, whereas the decision to amalgamate it with the IC(S) was stated to have been taken on 25.5.1999, i.e., even before its registration with the Commission as a political party. He also objected to the allotment of symbol 'Charkha' to the NCP on the ground that 'Charkha' was a part of the flag of the Indian National Congress, which has been in existence for over 100 years. The counsel for NCP contended that a political party could be in existence even before it was registered under Section 29A of the Representation of the People Act, 1951. It was also submitted that the symbol 'Charkha' was legacy of the IC(S) which had been using that symbol for a long time and the Indian National Congress could not object to its allotment to the NCP with which the IC(S) had amalgamated.

The Commission observed that the present case did not fall within the four corners of para 16 of the Symbols Order, as that para applied to a case of amalgamation of two or more parties to form a new party, whereas in the present case the IC(S) had merged or amalgamated with the NCP and no new party had been formed. The Commission also observed that the words 'merger' and 'amalgamation' had been commonly used as inter-changeable words and having the same meaning, i.e., joining of two or more parties either to form a new party or to inflate the rolls of an already existing party. The Commission further observed that even if the case did not fall within the four corners of para 16 of the Symbols Order, it had the jurisdiction to decide the issue arising in the present case under Article 324 of the Constitution and the residual powers under para 18 of the Symbols Order.

On merits, the Commission held, on the basis of documents furnished, that the Indian Congress (Socialist) had merged with the Nationalist Congress Party. Whereas Sh. N.I.Pawar (Batliwala) had subsequently withdrawn his objection, the other objector Prof. Ramnath Saha had not

furnished any documentary evidence to substantiate his claim that he was elected as the provisional president of the party. The Commission further held that the new formation, Nationalist Congress Party, carried with it the mandate given to the IC(S) that had merged into it and the NCP was entitled to be recognised as a State party in the Union Territory of Andaman and Nicobar Islands. The Commission, however, did not grant the prayer of the party to allot the symbol 'Charkha' to it, observing that the IC(S) having merged with the NCP had extinguished its entity, its name and its symbol, and that the new party will have to choose a new symbol to be reserved for it.

The Commission also reiterated the principle laid down by it in the case of RJD in December, 1996 that no splinter group of a recognised party would be given recognition straightaway on the basis of the past performance of its members and that any such group registered as a new party would have to contest a general election after registration and its recognition would depend on its poll performance in that general election.

The Commission also decided that in future it would examine the design and colours of flags of political parties at the time of their registration, and would even go into the question of flags adopted by the already registered parties, so that any similarity in their flags or with other National symbols or insignia did not create any confusion in the minds of the general public.

## **ORDER**

The question for consideration of the Election Commission is three-fold:

(i) Whether a merger has taken place between the Indian Congress (Socialist), a recognised State Party in the Union Territory of Andaman & Nicobar Islands and the Nationalist Congress Party, registered with the Commission as an unrecognised political party;

(ii) If so, whether this new formation, which bears the name of Nationalist Congress Party, is to be recognised as a State Party in any State or Union Territory and a symbol has to be reserved for it under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968;

(iii) And, if so, whether it has to be given the symbol being held by the Indian Congress (Socialist), namely, "Charkha", and which was reserved for it in the Union territory of Andaman & Nicobar Islands.

2. On 12th July, 1999. an application was filed by Shri T.P.

Peethambaran Master, General Secretary of the Indian Congress (Socialist) stating that the Indian Congress (Socialist) and the Nationalist Congress Party had amalgamated under the name 'Nationalist Congress Party' and decided to retain the symbol "Charkha" and the flag of Indian Congress (Socialist) for the new party. The applicant sought the Commission's permission for the amalgamation and allotment of the symbol "Charkha" for the new party. The applicant stated that the decision for amalgamation was initially taken at the meeting of the Working Committee of the Indian Congress (Socialist) held on 25th May, 1999 in which a resolution for merging the Indian Congress (Socialist) with the Nationalist Congress Party was passed and it was also decided to place the resolution before the AICC(S) and the Plenary Session of the party. The Working Committee again met on 26th May, 1999 and decided to hold the session of AICC(S) and the Plenary Session on 6th June, 1999.

3. The application further stated that the Working Committee again met on 5th June, 1999 at which meeting the resolution earlier passed on 25th May, 1999 was amended to the effect that the two parties amalgamated with the symbol "Charkha" and the flag of Indian Congress (Socialist). It was stated in the application that the Working Committee meeting was attended by 12 out of the 18 members and that 4 of the remaining 6 members had communicated their consent for the amalgamation. Individual affidavits of 16 members were also filed along with the application.

4. It was further stated in the application that the AICC(S) session was held on 6th June, 1999 at New Delhi and was attended by 123 members out of the total of 181 members and that the resolution of amalgamation was endorsed by the AICC(S). The Plenary Session, held on the same day later, also approved the resolution for amalgamation under the name 'Nationalist Congress Party' and for retaining the symbol "Charkha" and the flag of the Indian Congress (Socialist).

5. On 13th July, 1999, Shri Tariq Anwar, General Secretary of the Nationalist Congress Party, filed an application under paragraph 16 of the Election Symbols (Reservation and Allotment) Order, 1968, hereinafter referred to as the (Symbols Order) seeking amalgamation of the Indian Congress (Socialist) with the Nationalist Congress party. It was stated in the application that the ad-hoc committee of the Nationalist Congress Party met on 25.5.1999 and passed a resolution for amalgamation of the said two parties and to hold the National Convention of the party on 10th June, 1999. The resolution passed by the National Convention of the party held

on 10th June, 1999 endorsing the proposal of the ad-hoc committee for the amalgamation of the Indian Congress (Socialist) and the Nationalist Congress Party under the name 'Nationalist Congress Party' and accepting the symbol and flag of the Indian Congress (Socialist) after the amalgamation, was also enclosed with the said application.

6. On 11th June, 1999, the Commission received three separate letters (two of them dated 11th June, 1999 and the other dated 7th June, 1999) signed by Prof. Rama Nath Saha, Member of Working Committee of the Indian Congress (Socialist). Shri Saha stated that there was no merger or amalgamation of the Indian Congress (Socialist) and the Nationalist Congress Party and that the Indian Congress (Socialist) continued to exist as a separate entity and that he was elected as the Provisional President of the Indian Congress (Socialist) at the meeting of the Working Committee on 6th June, 1999. On 17th June, 1999, a letter dated 14th June, 1999 was received from one Shri N.I. Pawar (Batliwala), also opposing the amalgamation of the two parties and requesting that if any application for amalgamation was received, he should also be given a notice before deciding the issue.

7. In view of the ensuing General Elections to the House of the People and Legislative Assemblies of certain States, the Commission decided to hear all parties concerned urgently and accordingly fixed a hearing for 23rd July, 1999. The communications of the aforesaid claimants were exchanged among all the four contending groups on 14th July, 1999 and they were asked to furnish their comments latest by 21st July, 1999.

8. After notices were issued to the parties, a letter dated 15th July, 1999 was filed by the Indian National Congress, a recognised National party, requesting that in the event an application was moved by the Nationalist Congress Party for allotment of symbol consisting of the tricolour flag with "Charkha" on the white strip, the Indian National Congress also be given a hearing under paragraph 16 of the Symbols Order. The prayer of the party was accepted and a notice for hearing was given to the Indian National Congress also.

9. The above referred notices to the four groups were responded to as follows:

(i) The notice served on the Indian Congress (Socialist) was replied to by its General Secretary. Shri T.P. Peetambran Master. He refused the claim of Prof Ramnath Saha stating that his claim of appointment as provisional President of the Indian Congress (Socialist) by the CWC (S) was misconceived and factually incorrect and full of incorrect statements. As

regards the statement of Prof. Saha that Shri Sarat Chandra Sinha, President of the party, desired to retire from active politics because of ill health, he stated that Shri Sinha was in good health and never desired to retire from politics. In support of this claim, he submitted an affidavit from Shri Sinha wherein he stated on oath that he had never expressed any desire to retire from politics on account of ill health, old age or any other reason, and also that there was no CWC(S) meeting of the party on 6th June, 1999, where Shri Saha claimed to have been elected as the provisional President of the party. He further added that no documentary evidence was produced by Shri Saha to substantiate his claim.

(ii) Shri N.I. Pawar (Batliwala) in his reply dated 21th July, 1999 withdrew his objections in his letter dated 14th June, 1999 and endorsed the party decision for amalgamation. He filed a sworn affidavit in support of his submissions.

(iii) The notice to Prof. Ram Nath Saha was replied to by one Shri Sanjay Kumar Sharma, claiming to be the Joint Secretary, Indian Congress (Socialist). He stated that Shri Saha had gone to his native place at Patna to visit his family members and that neither he would be able to submit the written submissions by 21st July, 1999 nor would he be able to attend the hearing on 23rd July, 1999.

10. At the hearing held on 23rd July, 1999, Shri Ashok Desai, Senior Advocate appearing on behalf of the Indian Congress (Socialist), referred to the sequence of events starting from the meeting of the Working Committee on 25th May, 1999 and right up to the decision taken at the Plenary Session on 6th June, 1999. He stated that the documents submitted along with the application clearly showed that the decision of amalgamation was a unanimous one taken after following all procedures and after thorough discussion at various fora. The only member of the party opposing the merger was Prof. Ram Nath Saha and there was no other voice of dissent against the amalgamation. He stated that both the Indian Congress (Socialist) and the Nationalist Congress Party had similar political ideologies and their amalgamation was but logical and natural outcome. He also stated that the Nationalist Congress Party was formed on 25th May, 1999 and it was after consultation with the leaders of the said party that the Working Committee of the Indian Congress (Socialist) passed the resolution of merger in the evening of 25th May, 1999. Shri Desai stated that the Indian Congress (Socialist) had been in existence for a long time and its reserved symbol had been "Charkha" right through.

11. Shri Desai also referred to the order dated 19th December

1997, passed by the Commission in the case of the Rashtriya Janata Dal. By the said order, the Commission had allotted a common symbol to the Rashtriya Janata Dal which had then come into existence following a split in the Janata Dal. Shri Desai stated that the purpose of allotting a common symbol was to avoid confusion among the electors and to serve the cause of democratic elections. He contended that the same principle was applicable in the case of the amalgamated party. The Nationalist Congress Party, according to Shri Desai, had substantial presence in various States. Therefore, it would be only in the fairness of things if the new party was also allotted a common symbol. He contended that as the Indian Congress (Socialist) had been in existence since 1978 and the symbol "Charkha" had been allotted to it ever since, the new party formed by amalgamation of the Indian Congress (Socialist) and the Nationalist Congress Party was entitled to be allotted the symbol "Charkha". He, however, conceded that it was the Commission's discretion to allot "Charkha" or any other symbol to the new party. When pointed out by the Commission that the allotment of a common symbol to the Rashtriya Janata Dal was a one time arrangement. Shri Desai submitted that it could have been one time concession only for the Rashtriya Janata Dal and could not be made applicable to other parties and such other new parties should also be granted the benefit of one time concession of common symbol.

12. Shri A. Sharan, Counsel on behalf of the Nationalist Congress Party, stated that the decision of amalgamation was taken by the party at its National Convention held at Mumbai on 10th June, 1999. He stated that "Charkha" was being used by the Indian Congress (Socialist) for a long time and, following the amalgamation of the two parties, the new party was entitled to be allotted the symbol "Charkha".

13. Shri Sanjay Kumar Sharma who appeared on behalf of Shri Rama Nath Saha stated that Shri Sharad Pawar, who is the leader of Nationalist Congress Party, was earlier a leader of the Indian Congress (Socialist) prior to his joining the Indian National Congress, and that the only objective behind the amalgamation was to obtain the right to use the symbol "Charkha". He submitted that such manipulation for ulterior motive should not be permitted. He also stated that he was also a member of the Indian Congress (Socialist) and also had been an office-bearer, but nowhere in the list submitted by the Indian Congress (Socialist) along with its application, his name figured.

14. Shri Ashok Desai questioned the locus standi of the Indian National Congress, in the matter of the present application for amalgamation. The Commission pointed out that paragraph 16 of the Symbols Order

provided for hearing such persons as desired to be heard in the matter falling under the said para. Shri Kapil Sibal appearing for the Indian National Congress, requested that he be furnished copies of the documents submitted by the Indian Congress (Socialist) and the Nationalist Congress Party to enable him to present his case properly and to assist the Commission. At this stage, the hearing was adjourned to 24th July, 1999 at 11.00 AM. The documents requested for by Shri Sibal were furnished to him.

15. At the hearing on 24th July, 1999, Shri Desai, continuing his arguments, submitted that the questions to be considered by the Commission were : (i) whether the new party is entitled to allotment of a common symbol to the party, (ii) if not, whether the Commission should exercise its discretion to allot a common symbol, and (iii) whether the party should be allotted the symbol "Charkha". He contended that the judgement in the case of the Rashtriya Janata Dal fully supported his case that the new party should be allotted a common symbol. According to Shri Desai, paragraphs 15 and 16 of the Symbols Order should be interpreted in a broad sense and there should not be a distinction between cases of split falling under paragraph 15 and cases of amalgamation covered by paragraph 16 in the matter of allotting a common symbol. In fact, the case for allotment of a common symbol is stronger in the case of amalgamation. He submitted that the Commission's ruling in the case of the Rashtriya Janata Dal had become law laid down by the Commission. He conceded that a symbol allotted to a political party by the Commission was not its property, and that it was an identification for a political party and a symbol became necessary for removing confusion among the electors. While on the subject of allotment of common symbol, he submitted that the requirement of having to contest an election before recognition was only applicable in the case of splinter groups born out of split and the said requirement could not be insisted upon in case of amalgamation of already existing parties, one of which, as in the present case, was already a recognised State party. He submitted that the present case fell under paragraph 16 of the Symbols Order and the Commission had to decide whether the new party should be a National party or State party, and if so, the symbol to be allotted to it. Shri Desai submitted that the principle of allotting common symbol as laid down in the case of the Rashtriya Janata Dal, should be followed in the present case and the party should be allotted a common symbol.

16. Shri Kapil Sibal of the Indian National Congress, at the outset, stated that the present case did not come under paragraph 16 as the said paragraph provided for amalgamation of one or more political parties to form a new political party and that paragraph 2 (1) (h) of the Symbols Order

defined political party to mean an association or body of individual citizens of India registered with the Commission under Section 29A of Representation of the People Act, 1951. He stated that on 25th May, 1999, when the decision was initially taken to amalgamate the two parties, the Nationalist Congress Party was not in existence as a political party, as it was not registered with the Commission as a political party under Section 29A of the Representation of the People Act, 1951. The Nationalist Congress Party became a political party for the purposes of the Symbols Order only after its registration under Section 29A of the Representation of the People Act, 1951 on 5th July, 1999. Therefore, according to Shri Sibal, the Indian Congress (Socialist), a registered and recognised political party, merged with another party which was not a political party registered under Section 29A of the Representation of the People Act, 1951, and, therefore, there was no question of amalgamation on 25th May, 1999. When asked by the Commission as to what was the objection of the Indian National Congress to the amalgamation, Shri Sibal submitted that he was only opposing the request for allotment of the symbol "Charkha". He stated that the flag of the Indian National Congress consisted of a tricolour with "Charkha" on the white strip and allotment of the symbol "Charkha" would confuse the general public. He submitted that under the scheme of paragraph 16 of the Symbols Order, amalgamation had to be of two or more registered political parties and the newly formed party should again seek registration with the Commission, and it was only thereafter that the question of recognition or allotment of symbol to the new party would arise. He stated that the Indian Congress (Socialist) had only nominal presence in the political scene and was recognised only in Andaman & Nicobar Islands. He contended that if it was a case of the Nationalist Congress Party merging with the Indian Congress (Socialist), the position would have been different. He further stated that the Indian National Congress had been in existence for over 100 years and, had been using the tricolour flag with "Charkha". According to him, the intention of the Nationalist Congress Party was to get hold of the "Charkha" symbol and to confuse the general public and electors. He urged that the situation should be viewed in the correct political perspective and realities. He submitted that the case of the Nationalist Congress Party fell purely under paragraphs 10 and 12 of the Symbols Order.

17. Referring to the arguments of the Indian Congress (Socialist) that the Commission has got the discretionary power to grant similar concession of allotting a common symbol to political parties having substantial backing, as had been given in the case of the Rashtriya Janata Dal, Shri Sibal stated that the Commission made it clear in that Order that the concession was a one time concession and that the same could not be

revived, after a principle had been laid down. He added that the judgement was on the principle that no person should hijack a mandate on which he was elected. He further added that had the Nationalist Congress Party merged with the Indian Congress (Socialist), they would have got the symbol 'Charkha'

18. Shri D.N. Dwivedi, Senior Counsel, on behalf of the Nationalist Congress Party, stated that "Charkha" symbol was the legacy of the Indian Congress (Socialist) which had been using that symbol for a long time. He submitted that the Nationalist Congress Party was formed on 25th May, 1999 and that a political party could be in existence even before it was registered under Section 29A of the Representation of the People Act, 1951. According to him, registration under Section 29A is for the purpose of certain benefits and just because a party is not registered under the said section, it cannot be said that the party is not in existence as a political party. He further added that even Section 29A of the Representation of the People Act, 1951 provided for thirty days for the political party to apply for registration and, therefore, the contention of Shri Sibal that the Nationalist Congress party was not a political party on the date of its amalgamation with Indian Congress (Socialist) was not tenable. He also submitted that if the contention of Shri Sibal that the case of the applicant parties fell under paragraph 12 was accepted, then paragraph 16 would become totally meaningless.

19. At the conclusion of the hearing on 24th July, 1999, the Commission allowed the parties to file their written submissions latest by the evening of 26th July, 1999. The learned Counsel agreed to file their written submissions.

20. We have carefully examined the relevant records of the case and the documentary evidence that has been placed on record by the parties concerned. We have also analysed the legal submissions and contentions raised on their behalf, both in their oral submissions as well as in their written submissions.

21. The case of the applicants' party is that the Indian Congress (Socialist) has merged or amalgamated with the Nationalist Congress Party and that the Nationalist Congress Party may be recognised by the Commission as a State Party and the symbol "Charkha" may be reserved for it. The applicants have approached the Commission for the above relief under paragraph 16 of the Symbols Order.

22. Before examining the prayer of the parties, it would be appropriate to have a look at the provisions governing the amalgamation of

political parties and the definition of a political party, in the Symbols Order. Relevant provisions are contained in paragraphs 16 and 2 (1) (h) respectively of the Symbols Order. Those paragraphs are reproduced below: -

**“16. Power of Commission in case of amalgamation of two or more political parties -**

**(1) When two or more political parties, one or some or all of whom is a recognised political party or are recognised political parties join together to form a new political party, the Commission may, after taking into account all the facts and circumstances of the case, hearing such representatives of the newly formed party and other persons as desire to be heard and having regard to the provisions of this Order, decide-**

**(a) whether such newly formed party should be a National party or a State party; and**

**(b) the symbol to be allotted to it.**

**(2) The decision of the Commission under sub-paragraph (1) shall be binding on the newly formed political party and all the component units thereof.”**

**“2. Definitions and interpretation - (I) In this order, unless the context otherwise requires -**

**(h) “Political party” means an association or body of individual citizens of India registered with the Commission as a political party under Section 29A of the Representation of the People Act, 1951”.**

**23. Shri Kapil Sibal, learned Senior Counsel for the Indian National Congress has contended that the applicants’ case does not fall in the ambit of the above paragraph 16 in as much as the said paragraph envisages the amalgamation of two or more parties to form a new party, whereas, in the present case, the Indian Congress (Socialist) has merged with the Nationalist Congress Party and no new party has been formed. He also sought to make a distinction between the words merger and amalgamation used by the applicant parties in their resolutions.**

**24. Shri Sibal is right in his contention that the case of the present parties does not fall within the four corners of paragraph 16 of the Symbols Order. What has happened in the present case is that the Indian Congress (Socialist) has merged or amalgamated with the Nationalist Congress Party. Such merger or amalgamation has not resulted in the formation of any new party. We have observed that during the entire proceedings, the words,**

'merger' and 'amalgamation' have been used interchangeably. Even in the communications with the Election Commission, these two terms have been used to denote the synonymous meaning. The Commission does not wish to dilate on the controversy with regard to the use of these two terms, because, in common parlance, these two terms are understood to have the same meaning, that is, to say, the joining of two or more parties either to form a new party or to inflate the rolls of the already existing party. We have observed that even the Supreme Court in the case of Samyukt Socialist Party Vs the Election Commission of India, (AIR 1967, SC 898) have described the formation of the Samyukt Socialist Party as a merger of the Praja Socialist Party and the Socialist Party and not as the amalgamation of those two parties. Though, we have held above that the present case does not fall within the four corners of the paragraph 16 of the Symbols Order it cannot be disputed that the Commission does have the jurisdiction to decide the issues arising in the present case in exercise of its inherent powers under Article 324 of the Constitution and residual powers retained by it under paragraph 18 of the Symbols Order. In a similar case relating to the merger of the All Party Hill Leaders' Conference (APHLC) with the Indian National Congress in 1977, the Commission had decided the case by treating it as dispute under paragraph 15 of the Symbols Order as, one of the groups of the APHLC was claiming that the party had merged with the Indian National Congress and the other group was contending otherwise. The Supreme Court observed in APHLC Vs Captain W.A. Sangma (AIR 1977, SC 2155) that the matter did not fall under paragraph 15 of the Symbols Order, but the Supreme Court, nevertheless, held that the Commission did have the power to decide the controversy in that case. The issues involved in the present case are also almost similar and, therefore, the Commission does possess the powers to resolve those issues.

25. The first issue that arises for consideration is whether the Indian Congress (Socialist) has merged or amalgamated with the Nationalist Congress Party. For deciding this issue, we have to bear in mind the principle laid down by the Supreme Court in the above referred case of APHLC that, any decision to merge a party with another party should be taken by involving the general membership of the party, and not by a handful of its leaders and office-bearers, as the merger of the party amounts to wiping off its existence and signing its death warrant.

26. In the instant case, the Indian Congress (Socialist) submitted all the documents to prove that the general membership of the party gave consent to its amalgamation with the Nationalist Congress Party. Objections were received in the Commission from only two persons, viz. Prof. Ram Nath Saha and Shri N.I. Pawar (Batliwala). Later on, Shri Pawar (Batliwala)

withdrew his objection and submitted a duly sworn affidavit supporting the merger move. The other objector viz. Prof. Ram Nath Saha stated in his application that he was appointed as the provisional President of the party at the CWC (S) meeting held on 6th June, 1999 as Shri Sarat Chandra Sinha, President of the party, desired to retire from active politics on account of his old age and ill health. To substantiate his claim, he did not furnish any documentary evidence. On the day of hearing, he was represented by one Shri Sanjay Kumar Sharma claiming to be Joint Secretary, Indian Congress (Socialist), who also did not furnish any evidence and wanted more time for filing documentary evidence. The request could not be acceded to, as enough time was already granted to the objector to file the documentary evidence and also to present his case. Shri Saha was stated to have gone to Patna to meet his family members. Had he wanted to produce the evidence, he could have come to Delhi, as the reasons given for his absence on the day of hearing were not so compelling as to show that his presence at Patna was absolutely necessary. Further, he was represented by Shri Sanjay Kumar Sharma, who could have produced the documents, if any. Shri Sharma did not produce any documentary evidence to prove that Prof. Ram Nath Saha was appointed as the provisional President of the party. He could not also produce any documentary evidence to prove that the merger move did not have the consent at the plenary session of the party held on 6th June, 1999. We are, therefore, satisfied that the merger move had the consent of general membership of the party.

27. In so far as the Nationalist Congress Party is concerned, it too, decided to merge with the Indian Congress (Socialist) at its National convention on 10th June, 1999. Therefore, the general membership of that party was also involved in its move to merge with the Indian Congress (Socialist). Accordingly, we hold that the two parties validly merged and decided to continue in the name of Nationalist Congress Party.

28. The learned Counsel for the Indian Congress (Socialist) has very rightly said that the symbol is not a property of any political party, but it is an identification for a political party and that a symbol becomes necessary for removing confusion among electors. Therefore, it would be an error on the part of the Commission to bestow on the Nationalist Congress Party the identity of the Indian Congress (Socialist). As stated earlier, the Indian Congress (Socialist) as a party has merged with the Nationalist Congress Party. Therefore, its identity, which, in the political scheme of things, means the name of the party and the symbol, has submerged into the identity of the Nationalist Congress Party.

29. Having come to the conclusion that the Indian Congress (Socialist) has merged with the Nationalist Congress Party, we have now to

decide whether the new formation, on merger should be recognised as a State party, and given a reserved symbol. The question is whether the benefit of recognition could be extended to the newly formed party on the merger of a recognised political party into an unrecognised party. The answer has to be in the affirmative, as the mandate given by the electorate to a recognised political party continues until it is extinguished at the next general election. Thus, the new formation carries with it the mandate given to the party that has merged into it, that is to say, the recognition granted to the Indian Congress (Socialist) as a State party in the Union Territory of Andaman & Nicobar Islands on the results of the 1998 general elections to the 12th Lok Sabha is carried by it to the new formation. The Commission has, therefore, decided to recognise the new formation as a State party in Andaman & Nicobar Islands and to allot to that party a reserved under the Symbols Order.

30. Now, the only issue remaining to be decided is the symbol to be allotted to the Nationalist Congress Party, which has been considered eligible for recognition as a State party in Andaman & Nicobar Islands as aforesaid. Hitherto, the symbol “Charkha” has been reserved for Indian Congress (Socialist) in the Union Territory of Andaman & Nicobar Islands. With the merger of the Nationalist Congress Party it has in the words of the Supreme Court, in the case of APHLC (SUPRA) lost its separate identity and cannot claim, as a matter of right, that its reserved symbol should be allotted to the Nationalist Congress Party. The Supreme Court has held in the case of Sadiq Ali Vs. Election Commission and Others (AIR 1972: SC 187) that an election symbol is not property of any political party. Shri Ashok Desai, learned counsel for Indian Congress (Socialist), was also fair enough to concede this legal position.

31. To summarise, therefore, the Indian Congress (Socialist) has, by merging with the Nationalist Congress Party, extinguished its identity and the name, and the symbol, that the party had hitherto enjoyed, and has now got submerged into the identity of the Nationalist Congress Party. However, this new formation, namely, the Nationalist Congress Party into which the Indian Congress (Socialist) party has merged, cannot be denied the mandate that the Indian Congress (Socialist) obtained and, by virtue of it, it had gained recognition as a State party in the Union Territory of Andaman & Nicobar Islands. Therefore, the Nationalist Congress Party has to be recognised as a State Party in the Union Territory of Andaman & Nicobar Islands and will be eligible for the reservation of a symbol for it in that Union Territory which will be a symbol other than “Charkha” which now stands frozen with the merger of Nationalist Congress Party. The Nationalist Congress Party shall, therefore, submit a list of three symbols,

in order of its preference, one of which may be reserved for it by the Election Commission in the Union Territory of Andaman & Nicobar Islands. Of course, this symbol that would be reserved for it in the Union Territory of Andaman & Nicobar Islands can be operated by them, if they so choose, in other States and Union Territories, under the relevant provisions of the paragraph 10 of the Symbols Order.

32. Before parting with the present case, the Commission would like to take the opportunity to remove any misgivings in the minds of the political parties regarding the principle laid down by the Commission in its decision dated 19th December, 1997 in the case of the Rashtriya Janata Dal, and also in six other judgements on the eve of general elections to the House of the People held in 1998. Shri Ashok Desai, learned counsel for the Indian Congress (Socialist), contended in this case before the Commission that, the one-time concession, which was given to the Rashtriya Janata Dal and six other parties for the general elections to the Lok Sabha, 1998 may be extended to the Nationalist Congress Party also. His contention was that every splinter group of a recognised political party is eligible for this one-time concession. The principle laid down by the Commission in these seven judgments was rightly pointed out by Shri Kapil Sibal and the principle laid down was that in the event of a split of a recognised political party, the splinter groups from the main party would have to register themselves as new political parties and will have to contest the general elections as such registered parties and would gain recognition only after their poll performance in those general elections measured up to the norms laid down in paragraphs 6 and 7 of the Symbols Order. A one-time concession was given to Rashtriya Janata Dal and six other parties which were similarly placed at that time because of the contradictory stand taken on this issue by the Commission in the past. The Commission would now like to make it unambiguously clear to all parties and would like to put them on prior notice that no concession of allotment of a common symbol to any splinter group would be extended to any party in future unless that party becomes entitled to be recognised as the State party on the basis of its own poll performance under the Symbols Order, after it has been registered with the Commission under Section 29A of the R.P. Act, 1951. The recognition flows from the mandate gained at the general elections and gets extinguished on the performance in the general elections.

33. Shri Kapil Sibal, learned Counsel for the Indian National Congress has objected to the allotment of the symbol "Charkha" to the Nationalist Congress Party on the ground that "Charkha" is a part of the flag of the Indian National Congress and the use of "Charkha" as an election symbol by the Nationalist Congress Party would confuse the electors. He

contended that if the Nationalist Congress Party is allotted the symbol “Charkha” that party would also use the symbol “Charkha” on its party flag which is also a tricolour and that the flag of the Nationalist Congress Party would be a replica of the flag of the Indian National Congress. It has been seen by the Commission that various political parties have adopted certain flags in their party constitution. Some of them have not mentioned a flag that they intend to use in their party constitution. The Commission, henceforth, would like to examine the designs and colours of flags of various political parties also at the time of their registration and at an appropriate time, the Commission would even like to go into the question of flags adopted by the already registered parties also so that any similarity in their flags or their similarity with other national symbols or insignia does not create confusion in the minds of the general public.

34. We sum up our conclusions on the issues before us as follows :

(1) On the merger of the Indian Congress (Socialist), a recognised State Party in the Union Territory of Andaman & Nicobar Islands, with the Nationalist Congress Party, the Nationalist Congress Party is hereby recognised as a State Party in the Union Territory of Andaman & Nicobar Islands, under the provisions of the Election Symbols (Reservation & Allotment) Order, 1968;

(2) The Nationalist Congress Party so recognised as a State Party in the Union Territory of Andaman & Nicobar Islands will be eligible for the reservation of a Symbol for it in that Union Territory;

(3) The said Nationalist Congress Party shall submit a list of three Symbols, in order of its preference, any one of which may be reserved for it by the Election Commission in the Union Territory of Andaman & Nicobar Islands. Such preference shall be intimated to the Commission latest by 5.00 PM on 6th August, 1999.

**ORDERED ACCORDINGLY**

*Sd/-*  
**(G.V.G. Krishnamurthy)**  
Election Commissioner

*Sd/-*  
**(Dr. M.S. Gill)**  
Chief Election  
Commissioner

*Sd/-*  
**(J.M. Lyngdoh)**  
Election Commissioner



# **ELECTION COMMISSION OF INDIA**

**CORAM :**

**Hon'ble**  
**Sh. G.V.G. Krishnamurty**  
Election  
Commissioner

**Hon'ble**  
**Sh. J.M. Lyngdoh**  
Election  
Commissioner

In re: Republican Party of India and its Office Bearers of the Party

Dated: 4th August, 1999

This case was called for hearing on 29th July, 1999.

**PRESENT :**

*For R.S. Gavai Group :*

1. Sh. Kapil Sibal, Senior Advocate
2. Sh. B.R. Gavai, Advocate
3. Ms. Niti Dikshit, Advocate
4. Sh. Siddhartha Dave, Advocate
5. Sh. R.S. Gavai
6. Sh. S.R. Mogha
7. Prof. Jagendra Kawade

*For Ramdas Athawale Group:*

1. Sh. A. Sharan, Advocate
2. Sh. Ramdas Athawale
3. Sh. B.C. Kamble
4. Sh. Rahulan Ambawadekar
5. Sh. A. Sharan, Advocate
6. Sh. Bojja Tharakam
7. Sh. S. John
8. Sh. K. Baudh

*For T.M. Kamble Group:*

1. Sh. Ravinder Kumar, Advocate
2. Sh. T.M. Kamble
3. Sh. Dilip Jagtap

*For Prakash Ambedkar Group:*

1. Sh. Mahesh Madhukar Bharatiya
2. Sh. Ratan Singh
3. Sh. Naveen Kumar Goutam
4. Sh. Madanlal Bharathi

*Election Symbols (Reservation and Allotment) Order, 1968 - para 15 - split in a party on the question of organisational elections - Validity of election decided by a Civil Court - Election Commission accepting the results of such organisational elections - further split in the group recognised as the party - test of majority applied in respect of the new splinter groups.*

## **SUMMARY OF THE CASE**

The Republican Party of India was a State party in Maharashtra and the symbol 'Rising Sun' was reserved for it under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968. There was a dispute amongst the office-bearers of the party in 1997 and the Election Commission, by its interim order dated 3rd January, 1998, directed the party to settle its dispute amicably or before the competent court of law, and to hold regular organisational elections in accordance with the party constitution by the end of December, 1998. Organisational elections were then stated to have been held in December, 1998 and Sh. Ramdas Athawale was elected as party President. However, another group led by Sh. Prakash Ambedkar disputed the validity of these organisational elections in a civil suit before the Court of Civil Judge, Mumbai. The Civil Court dismissed that suit on 7th July, 1999. Thereupon, the Election Commission rejected the claims of Sh. Prakash Ambedkar and his supporters as representing the Republic Party of India.

Before the matter could be finally decided by the Commission, there was a further split in the party resulting in the formation of two groups, one led by Sh. Ramdas Athawale and the other by Sh. R.S.Gavai. Applying the test of majority, the Election Commission held that the group led by Sh. R.S.Gavai enjoyed superior numerical support, both in the organisational and legislature wings of the party. Accordingly, the Commission recognised the group led by Sh. R.S.Gavai as the Republican Party of India and entitled to the use of its reserved symbol 'Rising Sun' as a recognised State party in Maharashtra.

## **ORDER**

The question for consideration of the Election Commission is whom it should recognise as the office bearers of the Republican Party of India for the purposes of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as the "Symbols Order").

2. The Republican Party of India is a recognised State Party in the State of Maharashtra with the symbol 'Rising Sun' reserved for it in

that State. The Republican Party of India was a recognised party earlier until early 1970s. Subsequently, after it lost its recognition in early 1970s, the party split into several factions and some of those factions obtained registration with the Commission as Republican Party of India (Democratic), Republican Party of India (Khobragade), Republican Party of India (Kamble), etc. In December, 1995, some of the splinter parties merged with the main Republican Party of India and, as an ad-hoc working arrangement, a ten-member Presidium comprising representatives from the different merging parties was formed. In the year 1997, the Commission received communications from different office bearers of the party indicating a dispute in the party with regard to its office bearers, with two different groups of the party emerging. The two groups were then headed by Shri R.S.Gavai, on the one side, and Shri Prakash Ambedkar, on the other side. With the general election to the Lok Sabha being on the anvil in December, 1997, the Commission took up the matter and after hearing the rival groups on 17th December, 1997, passed an interim order on 3rd January, 1998. At the hearing, both the groups admitted that the organisational elections stated to have been conducted by them were not held in accordance with the provisions of the party constitution. In the said interim order dated 3rd January, 1998, it was directed, as an ad-hoc arrangement, that communications from the party with regard to setting up of its candidates at the general election of 1998, would be entertained only from the ten-member Presidium of the party and that the communications in that behalf had, to be signed by a minimum of six members of the Presidium. It was made clear that the said order was only a temporary and ad-hoc arrangement for the purposes of the 1998 general election and that the party would have to settle its intra-party dispute by amicable settlement or before the competent Court of Law and follow it up by regular organisational elections strictly in accordance with the provisions of the party constitution within three months of completion of the general election.

3. After the completion of the general election in March, 1998, the party, as per the directions contained in the Commission's interim order of 3rd January, 1998, was required to hold its organisational elections. But the Commission observed that there was no move on the part of the party to hold the organisational elections. Therefore, the party was directed to take immediate action and complete the elections by 30th September, 1998. The time limit for completing the elections was subsequently extended up to 31st December, 1998, on a request on behalf of the party.

4. Again, communications were received from two groups of the party regarding the conduct of its organisational elections. Shri Prakash

Ambedkar, who was a member of the ten-member Presidium, in his letter dated 25th September, 1998, stated that he was appointed by the party as the Returning Officer, for conducting the organisational elections and that he conducted the elections accordingly. The list submitted by Shri Prakash Ambedkar showed Sh. Raja Dhale, who was one of the members of the Presidium, as the National President of the party. The papers submitted by Shri Ambedkar also indicated that election at the State level was conducted only in Maharashtra.

5. On the other hand, another member of the Presidium, Shri Ramdas Athawale, in a letter dated 6th October, 1998, informed that Shri M.D. Shewale was appointed as the Returning Officer for conducting the organisational elections of the Republican Party of India. It was stated that the appointment was approved at the meeting of the Presidium held on 26th September, 1998. Copy of the minutes of the meeting of 26.9.1998 enclosed with the said letter showed that the said appointment had the approval of five members of the party Presidium. In another letter dated 7th October, 1998, Shri Athawale had stated that Shri Namdeo Dhasal, one of the ten members of the Presidium, had resigned from the party. No further details were given. Subsequently, Shri Athawale submitted, along with his letter dated 29th December, 1998, a list of office bearers stated to have been elected at the elections conducted with Shri M.D. Shewale as the Returning Officer. The said letter was signed by five members of the Presidium, namely, Shri R.S. Gavai, Shri Ramdas Athawale, Shri Shivramji Mogha, Prof. Jogendra Kawade and Shri Ghanshamji Talwatkar. In the said list, Shri Ramdas Athawale (also a member of the Presidium) was shown as the National President. From the papers submitted by this group, it was seen that elections were conducted at all levels and in various State Units before electing the General Central Council and the office bearers at the National level. Therefore, the elections conducted by this group appeared to be more in accordance with the procedure prescribed in the party constitution. This group also had the backing of five of the ten members of the Presidium. Shri Athawale, in a letter dated 1st February, 1999, had further stated that three of the four Members of Lok Sabha belonging to the Republican Party of India were with his group.

6. Shri T.M. Kamble, a member of the Presidium, who was a signatory to the minutes of the meeting of the Presidium of 26th September, 1998, later submitted a letter dated 28th December 1998, stating that the appointment of Shri Shewale as the Returning Officer was not valid as the earlier appointment of Shri Prakash Ambedkar was not terminated. He also stated that only five of the ten Presidium members were present at the

meeting held on 26th September, 1998 and he (Shri Kamble) was not in favour of the appointment of Shri Shewale as Returning Officer. He requested that the Presidium members should be directed to conduct the elections afresh.

7. Thus, it was clear that the party failed to sort out and resolve the dispute with regard to its office bearers at least two groups and went ahead with parallel organisational elections. Before deciding the question as to who should be recognised as the office bearers of the party, the Commission decided to hear all the parties and they were accordingly heard on 23rd February, 1999. At the hearing, Sh. Prakash Ambedkar and Sh. T.M. Kamble stated that a civil suit had already been filed before a Civil Court at Mumbai challenging the organisational elections held by Athawale group. They prayed that the Commission may adjourn the matter and await the decision of the Court. The Commission directed Sh. Ambedkar and Sh.Kamble to furnish copy of the suit plaint at the earliest.

8. On 28th April, 1999, a copy of a suit filed before the Bombay City Civil Court on 26th April, 1999 was received from the counsel of the plaintiff Sh. Nana Shamkule. The plaintiff had sought a direction restraining Shri Athawale and Shri Gavai from acting or holding out as the President and General Secretary of the Republican Party of India.

9. On 1st June, 1999, a copy of an interim order dated 6th May, 1999 passed by the Court granting interim injunction against Shri Athawale and Shri R.S.Gavai from acting as the President and General Secretary was received. The order also restrained the Commission from dealing with them as office bearers of the Republican Party of India.

10. Subsequently, on 7th July, 1999, the suit was dismissed without granting any relief to the plaintiff. The Court observed that recognising a group of a political party was exclusively the power of the Election Commission.

11. After the dismissal of the suit, certain communications were received in July, 1999 from Shri R.S. Gavai and Shri Ramdas Athawale which showed that now there was some dispute between Shri R.S. Gavai and Shri Ramdas Athawale. Sh. R.S.Gavai stated that Shri Ramdas Athawale defied the decision taken by the Central Executive Committee of the party on 11th May, 1999 regarding electoral alliance with the Indian National Congress. He requested that as Shri Athawale was acting against the decision of the Central Executive Committee, the Commission may recognise a person, whose name is intimated by the largest number of members of Presidium of the party, as the authorised Office Bearer to sign

Forms 'A' and 'B' for setting up candidates at the forthcoming general election. Shri Gavai also stated that four of the ten members of the Presidium were supporting him and requested that he should be given a hearing before the Commission passed any orders. Shri Athawale also submitted a letter on 17th July, 1999, requesting the Commission to recognise the office bearers elected in December, 1998. He also stated that no case was pending in the matter in any Court.

12. The Commission decided to hear the parties before passing any orders. Accordingly, all the rival factions were heard together on the 29th July, 1999. At the hearing on 29th July, 1999, Shri Kapil Sibal, Senior Counsel, appearing on behalf of Shri Gavai, referred to the history of the case and the circumstances under which the Commission had to pass the order on 3rd January, 1998 as an interim measure. He submitted that at the elections conducted in December, 1998, Shri Ramdas Athawale was elected as the party President. But, now, there is a dispute in the party following the decision of Shri Athawale to act contrary to the decision of the Central Executive Committee in the matter of electoral alliance at the forthcoming general election. He stated that at the meeting held on 11th May, 1999, the Central Executive Committee had decided to have electoral alliance with the Indian National Congress. But, Shri Athawale decided to side with the Nationalist Congress Party, thereby acting against the decision of the Central Executive Committee. He stated that Shri Ramdas Athawale was removed from the post of President by the Central Executive Committee for defying the Central Executive Committee, which is the highest executive authority of the party. He stated that if it was not possible to decide the dispute case under paragraph 15 of the Symbols Order at this stage due to paucity of line, the ad-hoc arrangement made by the Commission in its order dated 3rd January, 1998, recognising the Presidium of the party as the body to authorise Office Bearers to sign Forms 'A' and 'B', might continue for the time being. He submitted that at the hearing held last on 23rd February, 1999, Shri Prakash Ambedkar as well as Shri T.M. Kamble had also requested that the arrangement of the Presidium might continue, which showed that they also still recognised the existence and relevance of the Presidium.

13. Shri A. Sharan, Counsel on behalf of Shri Ramdas Athawale, stated that once the organisational elections were completed in December, 1998, the Presidium of the party had no relevance at all. He stated that Shri Ramdas Athawale was elected as the party President at the organisational elections held in December, 1998 and the issue of electoral alliance was an internal matter of the party. He submitted that the Commission was not

the appropriate forum to raise the question of expulsion of the party President and that such issues should be raised before a Civil Court. He stated that, as per the party constitution, the President could be expelled only with the approval of two-third members of the Central Executive Committee and the expulsion claimed by Shri Gavai did not have the approval of two-third members of the Central Executive Committee. Therefore, according to Shri Sharan, the expulsion was non-est and had no legal validity. He claimed that no notice was issued to Shri Ramdas Athawale on the proposed expulsion. He also stated that Shri Ramdas Athawale enjoyed the support of thirty-one out of forty nine members of the Central Executive Committee. He submitted affidavits from twenty three members and stated that he would submit affidavits of the remaining members within a day. He submitted that as Shri Ramdas Athawale was elected as the party President in a validly held election, and as he was not expelled in accordance with the provisions of the party constitution, Shri Ramdas Athawale continued to be the President and was entitled to sign Forms 'A' and 'B'.

14. Shri Ravinder Kumar, Counsel on behalf of Shri T.M. Kamble, submitted that Shri Kamble supported the contention of Shri Gavai that the ad-hoc arrangement of the Presidium should continue for the forthcoming general election. Shri Kamble who was present, also stated that he supported the views of Shri Gavai.

15. Shri Mahesh Madhukar Bharatiya, representative of Shri Prakash Ambedkar stated that neither Shri R.S. Gavai nor Shri Ramdas Athawale was entitled to sign Forms 'A' and 'B' and this power should be given to Shri Prakash Ambedkar and Shri Raja Dhale.

16. Replying to the arguments, Shri Kapil Sibal stated that on 13th May, 1999, Shri Ramdas Athawale had addressed a letter to the Commission stating therein that five members of the Presidium including himself had approved the organisational election held in December, 1998, which showed that Shri Ramdas Athawale himself recognised the existence of the Presidium on 13th May, 1999. He also pointed out that there was no provision in the party constitution which stipulated that expulsion of the party President required the approval of two-third members of the Central Executive Committee. Regarding the support of the Central Executive Committee claimed by Shri Athawale, Shri Sibal submitted that the list of office bearers submitted by Shri Athawale himself at the hearing showed that after the elections held in December, 1998, Shri Ramdas Athawale had, on his own, added some persons in the list of members of Central Executive Committee. Shri Sibal further submitted that Shri R.S. Gavai enjoyed support of the majority of the State Units of the party, apart from

the support of Shri Doman Singh Nagpure, Minister in Madhya Pradesh and Shri Rajendran, MLA in Karnataka, who were elected on the ticket of the Republican Party of India. He submitted that the Commission should take into account all the facts and circumstances of the case and pass an appropriate order so that the party might not be denied of its reserved symbol at the ensuing general election.

17. The Commission directed all the groups to file written submissions along with documentary evidence, including individual affidavits of their supporters, latest by 2nd August, 1999 and reserved judgement in the matter.

18. The Commission has carefully examined all relevant records and documentary evidence adduced by all parties, and also examined and analysed their suggestions both oral as well as written.

19. The Commission had, in its interim order, dated the 3rd January, 1998 directed the party to settle its dispute amicably or before the competent court of law, followed by regular organisational elections strictly in accordance with the provision of the party constitution within three months after the completion of the general election to the House of the People held in 1998. The time limit was subsequently extended up to 31st December, 1998. Following this order, organisational elections were held in December, 1998 at all levels in all States where the party has its units with the approval of five members of the Presidium, which constituted majority in the Presidium in view of the fact that one of the ten members of the Presidium, namely, Shri Namdeo Dhasal, had resigned as a member of the Presidium. Shri Ramdas Athawale, who was elected as the President of the party at the organisational elections, submitted the complete list of office bearers to the Commission with his letter dated 29th December, 1998.

20. The Commission did not accept the said list of office bearers of the party earlier, as Shri Prakash Ambedkar and Shri T.M. Kamble stated, at the hearing on 23rd February, 1999, that a civil suit had been filed before the Court of Civil Judge, Mumbai and that the Commission should not take a decision before the suit was decided by the Civil Court. They promised to send a copy a copy of the suit plaint.

21. But neither S/Shri Ambedkar nor Kamble furnished copy of a civil suit, as promised. The Commission, however, received a copy of a civil suit which was filed much later on 26th April, 1999 by one Shri Nana Shamkule. It was received from the counsel for the plaintiff. Thus the

statements made by S/Shri Ambedkar and Kamble at the hearing on 23rd February, 1999 were apparently wrong.

22. The civil suit filed by Shri Nana Shamkule was dismissed on 7th July, 1999. The Commission is not aware of any other proceedings pending in any Court. Shri Athawale has, in his letter dated 17th July, 1999, categorically, stated that there is no other order of any kind passed by any Court in the matters, and has requested the Commission to recognise the organisational elections held in December, 1998.

23. In view of the above, the Commission is now satisfied that the party has held its organisational elections in December, 1998 as directed by the Commission in its order dated 3rd January, 1998.

24. Consequently, the claims of S/Shri Prakash Ambedkar and T.M. Kamble, as representing the Republican Party of India are rejected as untenable.

25. Ordinarily, the matter would have rested there and the Commission would have accepted the office bearers as elected in the December, 1998 organisational elections, as the present office bearers of the party. But there have been further developments after the conduct of the organisational elections. It is apparent from the records that there has been split in the party recently in July, 1999, with two rival groups emerging out of that split, namely, one headed by Shri R.S. Gavai and Prof. Jogendra Kawade and the other by Shri Ramdas Athawale and each claiming to be the Republican Party of India. The Commission is, therefore, required to decide as to which of these two factions or groups is the Republican party of India.

26. In deciding the claims of rival groups in the case of split, the consistent and settled principle adopted by the Commission has been the test of numerical majority, both in organisational and legislature wings of the party concerned. The Hon'ble Supreme Court has upheld this principle in the case of Sadiq Ali and another Vs. Election Commission of India and others (AIR 1972 SC 187).

27. In support of the respective claims of majority, both the aforesaid two rival groups in the present case have filed certain affidavits from the members forming the legislature wing and organisational wing of the party. The relative strength of the two groups, on the basis of the said affidavits, emerges as follows :-

**LEGISLATURE WING**

Name of the House	Total No. of RPI Members	Number of members who have filed Affidavits in support of	
		Sh. R.S. Gavai and Prof. Kawade	Sh. Ramdas Athawale
12th Lok Sabha	4	2	1
Legislative Assembly (Madhya Pradesh)	1	1	—
Legislative Assembly (Karnataka)	1	1	—

**ORGANISATIONAL WING**

Name of the Body/ Committee	Total No. of Members	Number of members who have filed Affidavits in support of	
		Sh. R.S. Gavai and Prof. Kawade	Sh. Ramdas Athawale
Erstwhile Presidium	9	5	2
Central Executive Committee as formed after the organisational elections in December 1998	72 (46 elected and 26 ex-officio)	36	27

28. The above documentary evidence undoubtedly shows that the group led by Shri R.S. Gavai has superior numerical strength and enjoys majority in the legislature wing of the party.

29. In so far as the application of the test of majority in the organisational wing of the party is concerned, it is true that it is primary members who constitute the party. But it is also equally true that it is well nigh impossible to ascertain the relative strength of the primary members whose numbers may run into thousands. Therefore, the Commission has normally been applying in the past the test of majority in respect of those bodies or Committees of party which form the decision making organs at the apex and state levels in the organisational wing of the party. The documentary evidence in support of the respective groups shows that the group led by Shri R.S. Gavai enjoys superior numerical support not only in the Central Executive Committee, but also among the units of the party in

various States. As against the partial support of two State units claimed by the group led by Shri Athawale, the group led by Shri Gavai has demonstrated the support of eight State units in favour of that group. Thus, the obvious conclusion is that, in the organisational wing too, the group led by Shri R.S. Gavai and Shri Kawade enjoys the support of the majority.

30. Having regard to the above and to the totality of facts and circumstances the Election Commission hereby decides, in terms of paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968, that the group led by Shri R.S.Gavai and Prof. Jogindra Kawade represents the Republican Party of India and is entitled to the use of its reserved symbol "Rising Sun" as a recognised State party in Maharashtra.

**ORDERED ACCORDINGLY**

*Sd/-*  
**(G.V.G. Krishnamurty)**  
Election  
Commissioner

*Sd/-*  
**(J.M. Lyngdoh)**  
Election  
Commissioner



# **ELECTION COMMISSION OF INDIA**

## **CORAM :**

<b>Hon'ble</b> <b>Sh. G.V.G. Krishnamurty</b> Election Commissioner	<b>Hon'ble</b> <b>Dr. M.S. Gill</b> Chief Election Commissioner	<b>Hon'ble</b> <b>Sh. J.M. Lyngdoh</b> Election Commissioner
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In re: Dispute Case No. 1 of 1999 - Application filed by Shri H.D. Deve Gowda under paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968, seeking a declaration allotting the symbol "Chakra (Wheel)" to the group of Janata Dal led by Shri Deve Gowda.

Dated: 7th August, 1999

## **PRESENT :**

*For Deve Gowda Group:*

1. Sh. R.K. Anand, Senior Advocate
2. Sh. Lavkesh Sawhney, Advocate
3. Sh. Bhagwan, Advocate
4. Sh. Madhu Dandavate
5. Sh. S.R. Bommai
6. Sh. K. Yadav Reddy
7. Sh. Bapu Kaldate
8. Ms. Shivani Lal

*For Sharad Yadav Group:*

1. Sh. G.L. Sanghi, Senior Advocate
2. Sh. Dhruv Kumar Dohani, Advocate
3. Sh. Sharad Yadav
4. Sh. Ram Bilas Paswan
5. Ms. Kamala Sinha
6. Sh. Ramesh Chandra
7. Sh. K. Balasubramaniam

*Election Symbols (Reservation and Allotment) Order, 1968 - para 15 - split in a party - pending determination of dispute, interim arrangement made to give adhoc recognition to both rival groups in view of imminent general elections - both groups to share facilities of free time on TV/AIR, etc., on 50:50 basis.*

## **SUMMARY OF THE CASE**

The Janata Dal is a recognised National party and the symbol "Chakra (Wheel)" is reserved for it under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968. As per the records of the Election Commission, Sh. Sharad Yadav was the President of the party. However, on 22.7.1999, Sh. H.D.Deve Gowda filed an application before the Commission under para 15 of the Symbols Order seeking a direction that the party's reserved symbol may be allotted to the group of the party represented by him as the party president. His case was that Sh. Sharad Yadav was removed from the post of party President on 21st July, 1999, by the Political Affairs Committee, for his anti-party activities and for announcing the joining of the Lok Shakti and Samata Party with the Janata Dal and the joining of the Janata Dal with the National Democratic Alliance led by the Bharatiya Janata Party. He further claimed that he had been elected as party President in place of Sh. Sharad Yadav.

In view of the then imminence of general elections to the Lok Sabha and certain State Legislative Assemblies, the Commission heard both the rival groups on 3rd August, 1999. Each group refuted the claims and counter-claims of the other group and claimed the support of majority of the members in the organisational and legislature wings of the party. It was also contended on behalf of Sh. Sharad Yadav that the Political Affairs Committee had no power under the party constitution to remove the elected president of the party. The contending groups, however, did not furnish the agreed lists of office-bearers of the party at various levels which would have enabled the Election Commission to determine the relative strength of the two groups. Further, affidavits were filed by both the groups of certain persons claiming to be their office-bearers, which showed that they, like shifting sands, had been changing their stands and loyalties from one group to the other. In these circumstances, pending determination of the dispute case, the Election Commission decided to give ad-hoc recognition as National party to both the rival groups, so that their interests did not suffer at the then ensuing general elections to the House of the People and State Legislative Assemblies. The above ad-hoc recognition was given only for purposes of the above mentioned general elections and it was made clear that for final determination of the dispute, their poll performance at these general elections would be relevant, as the same would truly reflect the choice of the electors, who in democracy are the ultimate arbiters of the fate of political parties.

Furthermore, the Commission directed that the facilities which would be available to the Janata Dal, as a recognised National party, like, free

time on Doordarshan and All India Radio for their telecasts / broadcasts and free copies of electoral rolls, etc., would be shared by the two groups equally on 50:50 basis.

Note: By subsequent order dated 07.08.1999, the Election Commission recognised the group led by Sh. Sharad Yadav by the name of Janata Dal (United) and reserved the symbol 'Arrow' for that group. The group led by Sh. H.D.Deve Gowda was recognised under the name of Janata Dal (Secular) and the symbol "Farmer Driving Tractor" was reserved for that group.

### **ORDER**

This is an application filed, before the Election Commission of India, by Shri Deve Gowda under paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968 ('Symbols Order' for short), seeking a direction allotting the symbol 'Chakra (Wheel)' to the Janata Dal claimed to be headed by him.

2. The Janata Dal ('JD' for short) is a recognised National party with the symbol 'Chakra (Wheel)' reserved for it. As per the Commission's records, Shri Sharad Yadav is the President of the party.

3. On 22.7.99, Shri Deve Gowda filed an application under paragraph 15 of the Symbols Order seeking a direction that the symbol 'Chakra (Wheel)', reserved for JD may be allotted to the group of the JD represented by him as the President. Shri Gowda stated, in his application, that Shri Sharad Yadav addressed a press conference, jointly with the leaders of Lok Shakti and Samata Party on 21.7.99 and announced that the said two parties would join the JD and that the JD would join the National Democratic Alliance led by Bharatiya Janata Party. It was stated that the Political Affairs Committee (PAC for short) of the JD viewed the activities of Shri Yadav as anti party, and at its meeting held on 21.7.99, the PAC decided to remove Shri Yadav from the post of party President. The application further stated that the PAC, under the chairmanship of Vice-President Shri Maulana Obaidullah Khan Azmi, elected Shri Deve Gowda as the party President. Shri Gowda contended that the PAC was the creature of the National Executive Committee, the highest body of the party, and therefore, enjoyed all powers and performed all functions of the National Executive, including disciplinary functions, and as such the decision of the PAC was final. He also submitted a copy of the resolution passed at the meeting of the National Executive held on 6th and 7th August, 1994, in which one of the items related to authorising the party President to constitute the PAC with the approval of the National Executive.

4. Various press reports indicated that a dispute had arisen in the JD, resulting in the formation of two groups led by Shri H.D. Deve Gowda and Shri Sharad Yadav respectively. In view of the imminent general elections to Lok Sabha and certain State Legislative Assemblies, the Commission took cognizance of the matter under paragraph 15 of the Symbols Order and issued notice to the two groups asking them to file documentary proof to substantiate their respective claims of support in the party, including individual affidavits from members of legislature and organisational wings of the party.

5. Considering the urgency involved, the Commission also thought it appropriate to hold an early hearing in the matter and fixed 3rd August, 1999 to hear the rival groups.

6. Shri Sharad Yadav filed his reply to the application of Shri Deve Gowda on 1st August, 1999. In the reply, Shri Yadav stated that the PAC found no mention in the party constitution. It was stated that the resolution passed on 6th and 7th of August, 1994 by the National Executive relating to setting up of PAC was never placed before the National Council for ratification, as required under the party constitution, and hence, the decision of the National Executive had no force now. He denied that the PAC enjoyed powers of the National Executive and contended that the PAC was not empowered to sit in judgement over the decision of the party President. Shri Yadav further contended that, in any event, a meeting of the PAC could be convened only by the party President and the meeting of 21.7.99 was convened without his knowledge and hence was illegal. Further, according to him, the PAC has no power to decide on organisational affairs. He stated that a meeting of the National Executive was held on 29.7.99 and was attended by 40 members of the National Executive. He also stated that his decision to join hands with the Lok Shakti and the Samata Party received wide support within the party, and no case had been made out to refuse the symbol 'Chakra (Wheel)' to the JD headed by him. He also submitted that Shri Deve Gowda and others violated the provisions of the party constitution and all democratic norms, and hence, in the present case, the test of majority alone was not relevant.

7. On 1st August, 1999, Shri Deve Gowda filed affidavits from members belonging to various organisational wings of the party and also from MPs, MLAs and MLCs supporting him. On 2nd August 1999, Shri Sharad Yadav also filed affidavits from various categories of members of the party.

8. At the hearing on 3rd August, 1999, Shri R..K. Anand, Senior

Counsel appearing on behalf of Shri Deve Gowda, claimed that Shri Deve Gowda enjoyed superior numerical support in all wings of the party and at all levels of organisational hierarchy. Shri Anand reiterated the submissions made in the application that the PAC was an organ of the party, and had full powers to take decisions regarding political, economic and social matters, on behalf of the National Executive. He stated that when the present BJP-led Govt. was defeated on the floor of the Lok Sabha earlier this year in April, the National Executive of the JD had passed a resolution stating that the party would help in forming a secular government and that Shri Sharad Yadav went against the principle of the JD in announcing at a joint press conference on 21st July, 1999 that the Samata Party and Lok Shakti would unite with JD and JD would join the National Democratic Alliance led by BJP. Shri Anand submitted that the PAC took note of the moves of Shri Sharad Yadav and considered them anti-party and in a meeting held on 21st July, 1999 decided to remove Shri Sharad Yadav from the post of President of the party. According to Shri Anand, the group led by Shri Deve Gowda enjoyed majority support in all organisational bodies and Committees of the party and also in the legislature wing of the party.

9. Shri G.L. Sanghi, Senior Counsel on behalf of Shri Sharad Yadav submitted that the whole application of Shri Deve Gowda was based on the averment that the PAC acted on behalf of the National Executive Committee and decided to remove Shri Sharad Yadav from the post of President. Shri Sanghi contended that the PAC found no mention in the constitution of the party and it had no authority whatsoever to take any decision that it purported to have taken. According to him, such an application which does not give sufficient material does not fall under paragraph 15 of the Symbols Order and the Commission should not take cognizance of such an application. He contended that the PAC was set up merely to assist the President and the National Executive Committee. Shri Sanghi claimed that under the constitution of the party, the party President could exercise all powers of the National Executive when it was not in session and, therefore, Shri Yadav acted within his powers. He further stated that a meeting of the National Executive Committee was held on 29th July, 1999 and the Committee endorsed the decision taken by Shri Sharad Yadav to work in unison with Lok Shakti and Samata Party at the forthcoming general election, and also approved the action of Shri Yadav in suspending Shri Deve Gowda and Shri Jaipal Reddy from the party. He pointed out that the application of Shri Deve Gowda itself admitted that the PAC could only take decision on behalf of the National Executive. Thus, according to him, the PAC was at best an agent of the National Executive and it could not sit

in judgement over the decision of the President, much less remove him from the post. He submitted that, by no stretch of imagination, it could be assumed that the PAC had the authority to remove the President who was elected by the National Council.

10. Shri Sanghi further stated that any meeting of the PAC could be convened only by the party President and the meeting convened by Shri Deve Gowda and his supporters was a fraud perpetrated on the party constitution, which the party had submitted under the provisions of Section 29A of the Representation of the People Act, 1951, at the time of its registration and which thus, attained statutory sanctity. Shri Sanghi, therefore, contended that the party members violating the provisions of the party constitution, should not be permitted to claim to represent the party. According to Shri Sanghi, when the Hon'ble Supreme Court upheld the principle of the test of numerical majority in Sadiq Ali Vs. Election Commission of India (AIR 1972 SC 187), the situation was different inasmuch as the said Section 29A was not in vogue then and a party was not required to submit its constitution to the Commission under any statutory provision. Shri Sanghi also seriously questioned the authenticity of many of the affidavits filed by Shri Deve Gowda and alleged them to be false.

11. Shri R.K.Anand stated that official documents relating to party affairs were in the custody of the other group and wanted a list of office bearers of the party to be furnished to him. The Commission directed the counsel of Shri Sharad Yadav to furnish to the other group, a copy of the said list. The Commission also granted time to both the groups up to 12 noon on 6th August, 1999, to file further individual affidavits and other documents in support of their respective claims. They were also directed to file written submissions by the aforesaid time.

12. Pursuant to the above direction of the Commission, both the groups filed their written submissions and also filed a large number of additional affidavits on 6th August, 1999.

13. We have given our anxious consideration to the whole matter. The Commission notes with regret that, so close to the elections, an important political party which has been playing a significant role in the national polity and even guiding the fortunes of the country in the recent past has fragmented. The schism in the party seems to be almost vertical. As in their various applications and counter-replies so also in their oral submissions before the Commission at the hearing held on 3rd August, 1999, both the groups have claimed majority in the legislature and organisational wings of the party. To substantiate their respective claims of majority, both the groups

have filed individual affidavits from the members of the party in the dissolved 12th Lok Sabha, Rajya Sabha and several State Legislatures. These affidavits have been supplemented with a very large number of affidavits from various persons who claim to be members or office-bearers of one or the other body, board or committee in the organisational hierarchy of the party. The process of filing additional documentary evidence and the written submissions containing their claims and counter claims has continued till the evening of 6th August, 1999. In these written submissions, both the rival groups have, apart from reiterating their claims of majority, again reiterated their contentions and counter contentions with regard to the observance or breach of the provisions of the party constitution, and have attempted to justify the expulsions and counter expulsions of important leaders and functionaries of the party, from the offices held by them in the organisational wing of the party, including the President of the party.

14. Our anxiety to dispose of the matter as expeditiously as possible, in view of the fast approaching general elections to the House of the People and to the Legislative Assemblies of Andhra Pradesh, Arunachal Pradesh, Karnataka, Maharashtra and Sikkim, hardly needs to be stated. The first notification by the President in terms of Section 14 of the Representation of the People Act, 1951, starting the electoral process in as many as ten States and six Union Territories is due to issue only four days hence, i.e. on 11th August, 1999. In the short time available, after the parties have filed their pleadings and documentary evidence, we have perused and examined these voluminous records. This has been a disturbing experience. On our record, there are affidavits from a large number of individuals who seem to have pledged their support to both the groups. Serious allegations have been made with regard to the veracity of these affidavits, not by one but by both the groups. No firm view can be formed on the basis of such disputed affidavits and controversial evidence, as the allegations, if established, may have far-reaching bearing on the value or weight that might be attached to the plethora of other affidavits brought on record by the parties. A further probe is, therefore, necessary before coming to any decisive finding. Whatever undisputed evidence remains on record shows that the party has split vertically and both the groups are more or less evenly poised. On the basis of such evidence, it cannot be straightaway said that one or the other group enjoys such overwhelming majority in the organisational and legislature wings of the party, that it may be recognised as 'the Janata Dal'.

15. Another significant point to be taken note of is that there are a large number of office bearers of the party, at various levels, relevant to the determination of the dispute, whose present position is not known, as

no affidavits have been filed from them by either side. Like shifting sands, many of the office bearers of the party have been changing their stands and loyalties, as is evident from the disputed affidavits, or have been fence sitters keeping their options close to them. The Commission would like to go into all these relevant aspects, before it formally comes to any conclusions. But, as observed above, there is hardly any time for this exercise, which will be a time consuming process, and cannot be completed before the process of the general elections above mentioned commences on the 11th August, 1999. Even the parties and their office bearers need time to respond. Unless the contentious issues and factual controversies raised by the two rival groups are resolved and determined, after proper investigation and examination, it would be unfair and detrimental to the interests of both the contending groups, if either of them is permitted by the Commission to project itself as the Janata Dal and corner to itself the goodwill of the party as a whole. Therefore, it is of paramount importance and urgency that, until the determination of the dispute, some interim arrangement is made, whereby both the rival groups are placed on an equal footing, in the matter of their approach to the electorate.

16. Having regard to the totality of facts and circumstances of the present case, and in view of the extreme paucity of time left for disposal of the present dispute on merits, principles of fair play and equity demand of the crystal nature of the Election Commission in the eyes of the electorate and the polity that both the disputant groups before it be treated at par, pending final determination of the dispute, and neither of the splinter groups is allowed to use, either the 'name' or the "reserved symbol" of the Janata Dal, as it may cause prejudice to one or the other group. At the same time, the Commission would also not like any of these groups to be placed at a disadvantageous position, vis-a-vis other political parties, in their election campaigns. Therefore, as a purely stop gap arrangement and interim measure, we have decided to grant provisional and ad-hoc recognition to both the rival groups as National parties, for the purposes of the Symbols Order, at the ensuing general elections to the House of the People and to the Legislative Assemblies of Andhra Pradesh, Arunachal Pradesh, Karnataka, Maharashtra and Sikkim, and also the bye-elections being held simultaneously to various State Legislative Assemblies. Meanwhile, the symbol 'Chakra (Wheel)' shall be kept in the safe and protective custody of the Election Commission, and may be allotted to the party which ultimately is found entitled to the use of the name and symbol of the party, on the final determination of the dispute.

17. At the cost of repetition, the Commission would like to make

it clear to both the rival groups, that the aforesaid ad-hoc recognition to them, as National parties, will be applicable, only for the purposes of the above mentioned general elections and bye-elections to be held in the months of August-October 1999, and not at any other elections to be held thereafter. The question of their recognition and allotment of symbol would be dependent upon the final determination of the dispute. For such final determination, their poll performance at the above said general elections would be very relevant, as the same would truly reflect the choice of the electors, who, in democracy, are the ultimate arbiters of the fate of political parties.

18. In view of the foregoing, the Election Commission hereby directs that -

(i) both the rival or splinter groups of Janata Dal, led by Shri Sharad Yadav and Shri H.D. Deve Gowda respectively, shall intimate the Commission, latest by 5.00 p.m. on 8th August, 1999 (Sunday), the names by which these splinter groups would like to be identified and recognised subject to the approval of Election Commission of India, as ad-hoc National parties for the limited purposes of the general elections and bye-elections mentioned above;

(ii) each of the said groups shall also intimate, by the aforesaid date and time, their choice of symbols to be reserved for them, as such ad-hoc recognised parties. For this purpose, each of them should give three options with regard to symbols, in order of their preference, any one of which may be reserved by the Commission for them. Such option of symbols should be confined, to the list of free symbols, already specified by the Commission vide its Notification dated 30th July, 1999;

(iii) neither of the said two groups or any other group shall be permitted to use the name of the Janata Dal or its reserved symbol 'Chakra (Wheel)', until further orders of the Commission.

19. Before concluding, we would also like to clarify here that the Janata Dal, as a recognised National party, was entitled to certain benefits, like the free time on Doordarshan and All India Radio for their political telecasts / broadcasts, in accordance with the scheme announced by the Commission on 4th August, 1999. In addition, that party was also entitled to the free supply of two copies of electoral rolls of each Parliamentary/ Assembly constituency. There may be some other benefits also which might be available to the recognised National parties. As we have decided to grant ad-hoc recognition to the aforesaid two splinter groups of the Janata Dal, as claimants to the whole Janata Dal, both the groups will be entitled to enjoy

Dispute Case No. 1 of 1999 - Application filed by Shri H.D. Deve Gowda

the privileges and facilities meant for the Janata Dal, including the time allocated to the Janata Dal on Doordarshan / All India Radio, on equitable basis, that is to say, to be shared by them equally on 50:50 basis.

**ORDERED ACCORDINGLY**

**Sd/-**  
**(G.V.G. Krishnamurthy)**  
Election Commissioner

**Sd/-**  
**(Dr. M.S. Gill)**  
Chief Election  
Commissioner

**Sd/-**  
**(J.M. Lyngdoh)**  
Election Commissioner

# **ELECTION COMMISSION OF INDIA**

**CORAM :**

**Hon'ble**  
**Sh. T.S. Krishna Murthy**  
Election Commissioner

In re: Republican Party of India - Withdrawal of Recognition as a State Party in the State of Maharashtra

Dated: 18th August, 2000

**PRESENT :**

*For Republican Party of India :*

1. Sh. R.S. Gavai, President
2. Prof. Jogendra Kawade
3. Sh. M.L. Gautam
4. Sh. Ashok S. Wankhade
5. Sh. Bindeshwar Ram
6. Sh. K.L. Gautam
7. Sh. R.C. Maurya
8. Sh. I.V. Gaikwad
9. Sh. R.S. Diwakar

*Election Symbols (Reservation and Allotment) Order, 1968 - paras 6,7 - failure of party to fulfil prescribed criteria for continued recognition - prayer for review of poll performance only after five years, rejected - prayer for common symbol on withdrawal of recognition, not permissible.*

## **SUMMARY OF THE CASE**

The Republican Party of India was a recognised State party in Maharashtra and the symbol 'Rising Sun' was reserved for it in that State, under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968. The party failed to fulfil the prescribed requirements in the Symbols Order for its continued recognition as a State party. In response to the Commission's show-cause notice for withdrawal of the recognition, the party submitted that the recognition of the party should be reviewed only after the period of five years and not after every general election. The party also prayed that, in the event of the withdrawal of its recognition, it may be allotted a common symbol for its candidates.

The Election Commission rejected the above submissions of the party, as being not maintainable under the Symbols Order. The Commission observed that the Symbols Order requires review of the poll performance of every party after each general election, and that common symbols are allotted to recognised parties and not to others.

## **ORDER**

The Republican Party of India is a recognised State party in Maharashtra with the symbol “Rising Sun” reserved for it in the said State under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as ‘Symbols Order’).

2. The recognition of political parties as National parties or State parties is governed by the provisions of paragraphs 6 and 7 of the Symbols Order. For facility of reference, the said paragraphs 6 and 7 are reproduced below:-

“6. Classification of political parties -

(1) For the purposes of this Order and for such other purposes as the Commission may specify as and when necessity therefor arises, political parties are either recognised political parties or unrecognised political parties.

(2) A political party shall be treated as a recognised political party in a State, if, and only if either the conditions specified in clause (A) are, or the condition specified in clause (B) is, fulfilled by that party, and not otherwise, that is to say-

(A) that such party -

(a) has been engaged in political activity for a continuous period of five years; and

(b) has, at the last general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly of the State, returned-

either (i) at least one member to the House of the People for every twenty-five members of that House or any fraction of that number elected from that State; or (ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;

(B) that the total number of valid votes polled by all the contesting candidates set up by such party at the last general election in the State to

the House of the People, or as the case may be, to the Legislative Assembly of the State, is not less than six per cent of the total number of valid votes polled by all the contesting candidates at such general election in the State.

(2A) Notwithstanding anything contained in clause (B) of sub-paragraph (2), a political party shall be treated as a recognised political party in a State, if, at the general election to the House of the People or, as the case may be, to the Legislative Assembly of the State, in existence and functioning at the commencement of the Election Symbols (Reservation and Allotment) (Amendment) Order, 1997, the total number of valid votes polled by all the contesting candidates set up by such party (but excluding the valid votes of each such candidate in a constituency as has not been elected and has not polled at least one-twelfth of the total valid votes polled by all the contesting candidates in that constituency) is not less than four per cent of the total number of valid votes polled by all the contesting candidates at such general election in that State (including the valid votes of those contesting candidates who have forfeited their deposits).

(3) For the removal of doubts it is hereby declared that the condition in clause (A) (B) of sub-paragraph (2) shall not be deemed to have been fulfilled by a political party if a member of the House of the People or the Legislative Assembly of the State becomes a member of that political party after his election to that House or, as the case may be, that Assembly.

7. Two categories of recognised political parties :-

(1) If a political party is treated as a recognised political party in accordance with paragraph 6 in four or more States, it shall be known as, and shall have and enjoy the status of, a “National Party” throughout the whole of India, but only so long as that political party continues to fulfil thereafter the conditions specified in paragraph 6 for such recognition in four or more States on the results of any subsequent general election either to the House of the People or to the Legislative Assembly of any State.

(2) If a political party is treated as a recognised political party in accordance with paragraph 6 in less than four States, it shall be known as, and shall have and enjoy the status of, a “State Party” in the State or States in which it is so recognised, but only so long as that political party continues to fulfil thereafter the conditions specified in paragraph 6 for such recognition as a State Party on the results of any subsequent general election to the House of the People or, as the case may be, to the Legislative Assembly of the State, in the said State or States.”

3. In pursuance of the provisions of the above referred paragraphs 6(2) and 7 of the Symbols Order, a review of the poll performance of every political party is required to be made by the Election Commission after every general election to the House of the People or, as the case may be, to the State Legislative Assembly.

4. Accordingly, the poll performance of the said Republican Party of India at the General Election to the Lok Sabha held in August-October, 1999 and the General Elections to the State Legislative Assemblies, including the Maharashtra Legislative Assembly, held in August-October, 1999, and January-February, 2000, has been reviewed by the Election Commission in terms of paragraphs 6(2) and 7 of the said Symbols Order.

5. The poll performance of the said party at the aforesaid General Elections (*Annexure-'A'*) does not satisfy any of the criteria laid down for the continued recognition of the said party as a State party in the State of Maharashtra.

6. Before withdrawing such recognition from the said party, the Election Commission considered it appropriate to afford it an opportunity of making a representation to the Commission as to why its recognition in Maharashtra may not be withdrawn. Accordingly, a show-cause notice was issued to the party on 26th May, 2000 (*Annexure-'B'*) and the party was asked to make its representation on or before 10th June, 2000.

7. The party submitted its reply to the said notice on 8.6.2000. In the reply, the party admitted that under the provisions of the Symbols Order, the party was no longer eligible to retain its recognition as a State party in Maharashtra. The party, however, submitted that once a party was granted recognition, its status should be reviewed only after a period of five years had elapsed. The party made a further submission that all registered political parties should be allotted a symbol of their own.

8. In order to afford all reasonable opportunities to the party to present its case, the Commission decided to give a personal hearing to the representatives of the party on 2nd August, 2000. In pursuance of the Commission's notice dated 26th May, 2000, for that hearing, Shri R.S. Gavai, President of the party, appeared before the Commission and made his oral submissions.

9. Shri Gavai has stated that the Republican Party of India is a political party with a long standing, having been formed in 1957 and has presence in different parts of the country, and, in view of this, its recognition should not be withdrawn. He reiterated the submissions made in the reply

filed by the party that recognition of a party should be reviewed only after a period of five years. He made an alternative prayer that in the event the party's recognition was withdrawn, and the party was not able to use its symbol, the symbol "Rising Sun" may be included in the list of free symbols, to enable the party to opt for the said symbol at future elections. He submitted that the said symbol could be included as a free symbol in those States where the symbol was not reserved for any other recognised party. However, in the written statement submitted at the hearing, Shri Gavai fairly conceded that since "Rising Sun" was reserved for certain parties in some States, it might not be possible to include the said symbol as a free symbol. He requested that in view of this, the party may be allotted a different common symbol.

10. On the request of Shri Gavai, the Commission granted him further time to submit his written arguments, bringing out cases of precedents to support his request.

11. Shri Gavai then submitted a letter dated 8th August, 2000. According to him, the Commission has the power under the provisions of paragraph 18 of the Symbols Order to allot a common symbol to the party. He submitted that in the event the symbol "Rising Sun" could not be allotted to the party, an alternative common symbol may be allotted to it.

12. The perusal of the above quoted paragraphs 6 and 7 would show that the recognition, and also the continued recognition, of a political party as National or State Party depends on the fulfilment of the conditions mentioned in paragraph 6(2) or, as the case may be, para 6 (2A). If a political party becomes eligible and is granted recognition as a National or a State party on the fulfilment of the conditions mentioned in the said paragraph at the general election, it will continue to enjoy that status so long as it continues to fulfil those conditions at the subsequent general elections, as has been expressly provided in paragraph 7 of the Symbols Order. Therefore, the poll performance of every recognised political party needs to be reviewed under the said paragraphs after every general election held in a State either to the Lok Sabha or to the State Legislative Assembly. The Hon'ble Supreme Court in *Janata Dal (Samajwadi) Vs. Election Commission of India* (AIR 1996 SC 577) has upheld this position. The relevant portion from the judgement of the Apex Court says:-

"It is true that there is no specific provision under the Symbols Order vesting power in the Election Commission after having recognised a political party as a National party to declare that such political party has ceased to be a National party, not being entitled to the exclusive use of the symbol

allotted to it. But at that same time, it cannot be conceived that a political party having been recognised as a National party or a State party as the case may be on having fulfilled the conditions prescribed in paragraph 6 (2) shall continue as such in perpetuity although it has forfeited the right to be recognised as a National party or a State party. In paragraph 2 (2) of the said Symbols Order, it has been specifically provided that the General Clauses Act, 1897 shall as far as may be applicable in relation to the interpretation of the said order as it applies in relation to the interpretation of a Central Act. Section 21 of the General Clauses Act provides that where by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction, and conditions if any to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued. As paragraph 2 (2) of the order in clear and unambiguous term makes provision of the General Clauses Act applicable to the Symbols Order, it need not be impressed that provisions of Section 21 of the General Clauses Act, also become applicable vesting power in the Election Commission which had issued the aforesaid order dated 16.4.1991 recognising the appellant as a National party to rescind the said order as appellant in the elections to the Legislative Assemblies of the States mentioned above ceased to fulfil the conditions prescribed in paragraph 6 (2) of the Order read with para 7(1) thereof.”

13. Thus, the law on the point is conclusively settled by the above decision of the Hon'ble Supreme Court that a party once recognised cannot claim to enjoy continued recognition in perpetuity. It has to show the minimum electoral support for recognition or continued recognition, as measured in terms of paragraph 6 (2) of the Symbols Order, at every general election. The contention of the party that recognition status need not be reviewed after every general election, but once in five years only, has no merit and the same is rejected.

14. The request of the party for allotment of a common symbol to it cannot be accepted. Common symbols are allotted only to recognised parties and not unrecognised parties. In this connection, it is relevant to refer to the provisions of sub-paragraph (3) (a) of paragraph 12 of the Symbols Order, which would give the candidates set up by the present party preference in the matter of allotment of symbol at future elections for a period of six years.

15. Having regard to the above, the Commission is satisfied that the Republican Party of India is no longer entitled to recognition as a State party under paragraphs 6 and 7 of the Election Symbols (Reservation and

Republican Party of India - Withdrawal of Recognition as a State Party in the State of Maharashtra

Allotment) Order, 1968. Accordingly, the said party shall cease to be recognised as a State party in the State of Maharashtra and shall not be entitled to the exclusive use of the symbol "Rising Sun" earlier reserved for it in that State. It shall hereafter be a registered - unrecognised political party for the purposes of the said Symbols Order.

**Sd/-**  
**(T.S. Krishna Murthy)**  
Election Commissioner

**ANNEXURE 'A'**

**ELECTION COMMISSION OF INDIA**  
Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 56/Review/RPI/2000/JS-III/3030

Dated 26th May, 2000

To

The President  
Republican Party of India  
ENSA Hutment, I-Block  
Mahapalika Marg, Azad Maidan  
Mumbai-400001 (Maharashtra)

**SHOW CAUSE NOTICE**

WHEREAS, REPUBLICAN PARTY OF INDIA is a recognised State Party under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as 'Symbols Order');

AND WHEREAS, paragraph 6 (2) of the Symbols Order provides that a political party shall be treated as a recognised political party in a State, if and only if either the conditions specified in Clause (A) of that paragraph are, or the condition specified in Clause (B) thereof is, fulfilled by that party and not otherwise, that is to say :-

(A) That such party -

(a) has been engaged in political activity for a continuous period of five years; and

(b) has, at the general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning returned - either (i) at least one member to the House of the People for every twenty-five members of that House or any fraction of that number elected from that State;

or (ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;

(B) that the total number of valid votes polled by all the contesting candidates set up by such party at the last general election in that State to the House of the People, or as the case may be, to the Legislative Assembly of the State, is not less than six per cent of the total number of valid votes polled by all the contesting candidates at such general election in the State.

**AND WHEREAS**, under paragraph 7 of the Symbols Order, a party shall be recognised as a State Party if it is treated as a recognised political party in accordance with paragraph 6, referred to above, in less than four States;

**AND WHEREAS**, in pursuance of the provisions of the above referred paragraphs 6 (2) and 7 of the Symbols Order, a review of the poll performance of every political party is required to be made by the Election Commission after every general election to the House of the People or, as the case may be, to the State Legislative Assembly;

**AND WHEREAS**, the poll performance of the said REPUBLICAN PARTY OF INDIA at the General Election to the Lok Sabha held in August-October, 1999 and the general elections to the State Legislative Assemblies held in August-October, 1999 and January-February, 2000, has been reviewed by the Election Commission in terms of paragraphs 6 (2) and 7 of the said Symbols Order, as per the statement(s) annexed hereto;

**AND WHEREAS**, the poll performance of the said party at the aforesaid General Elections does not satisfy any of the criteria laid down for recognition of the said party as a State party in the State of MAHARASHTRA.

**AND WHEREAS**, the Election Commission proposes to withdraw the recognition granted to the said party as a State party in the State of MAHARASHTRA on the failure of the party to fulfil any of the criteria fixed for such recognition as aforesaid;

**AND WHEREAS**, before withdrawing such recognition from the said party, the Election Commission proposes to afford to the said party an opportunity of making a representation to the Commission as to why such recognition may not be withdrawn;

**NOW, THEREFORE**, the said party is required to show cause as to why the recognition of the said party as a State party in the State of MAHARASHTRA may not be withdrawn under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968. The representation of the party should reach the Commission, on or before the 10th June, 2000.

If the said party desires to have an opportunity of personal hearing in the matter, the duly authorised representative(s) of the party may appear before the Commission to present its case on 20th June, 2000, at 12.00 noon in the Commission's Secretariat at Nirvachan Sadan, Ashoka Road, New Delhi.

Name(s) of the authorised representative(s) of the party being deputed, if any, for the said hearing, may be intimated in advance.

Republican Party of India - Withdrawal of Recognition as a State Party in the State of Maharashtra

It may be noted that representative(s) of the party will appear before the Commission at his / their own expenses and no TA / DA will be paid by the Commission.

It may also be noted that in case of default appearance at the aforesaid hearing, it will be presumed that the party has nothing further to say in this behalf and the matter will be decided by the Commission without any further reference to the said party.

By order

**Sd/-**  
**(K.J. RAO)**  
Secretary

## STATEMENT

### Poll Performance - States in which eligible for recognition or otherwise

Name of the Party	State/Union Territory	General Election to Lok Sabha 1999 whether eligible for recognition		General Election to the Legislative Assembly, 1999-2000 whether eligible for recognition		Whether eligible on the basis of last Gen. Elec. to existing Legislative Assembly	Total No. of States / UTs in which eligible for recognition
		under para 6 (2)	under para 6 (2)	under para 6 (2)	under para 6 (2)		
Republican Party of India	1. Andhra Pradesh	No	No	No	No	No	NIL
	2. Arunachal Pradesh						
	3. Assam						
	4. Bihar						
	5. Goa						
	6. Gujarat	No	No	No	No	No	
	7. Haryana	No	No	No	No	No	
	8. Himachal Pradesh						
	9. Jammu & Kashmir						
	10. Karnataka						
	11. Kerala						
	12. Madhya Pradesh	No	No	No	No	No	
	13. Maharashtra	No	No	No	No	No	
	14. Manipur						
	15. Meghalaya						
	16. Mizoram						
	17. Nagaland						
	18. Orissa						
	19. Punjab	No	No	No	No	No	
	20. Rajasthan			No	No	No	
	21. Sikkim				No	No	
	22. Tamilnadu				No	No	
	23. Tripura						
	24. Uttar Pradesh	No	No	No	No	No	
	25. West Bengal						
	UNION TERRITORIES						
	26. A&N Islands						
	27. Chandigarh						
	28. Dadra & Nagar Haveli						
	29. Daman & Diu						
	30. Delhi				No	No	
	31. Lakshdweep						
32. Pondicherry							

**ANNEXURE 'B'**

**POLL PERFORMANCE OF THE PARTY**

Name of Party	State	Seats		Votes Polled	
		Contested	Won	Votes	%
1	2	3	4	5	6

**General Election to the House of People, 1999**

Republican Party of India	Maharashtra	2	0	4,76,825	1.44
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**General Election to the Legislative Assembly, 1999**

		10	01	2,26,481	0.70
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# **ELECTION COMMISSION OF INDIA**

**CORAM :**

**Hon'ble**  
**Sh. T.S. Krishna Murthy**  
Election  
Commissioner

**Hon'ble**  
**Sh. J.M. Lyngdoh**  
Election  
Commissioner

In re: Himachal Vikas Congress - Dispute Relating to.

Dated: 25th September, 2000

**PRESENT :**

*For Himachal Vikas Congress :*

Sukh Ram Group

1. Sh. Sukh Ram
2. Sh. Anil Sharma
3. Dr. (Col.) Dhani Ram Shandil
4. Dr. R.L. Markanda
5. Sh. S.L. Verma
6. Sh. M.N. Sukla, Advocate

Kewal Ram Chauhan Group

1. Sh. Inder Singh Thakur
2. Sh. O.P. Ratten
3. Sh. Kewal Ram Chauhan
4. Sh. Mohinder Singh Thakur
5. Sh. Aditya Kumar Sharma, Advocate
6. Sh. B.R. Chauhan, Advocate

*Election Symbols (Reservation and Allotment) Order, 1968 - para 5 - dispute between two rival groups of a recognised State party - test of the numerical of majority applied for determination of dispute - one of the groups not filing any affidavit from any member in support of its claim of majority.*

## **SUMMARY OF THE CASE**

The Himachal Vikas Congress was formed in the year 1997 and was granted recognition as a State Party in Himachal Pradesh, on the basis of its poll performance at the general election to the House of the People in 1998, under the Election Symbols (Reservation and Allotment) Order, 1968. The symbol 'Telephone' is reserved for it in the said State. In or around

April, 2000, there was a split in the party, resulting in the formation of two groups - one led by Shri Sukh Ram, who was the President of the party as per the records of the Commission, and the other by Shri Kewal Ram Chauhan.

After due inquiry and hearing both the groups, the Commission observed that neither of the two rival groups could be said to be acting wholly in accordance with the provisions of the party constitution and were interpreting them in a manner convenient to them. The Commission, therefore, applied the test of numerical majority in the organisational and legislature wings of the party and came to the conclusion that the group led by Shri Sukh Ram enjoyed the majority support in both the wings. The group led by Shri Kewal Ram Chauhan had not filed any affidavit from any MP or MLA or any office-bearers in the party organisation, in support of its claim as representing the party.

### **ORDER**

The Himachal Vikas Congress is a recognised State Party in Himachal Pradesh, with the symbol "Telephone" reserved for it in the said State, under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as 'Symbols Order').

2. The party was formed in the year 1997 and was granted recognition as a State Party in the State of Himachal Pradesh, on the basis of its poll performance at the general election to the House of the People held in 1998. Shri Sukh Ram was the President of the party at the time of its registration and, according to the party constitution, the term of the party President is two years. On 7.4.2000, Shri Sukh Ram sent a list of office-bearers of the party in which Shri Sukh Ram was shown as the party President. In the first week of May, 2000, certain reports appeared in the press about a dispute in the party. Around the same time, a communication was received from one Shri Kewal Ram Chauhan giving the names of office-bearers of the party stated to have been elected on 25th April, 2000. As per that list, Shri Inder Singh Thakur was the new President of the party. On 9th May, 2000, Shri Sukh Ram submitted a letter stating that Shri Mohinder Singh, MLA and Minister for PWD, was expelled from the party for six years for indulging in anti-party activities, and that 47 members of the State Executive out of a total of 54, attended the meeting at which Shri Mohinder Singh was reportedly expelled. He also stated that he had the support of the two party MPs (Dr. D.R. Shandil, Lok Sabha and Shri Anil Sharma, Rajya Sabha) and Dr. Ram Lal Markanda, MLA. He requested that any misrepresentation of facts by any splinter group of the party should not be considered by the Commission.

3. Copies of the communications were exchanged between Shri Kewal Ram Chauhan and Shri Sukh Ram, for their comments / reply. Shri Sukh Ram, in his reply, dated 18th May, 2000, stated that in the State political convention of the party held on 6th July, 1997, a resolution was passed authorising him to nominate the State and District Bodies of the party and that such bodies were to continue functioning till they were replaced by elected bodies. Therefore, holding a meeting for election of office-bearers when the earlier office-bearers were still in position was violation of the provisions of the party constitution. He also repeated the statements made in his earlier letters regarding majority support being enjoyed by him in the organisational and legislature wing of the party.

4. Shri Kewal Ram Chauhan submitted his reply on 19th June, 2000, enclosing therewith copies of the proceedings of the meeting held on 25th April, 2000, at which new office-bearers were stated to have been elected. He stated that with these elections, democracy was restored at all levels in the party. A copy of the proceedings, enclosed with the said letter, mentioned that the State Executive expressed displeasure at the attitude of the President and some other office bearers of the party and decided to set-up an Ad-hoc Executive Committee until the next organisational elections of the party. In a separate letter dated 19th June, 2000, Shri Kewal Ram Chauhan stated that no resolution was passed by the State Executive expelling Shri Mohinder Singh, as contended by Shri Sukh Ram. He also stated that the reconstitution of the State Executive on 25th April, 2000, replacing Shri Sukh Ram by Shri Inder Singh Thakur as party President, was in accordance with the provisions of the party constitution, as the term of Shri Sukh Ram as party President had expired on 6th July, 1999.

5. In the mean time, a communication dated 10th May, 2000, was received from one Shri Bhagat Ram Chauhan, claiming that he was appointed as the Returning Officer for holding organisational elections of the party and giving therein the schedule of elections. Copy of this communication from Shri Bhagat Ram Chauhan was also sent to the two groups. While Shri Kewal Ram Chauhan stated that the schedule of elections intimated by Shri Bhagat Ram Chauhan was in accordance with the party constitution, Shri Sukh Ram stated that Shri Bhagat Ram Chauhan had resigned from the party on 4th May, 2000 and this resignation was accepted by him on 7th May, 2000. In view of this, Shri Sukh Ram claimed that Shri Bhagat Ram Chauhan had no authority to conduct any elections of the party. Shri Sukh Ram also submitted individual affidavits to show that he had the support of two MPs and two MLAs of the party. He also submitted individual affidavits from some defeated candidates of the party at the Assembly election

and also from some persons stated to be the members of the State Executive.

6. On 15th July, 2000, Shri Sukh Ram submitted another application, reiterating his claim of majority support within the party. He stated that a meeting of the party was held on 6th July, 2000, its foundation day, and more than 20,000 delegates attended the said meeting. He also stated that the Speaker of the Himachal Pradesh Legislative Assembly had declared Shri Mohinder Singh as an unattached member of the House vide his order dated 14th July, 2000. He further stated that the Executive Committee of the party had empowered him to extend the period of membership drive and he had extended that period up to 31st August, 2000 and that the organisational elections of the party could be held only after 31st August, 2000. Copy of the order dated 14th July, 2000 of the Speaker and press clippings reporting the meeting of 6th July, 2000 were also submitted by him.

7. On 13th July, 2000, Shri Kewal Ram Chauhan submitted a letter intimating about the holding of organisational elections of the party and mentioning the names of the office-bearers elected. On 2nd August, 2000, he submitted copies of press clippings reporting the election of Shri Inder Singh Thakur as the party President.

8. The Commission decided to hear the two groups before taking any final view in the matter, and fixed a hearing for 28th August, 2000. Both the groups were also asked to file written submissions, if any.

9. Shri Kewal Ram Chauhan, in his written statement, submitted that Shri Sukh Ram was not elected at the organisational elections held in 2000 and, therefore, he had no locus standi in the matter. He also stated that the dispute was an internal dispute of the party and that Shri Sukh Ram had never raised any objection before a court of law against the organisational elections. The other submissions made in the written statement were reiteration of the submissions made on earlier occasions. Shri Sukh Ram also filed written submissions reiterating the statements made by him in his earlier communications. He stated that he enjoyed majority support, both in the organisational and legislature wings of the party, and, hence, the claim of the opposite group had no validity.

10. Shri M.N. Sukla, Advocate along with Shri Sukh Ram and the two MPs Dr. (Col.) Dhani Ram Shandil and Shri Anil Sharma and Shri R.L.Markandey, MLA, supporting him, appeared on behalf of Shri Sukh Ram. The learned counsel for Sukh Ram group submitted that the issue was not a case of split in the party, and that the dispute was the result of some members of the party indulging in anti-party activities and violating

the provisions of the party constitution by holding an unauthorised meeting of the Executive Committee. He averred that Shri Sukh Ram was, and continued to be, the President of the party and the election of office-bearers stated to have been conducted by the other group was totally illegal. He also submitted that Shri Sukh Ram had the support of the both the MPs elected on the party ticket (one each in the Lok Sabha and the Rajya Sabha), two out of the three MLAs and 42 out of 58 members of State Executive. He contended that the group led by Shri Sukh Ram satisfied the test of majority in the organisational and legislature wings of the party, a test upheld by the Supreme Court in *Sadiq Ali Vs. Election Commission of India and Others* (AIR 1972 SC 187). To a query as to why were the party elections were not held in time, Shri Sukla stated that due to difficult climatic conditions in some far flung areas of the State, on account of heavy snow fall, floods, etc., the membership drive could not be taken up, and as per the provisions of the party constitution, elections could be held only after membership drive was completed.

11. Shri Aditya Kumar Sharma, learned counsel appeared on behalf of the group headed by Shri Kewal Ram Chauhan. He stated that a notice calling the meeting of the State Executive on 25th April, 2000, was issued by Shri K.S. Thakur, Permanent Secretary of the party. As the delegates reached the venue of the meeting, which was the residence of Shri Sukh Ram, they found that the gate of the premises was locked. According to him, this was done at the instance of Shri Sukh Ram to prevent the meeting from being held. He stated that 32 out of the 43 members of the State Executive, then in position, decided to go ahead with the conduct of the meeting and, accordingly, a meeting with the participation of 32 members took place on 25th April, 2000. At the said meeting, an ad-hoc committee was constituted until proper elections were held. He submitted that the term of Shri Sukh Ram as Party President had expired in July, 1999 and he was holding the office of President without authority. Regarding expulsion of Shri Mohinder Singh, Shri Sharma stated that no notice was given to Shri Mohinder Singh. He also stated that organisational elections were completed on 11th July, 2000. He contended that the meeting convened on 25th April, 2000 was valid as party-elections were over-due and the office-bearers elected should be recognised by the Commission.

12. Shri Sukh Ram, in his rejoinder submissions, stated that before the scheduled time of meeting on 25th April, 2000, he got a message that some unauthorised persons were coming in a procession with the intention of participating in the meeting. It was as a precautionary measure to ensure that no unauthorised person attended the meeting that the premises had to

be locked. Regarding expulsion of Shri Mohinder Singh, Shri Sukh Ram stated that Shri Mohinder Singh was suspended for anti-party activities, and instead of replying to the charges, he chose to defy the party and convened an unauthorised meeting. Shri Sukh Ram stated that he had submitted a list of office-bearers of the party to the Commission on 7th April, 2000, and in that list, Shri Mohinder Singh was also one of the office-bearers. Shri Sukh Ram further submitted that he was authorised by the party on 6.7.1997 to nominate the office-bearers and such office-bearers were to continue until fresh elections were conducted. He stated that as per the party constitution, elections could be held only after membership drive was completed, and the resolution to this effect was moved by Shri Mohinder Singh himself at the party convention. He also stated that the party empowered him to extend the period of membership drive and he extended it up to 31st August, 2000. Any proper election could be held only after the said date and the claim of the other group regarding conduct of elections was a farce. He further added that the Party President could be removed only by the General Body. He stated that the organisational elections of the party would be completed by October, 2000.

13. Shri O.P. Ratten also made a brief submission on behalf of Kewal Ram Chauhan group. He stated that Shri Sukh Ram had not raised any objection with regard to the conduct of Shri Mohinder Singh at any point. He contended that there was a disciplinary committee in the party for initiating disciplinary action, and Shri Sukh Ram replaced the Chairman of the committee and appointed a new person as its Chairman.

14. After hearing the two groups, the Commission allowed them further time up to 11th September, 2000, to file their written submissions, if any. Both the groups filed their respective submissions, reiterating the submissions made by them in their earlier written statements and oral submissions made at the hearing.

15. Although both the groups seem to contend that there was no split and it is a simple issue of election of office bearers, as contended by Shri Kewal Ram Chauhan, and of illegal election, as alleged by Shri Sukh Ram, the fact is that there is a dispute in the party resulting in the formation of two groups and each group coming up with different list of office-bearers, headed by a different Party President. Such a dispute having been raised before it, the Commission, is required to decide as to which group represents the party for the purposes of the Symbols Order. The Commission is satisfied on information in its possession that there are two rival groups of the party, each of whom claims to be the party, and, therefore, the matter needs determination in terms of paragraph 15 of the Symbols Order. That is why

it has heard both the groups on 28th August, 2000.

16. The party, was registered in the year 1997, and was recognised in 1998, as a State party in Himachal Pradesh, on the basis of its poll performance at the general elections to the House of the People and Himachal Pradesh Legislative Assembly in 1998. It continues to satisfy the conditions for its continued recognition even on the results of the last general election to the House of the People in 1999. The strength of the legislature wing of the party at present consists of one member in the Lok Sabha, three members in the Himachal Pradesh Legislative Assembly and one Member in the Rajya Sabha. The copy of the party constitution, submitted by the party at the time of its registration, shows that the term of all committees and office bearers of the party is two years. Therefore, the term of the office-bearers who took charge in 1997 should have normally lasted till 1999. This is the main plank of contention put forward by Shri Kewal Ram Chauhan. Both sides have alleged that the other party acted contrary to the provisions of the party constitution. Although Shri Kewal Ram Chauhan has disputed the list of office-bearers submitted by Shri Sukh Ram, he has not denied the claim of Shri Sukh Ram that the party had authorised him to nominate the office-bearers who were to continue in office till the next organisational elections.

17. In the case of splits, the experience of the Commission has been that neither of the rival groups acts wholly in accordance with the provisions of the party constitution and both of them interpret them in a manner convenient to them. In such circumstances, for deciding the claims of rival groups, the consistent and settled principle adopted by the Commission has been the test of numerical majority, both in the organisational and legislature wings of the party. The Supreme Court has upheld this test as a valuable test in the case of *Sadiq Ali and Another Vs. Election Commission of India and Others* (AIR 1972 SC 187).

18. In support of its claim of majority, in the legislature wing and the organisational wing, the group led by Shri Sukh Ram has filed individual affidavits from two out of three sitting MLAs in the Legislative Assembly of Himachal Pradesh, the lone sitting Member in the Lok Sabha and the lone sitting Member in the Rajya Sabha, who were elected to those Houses as candidates of the Himachal Vikas Congress. The group led by Shri Kewal Ram Chauhan has not filed any affidavit from any MP or MLA in support of its claim.

19. As regards the organisational wing, the group led by Shri Sukh Ram has filed individual affidavits from 29 members of the State Executive

Committee, whereas, the group led by Shri Kewal Ram Chauhan has, again, not filed any affidavit from any member in support of its claim.

20. The above documentary evidence undoubtedly shows that the group led by Shri Sukh Ram has superior numerical strength and enjoys majority support, both in the legislature and organisational wings of the party.

21. Having regard to the above and to the totality of facts and circumstances, the Election Commission hereby decides, in terms of paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968, that the group led by Shri Sukh Ram represents the Himachal Vikas Congress, and is entitled to the use of its reserved symbol "Telephone" as a recognised State Party in Himachal Pradesh. The Commission, however, directs that the party shall complete its organisational elections by 15th November, 2000, and submit to the Commission, the list of office-bearers so elected immediately thereafter, and in any case not later than 30th November, 2000. The party should ensure that, in future, the organisational elections of the party are held, in due time, in accordance with the provisions of the party constitution.

ORDERED ACCORDINGLY

*Sd/-*  
**(T.S. Krishna Murthy)**  
Election Commissioner

*Sd/-*  
**(J.M. Lyngdoh)**  
Election Commissioner

# **ELECTION COMMISSION OF INDIA**

**CORAM :**

<b>Hon'ble</b> <b>Sh. T.S. Krishna Murthy</b> Election Commissioner	<b>Hon'ble</b> <b>Dr. M.S. Gill</b> Chief Election Commissioner	<b>Hon'ble</b> <b>Sh. J.M. Lyngdoh</b> Election Commissioner
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In re: Communist Party of India (Marxist) - Withdrawal of Recognition as a National Party

Dated: 27th September, 2000

**PRESENT :**

*For Communist Party of India (Marxist) :*

1. Sh. Harkishan Singh Surjeet, General Secretary
2. Sh. Ramchandran Pillai

*Election Symbols (Reservation and Allotment) Order, 1968 - paras 6 and 7 - withdrawal of recognition of a party as National Party on its failure to fulfil the prescribed criteria - prescribed criteria to be applied as existed at the time of the relevant general elections - any amendment to Symbols Order to have prospective effect.*

## **SUMMARY OF THE CASE**

The Communist Party of India (Marxist) was a recognised National Party at the time of general elections to the House of the People and Legislative Assemblies held in 1999 and 2000. The party fulfilled the criteria for recognition in three States at the aforesaid general elections, and did not satisfy the condition of recognition in at least four States for its continued recognition as a National Party. The party contended that it was the third largest party in the country, having the third largest number of members in the House of the People, and was also heading three State Governments. The party prayed to the Commission to amend the Election Symbols (Reservation and Allotment) Order, 1968, to allow it to retain its status as National Party. The Commission observed that it had to apply the provisions of the Symbols Order as they existed at the time of relevant general elections, and the provisions of the Symbols Order could not be amended retrospectively to give advantage to the party, as prayed for by it. Accordingly, the

Commission withdrew the recognition of the party as National Party and granted it recognition as a State Party in three States, namely, Kerala, Tripura and West Bengal, where its poll performance satisfied the prescribed criteria.

## **ORDER**

The Communist Party of India (Marxist) is a recognised National party with the symbol “Hammer, Sickle and Star” reserved for it under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as ‘Symbols Order’).

2. The recognition of political parties as National parties or State parties is governed by the provisions of paragraphs 6 and 7 of the Symbols Order. For facility of reference, the said paragraphs 6 and 7 are reproduced below:-

“6. Classification of political parties -

(1) For the purposes of this Order and for such other purposes as the Commission may specify as and when necessity therefor arises, political parties are either recognised political parties or unrecognised political parties.

(2) A political party shall be treated as a recognised political party in a State, if, and only if either the conditions specified in clause (A) are, or the condition specified in clause (B) is, fulfilled by that party, and not otherwise, that is to say-

(A) that such party -

(a) has been engaged in political activity for a continuous period of five years; and

(b) has, at the last general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly of the State, returned-

either (i) at least one member to the House of the People for every twenty-five members of that House or any fraction of that number elected from that State;

or (ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;

(B) that the total number of valid votes polled by all the contesting candidates set up by such party at the last general election in the State to

the House of the People, or as the case may be, to the Legislative Assembly of the State, is not less than six per cent of the total number of valid votes polled by all the contesting candidates at such general election in the State.

(2A) x x x x x

(3) For the removal of doubts it is hereby declared that the condition in clause (A) (B) of sub-paragraph (2) shall not be deemed to have been fulfilled by a political party if a member of the House of the People or the Legislative Assembly of the State becomes a member of that political party after his election to that House or, as the case may be, that Assembly.

7. Two categories of recognised political parties :-

(1) If a political party is treated as a recognised political party in accordance with paragraph- 6 in four or more States, it shall be known as, and shall have and enjoy the status of, a “National Party” throughout the whole of India, but only so long as that political party continues to fulfil thereafter the conditions specified in paragraph 6 for such recognition in four or more States on the results of any subsequent general election either to the House of the People or to the Legislative Assembly of any State.

(2) If a political party is treated as a recognised political party in accordance with paragraph 6 in less than four States, it shall be known as, and shall have and enjoy the status of, a “State Party” in the State or States in which it is so recognised, but only so long as that political party continues to fulfil thereafter the conditions specified in paragraph 6 for such recognition as a State Party on the results of any subsequent general election to the House of the People or, as the case may be, to the Legislative Assembly of the State, in the said State or States.”

3. In pursuance of the provisions of the above referred paragraphs 6(2) and 7 of the Symbols Order, as amended from time to time, a review of the poll performance of every political party is required to be made by the Election Commission after every general election to the House of the People or, as the case may be, to the State Legislative Assembly.

4. Accordingly, the poll performance of the said Communist Party of India (Marxist) at the General Election to the Lok Sabha held in August-October, 1999 and the general elections to the State Legislative Assemblies of nine States, held in August-October, 1999, and January- February, 2000, has been reviewed by the Election Commission in terms of paragraphs 6(2) and 7 of the said Symbols Order.

5. The poll performance of the said party at the aforesaid General Elections (Annexure-A) shows that the party fulfills the criteria for

recognition only in three States, viz., Kerala, Tripura and West Bengal, and hence, the party is not eligible to continue as a recognised National party in terms of para 7(2), which requires that a party should be recognised in at least four States so as to be eligible to be recognised as a National party.

6. Before withdrawing its recognition as a National party, the Election Commission considered it appropriate to afford the party an opportunity of making a representation to the Commission as to why its recognition as a National party, may not be withdrawn. Accordingly, a show cause notice was issued to the party on 12th June, 2000 (Annexure-B) and the party was asked to make its representation by 15th July, 2000.

7. The party submitted its reply to the said notice on 13th July, 2000. In the reply, the party submitted that the Communist Party of India (Marxist) had been enjoying the status of a National party ever since the Symbols Order was issued in the year 1968 and that the party was the third largest party, in terms of its strength in both the Houses of Parliament. The party further stated that it was heading three State Governments and had its representation in the Legislative Assemblies of twelve States. The party also submitted that after the Symbols Order was formulated in 1968, there has been a lot of changes in the political situation in the country since then and that the Symbols Order required to be modified so as to take care of the changed scenario. The party requested that necessary amendments should be made to the Symbols Order by further providing that a political party having a representation in the Lok Sabha from a minimum of four States and satisfying the ratio of 1 : 25 of the total strength of the Lok Sabha should be eligible for the status of a National party, and that the party should be given the benefit of these amendments in the present case, so that the party continued to be recognised as a National party.

8. In order to afford all reasonable opportunities to the party to present its case, the Commission decided to give a personal hearing to the representatives of the party and a hearing was fixed for 8th September, 2000.

9. Shri Ramachandran Pillai and Shri Harkishan Singh Surjeet appeared before the Commission on 8th September, 2000 and made their oral submissions. Shri Pillai reiterated the submissions made in the reply filed earlier. In fairness to him, he conceded that as per the existing criteria laid down in the Symbols Order, the Party was eligible for recognition only in three States, and thereby not eligible for recognition as a National Party. But he stated that the party, which started its political activity 70 years back, was the third largest political party in India. He further submitted that their party was also the third largest party in both Houses of Parliament

in terms of members, and that the party was represented from five States, namely, Bihar, Kerala, Tamil Nadu, Tripura and West Bengal in the Lok Sabha, and they were represented from Andhra Pradesh, Kerala, Tripura and West Bengal in the Rajya Sabha. Shri Pillai stated the party was heading the Governments in three States, namely, Kerala, Tripura and West Bengal, and that if a political party of such stature lost its recognition as a National Party, that would adversely affect the meaningful role being played by that party in the political arena.

10. Shri Pillai further stated that the Symbols Order was formulated in 1968, taking into account the situation, as prevailed then. He submitted that the Symbols Order should take into account the representation, a party has in the Lok Sabha. According to him, the mechanical application of the present criteria for recognising a party as a National party could lead to an anomalous situation, inasmuch as parties with a much less number of members in Parliament would continue as National Parties and the Communist Party of India (Marxist) would be relegated to the status of a State party. He stated that if the representation in the Lok Sabha was taken as a whole, the Communist Party of India (Marxist) satisfied the requirement of one out of every 25 seats in the Lok Sabha, as the party has thirty-three (33) members in the present Lok Sabha. He contended that the representation in the Lok Sabha was an important factor to be taken into account, while deciding the eligibility for National status of a political party. He suggested that the Symbols Order was somewhat distortive and should be amended to provide for an additional criterion for recognition as a National party, for a party having representation in the Lok Sabha from a minimum of four States and satisfying the ratio of 1 : 25 of the total strength of the Lok Sabha. He pleaded that the Symbols Order should be immediately amended and the benefit given to them in the present case.

11. On a question from the Commission, Shri Pillai argued that the Commission should consider their case under the residuary powers of the Commission under paragraph 18 of the Symbols Order, and allow it to continue to have its status of a National Party. Shri Harkishan Singh Surjeet also made brief oral submissions, supplementing the submissions made by Shri Pillai.

12. The Commission has carefully considered the above submissions of the party. The perusal of the above quoted paragraphs 6 and 7 of the Symbols Order would show that the recognition, and also the continued recognition, of a political party as National or State Party depends on the fulfillment of the conditions mentioned in paragraph 6(2) or, as the case may be, para 6 (2A), on State-wise basis. If a political party becomes

eligible and is granted recognition as a National or a State party on the fulfillment of the conditions mentioned in the said paragraph at a general election, it will continue to enjoy that status so long as it continues to fulfil those conditions at the subsequent general elections, as has been expressly provided in paragraph 7 of the Symbols Order. Therefore, the poll performance of every recognised political party needs to be reviewed, under the said paragraphs, after every general election held in a State, either to the Lok Sabha or to the State Legislative Assembly. The Commission has been strictly following this requirement under the Symbols Order and taking necessary action promptly for withdrawal of recognition of political parties which failed to fulfil the criteria laid down in the said Symbols Order, after such review of poll performance. The Hon'ble Supreme Court in Janata Dal (Samajwadi) Vs. Election Commission of India (AIR 1996 SC 577) has upheld this position. The relevant portion from the judgement of the Apex Court says:-

“..... it cannot be conceived that a political party having been recognised as a National party or State party as the case may be on having fulfilled the conditions prescribed in paragraph 6 (2) shall continue as such in perpetuity although it has forfeited the right to be recognised as a National party or a State party. In paragraph 2 (2) of the said Symbols Order, it has been specifically provided that the General Clauses Act, 1897 shall as far as may be applicable in relation to the interpretation of the said order as it applies in relation to the interpretation of a Central Act. Section 21 of the General Clauses Act provides that where by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction, and conditions if any to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued. As paragraph 2 (2) of the order in clear and unambiguous term makes provision of the General Clauses Act applicable to the Symbols Order, it need not be impressed that provisions of Section 21 of the General Clauses Act, also become applicable vesting power in the Election Commission which

had issued the aforesaid order dated 16.4.1991 recognising the appellant as a National Party to rescind the said order as appellant in the elections to the Legislative Assemblies of the States mentioned above ceased to fulfil the conditions prescribed in paragraph 6 (2) of the Order read with para 7(1) thereof.”

13. Thus, the law on the point is conclusively settled by the above decision of the Hon'ble Supreme Court that a party once recognised cannot claim to enjoy continued recognition in perpetuity. It has to show the minimum electoral support for recognition or continued recognition, as measured in terms of paragraph 6 (2) of the Symbols Order, read with para 7, at every general election. The Commission has, as indicated above, diligently, after every general election, taken appropriate action after review of poll performance of political parties. Therefore, the Commission is bound to take the same action in the present case also. Shri Pillai has conceded that the party did not fulfil the criteria laid down in the current amended Symbols Order, for its continued recognition as a National party. Further, the Commission has, in the recent past, withdrawn recognition of the Janata Party and Samata Party, as National parties, applying the same criteria laid down in the Symbols Order. The Commission cannot, therefore, take a different stand in the present case.

14. The plea of the party that their case may be considered by the Commission under para 18 of the Symbols Order cannot be accepted. Para 18 of the Symbols Order has no application to the facts and circumstances of the present case, as that para applies in relation to a matter which needs clarification, or for the removal of any difficulty in the implementation of the provisions of that order, or where the Symbols Order makes no provision or insufficient provisions to deal with a particular matter. Withdrawal of recognition of a party, either as a National or State-Party, is not one such matter. Scores of parties have been granted recognition under paras 6 and 7 of the Symbols Order, and their recognition has been withdrawn on their subsequent failure to fulfil the requirements of those paras in the past. The case of the Janata Dal (Samajwadi), referred to above and which went up to the Supreme Court, was one such case. Therefore, taking comprehensive view of the issues involved, para 18 is not applicable in the present case.

15. Further, the Commission has carefully considered the submission of the party for immediate amendment of the Symbols Order. The Commission is unable to accede to the request of the party for an amendment to the Symbols Order and giving it the benefit of such amendment. The Commission has been consistently applying the Symbols

Order judiciously, and giving equal treatment to all parties equally placed. The Commission cannot act differently in this case.

16. Having regard to the above, the Commission is satisfied that the Communist Party of India (Marxist) is no longer entitled to recognition as a National Party under paragraphs 6 and 7 of the Election Symbols (Reservation and Allotment) Order, 1968. Accordingly, the said Communist Party of India (Marxist) shall cease to be recognised as a National Party. It shall hereafter be recognised as a State Party in the States of Kerala, Tripura and West Bengal and the symbol "Hammer, Sickle and Star" shall be reserved for its exclusive use in those States, under the Election Symbols (Reservation and Allotment) Order, 1968.

17. The Commission has, nevertheless, taken note of the plea of the Communist Party of India (Marxist) that it is a political party with long-standing and the Symbols Order should not apply in such a manner as may adversely affect its standing in the political arena. The Commission sees some force in the submission of the party that a political party recognised as a National Party should have a reasonable presence in Parliament. The Commission does realise that the Communist Party of India (Marxist) is the third largest party, in terms of its strength in both the Houses of Parliament, and also that it is heading three State Governments, and has its representation in the Legislative Assemblies of twelve States. The Commission is also conscious of the arguments, which have been made in other fora that the Symbols Order needed some amendments. The Commission has noted these arguments and will consider the same at an appropriate time. However, as of now, the Commission has to apply the Symbols Order as it stood at the time of the general elections held in 1999 and 2000, on the basis of which the poll performance of the party was reviewed.

ORDERED ACCORDINGLY

*Sd/-*  
**(T.S. Krishna Murthy)**  
Election Commissioner

*Sd/-*  
**(Dr. M.S. Gill)**  
Chief Election  
Commissioner

*Sd/-*  
**(J.M. Lyngdoh)**  
Election Commissioner

ANNEXURE 'A'

**POLL PERFORMANCE OF COMMUNIST PARTY OF INDIA (MARXIST)**

State	General Election, 1999			General Election to Legislative Assembly, 2000		
	Seats Won	% of Votes	Seats Won	% of Votes	Seats Won	% of Votes
	Lok Sabha			Legislative Assembly		
	Seats Won	% of Votes	Seats Won	% of Votes	Seats Won	% of Votes
Andhra Pradesh	0	1.40	2	1.71		
Assam	0	1.77				
Bihar	1	0.98			2	0.91
Haryana	0	0.15			0	0.25
J & K	0	1.00				
Karnataka	0	0.08	0	0.38		
Kerala	8	27.90				
Madhya Pradesh	0	0.05				
Maharashtra	0	0.52	2	0.62		
Manipur					0	0.30
Orissa	0	0.20			1	0.77
Punjab	0	2.18				
Rajasthan	0	0.49				
Sikkim			0	0.19		
Tamil Nadu	1	2.35				
Tripura	2	56.24				
Uttar Pradesh	0	0.03				
West Bengal	21	35.57				

**ANNEXURE 'B'**

**ELECTION COMMISSION OF INDIA**

Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 56/Review/CPM/99/J.S.III/3116

Dated 12th June, 2000

To

The General Secretary  
Communist Party of India (Marxist)  
A.K. Gopalan Bhawan  
27-29, Bhai Vir Singh Marg  
Gole Market  
New Delhi-110 001

**SHOW CAUSE NOTICE**

WHEREAS, COMMUNIST PARTY OF INDIA (MARXIST) is a recognised National Party under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as 'Symbols Order');

AND WHEREAS, paragraph 6 (2) of the Symbols Order provides that a political party shall be treated as a recognised political party in a State, if and only if either the conditions specified in Clause (A) of that paragraph are, or the condition specified in Clause (B) thereof is, fulfilled by that party and not otherwise, that is to say :-

(A) That such party -

(a) has been engaged in political activity for a continuous period of five years; and

(b) has, at the general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning returned - either (i) at least one member to the House of the People for every twenty-five members of that House or any fraction of that number elected from that State; or

(ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;

(B) that the total number of valid votes polled by all the contesting candidates set up by such party at the last general election in that State to the House of the People, or as the case may be, to the Legislative Assembly

of the State, is not less than six per cent of the total number of valid votes polled by all the contesting candidates at such general election in the State;

AND WHEREAS, under paragraph 7 of the Symbols Order, a party shall be recognised as a State Party if it is treated as a recognised political party in accordance with paragraph 6, referred to above, in four or more States;

AND WHEREAS, in pursuance of the provisions of the above referred paragraphs 6 (2) and 7 of the Symbols Order, a review of the poll performance of every political party is required to be made by the Election Commission after every general election to the House of the People or, as the case may be, to the State Legislative Assembly;

AND WHEREAS, the poll performance of the said COMMUNIST PARTY OF INDIA (MARXIST) at the General Election to the Lok Sabha and the Legislative Assemblies of Andhra Pradesh, Arunachal Pradesh, Karnataka, Maharashtra and Sikkim held in August-October, 1999 and the last General Elections to the Legislative Assemblies of other States, has been reviewed by the Election Commission in terms of paragraphs 6 (2) and 7 of the said Symbols Order, as per the statement(s) annexed hereto;

AND WHEREAS, the poll performance of the said party at the aforesaid General Elections does not satisfy the criteria laid down for recognition of the said party as a National party, as the said party fulfills the criteria only in three states, namely, Kerala, Tripura and West Bengal;

AND WHEREAS, before withdrawing such recognition from said party, the Election Commission proposes to afford to the said party an opportunity to make a representation to the Commission as to why its recognition as a National party may not be withdrawn;

NOW, THEREFORE, the said party is required to show cause as to why the recognition of the said party as a National party may not be withdrawn under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968. The representation of the party should reach the Commission, on or before the 15th July, 2000.

If your party desires to have an opportunity of personal hearing in the matter, the duly authorised representative(s) of your party may appear before the Commission to present your case on 21st August, 2000 at 11.00 A.M. in the Commission's Secretariat at Nirvachan Sadan, Ashoka Road, New Delhi-110001.

Name(s) of the authorised representative(s) of your party being deputed, if any, for the said hearing, may be intimated in advance.

Communist Party of India (Marxist) - Withdrawal of Recognition as a National Party

It may be noted that representative(s) of your party will appear before the Commission at his / their own expenses and no TA / DA will be paid by the Commission.

It may also be noted that in case of default of appearance at the aforesaid hearing, and if no reply is filed, it will be presumed that you have nothing further to say in this behalf and the Commission will pass appropriate orders without any further reference to you.

By order

**Sd/-**  
**(K.J. RAO)**  
Secretary

# **ELECTION COMMISSION OF INDIA**

**CORAM :**

<b>Hon'ble</b> <b>Sh. T.S. Krishna Murthy</b> Election Commissioner	<b>Hon'ble</b> <b>Dr. M.S. Gill</b> Chief Election Commissioner	<b>Hon'ble</b> <b>Sh. J.M. Lyngdoh</b> Election Commissioner
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In re: Janata Party - Withdrawal of Recognition as a State Party in the State of Arunachal Pradesh.

Dated: 27th September, 2000

**PRESENT :**

*For Janata Party :*

1. Dr. Subramanian Swamy, President
2. Smt. Roxna Swamy, Advocate
3. Sh. Arvind Chaturvedi, General Secretary

*Election Symbols (Reservation and Allotment) Order, 1968- paras 6 and 7 - withdrawal of recognition of a party on its failure to satisfy the prescribed criteria - prescribed criteria to be applied as existed at the time of the relevant general elections - any amendment to Symbols Order to have prospective effect.*

## **SUMMARY OF THE CASE**

The Janata Party was earlier recognised as a National party and its status was subsequently reduced to that of a State party in Arunachal Pradesh at the time of the 1999 general elections to the House of the People and Arunachal Pradesh Legislative Assembly. The poll performance of the party at the aforesaid general elections fell short of the prescribed criteria for continuation as a State Party in Arunachal Pradesh. Accordingly, its recognition as a State party in Arunachal Pradesh was withdrawn by the Election Commission by its present order dated 27th September, 2000.

The party submitted that the Symbols Order should be amended to allow the party to use its reserved symbol, even after the withdrawal of its recognition, as the symbol is to be regarded as insignia identifying the party to the electorate. The Election Commission applied the provisions of the Symbols Order as in existence at the time of the aforesaid general elections,

observing that any amendment to the Symbols Order can have only a prospective affect.

## **ORDER**

The Janata Party is a recognised State party in Arunachal Pradesh with the symbol “Haldhar within Wheel (Chakra Haldhar)” reserved for it in the said State under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as ‘Symbols Order’).

2. The recognition of political parties as National parties or State parties is governed by the provisions of paragraphs 6 and 7 of the Symbols Order. For facility of reference, the said paragraphs 6 and 7 are reproduced below:-

**“6. Classification of political parties -**

(1) For the purposes of this Order and for such other purposes as the Commission may specify as and when necessity therefor arises, political parties are either recognised political parties or unrecognised political parties.

(2) A political party shall be treated as a recognised political party in a State, if, and only if either the conditions specified in clause (A) are, or the condition specified in clause (B) is, fulfilled by that party, and not otherwise, that is to say-

(A) that such party -

(a) has been engaged in political activity for a continuous period of five years; and

(b) has, at the last general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly of the State, returned -

either (i) at least one member to the House of the People for every twenty-five members of that House or any fraction of that number elected from that State;

or (ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;

(B) that the total number of valid votes polled by all the contesting candidates set up by such party at the last general election in the State to the House of the People, or as the case may be, to the Legislative Assembly of the State, is not less than six per cent of the total number of valid votes polled by all the contesting candidates at such general election in the State.

(2A) x x x x x

(3) For the removal of doubts it is hereby declared that the condition in clause (A) (B) of sub-paragraph (2) shall not be deemed to have been fulfilled by a political party if a member of the House of the People or the Legislative Assembly of the State becomes a member of that political party after his election to that House or, as the case may be, that Assembly.

7. Two categories of recognised political parties :-

(1) If a political party is treated as a recognised political party in accordance with paragraph 6 in four or more States, it shall be known as, and shall have and enjoy the status of, a “National Party” throughout the whole of India, but only so long as that political party continues to fulfil thereafter the conditions specified in paragraph 6 for such recognition in four or more States on the results of any subsequent general election either to the House of the People or to the Legislative Assembly of any State.

(2) If a political party is treated as a recognised political party in accordance with paragraph 6 in less than four States, it shall be known as, and shall have and enjoy the status of, a “State Party” in the State or States in which it is so recognised, but only so long as that political party continues to fulfil thereafter the conditions specified in paragraph 6 for such recognition as a State Party on the results of any subsequent general election to the House of the People or, as the case may be, to the Legislative Assembly of the State, in the said State or States.”

3. In pursuance of the provisions of the above referred paragraphs 6(2) and 7 of the Symbols Order, as amended from time to time, a review of the poll performance of every political party is required to be made by the Election Commission after every general election to the House of the People or, as the case may be, to the State Legislative Assembly.

4. Accordingly, the poll performance of the said Janata Party at the General Election to the Lok Sabha held in August-October, 1999 and the general elections to the State Legislative Assemblies, including the Arunachal Pradesh Legislative Assembly, held in August-October, 1999, and January- February, 2000, has been reviewed by the Election Commission in terms of paragraphs 6(2) and 7 of the said Symbols Order.

5. The poll performance of the said party at the aforesaid General Elections (Annexure-A) does not satisfy any of the criteria laid down for the continued recognition of the said party as a State party in the State of Arunachal Pradesh.

6. Before withdrawing such recognition from the said party, the Election Commission considered it appropriate to afford it an opportunity of making a representation to the Commission as to why its recognition in Arunachal Pradesh may not be withdrawn. Accordingly, a show cause notice was issued to the party on 26th May, 2000 (Annexure-B) and the party was asked to make its representation.

7. The party submitted its reply to the said notice on 17th July, 2000. In the reply, the party narrated the history of the Janata Party, dating back to the year 1977, when the party was formed, and the existence of the party as a recognised party since then, with the status of a National party or a State party since then. It was stated that this long period of political activity had resulted in the symbol "Chakra Haldhar" being associated with the party throughout the country. The reply further stated that the party still continued to have all India presence, although it failed to fulfil the criteria for recognition laid down in the Symbols Order at the latest round of general elections. The party submitted that once a party was recognised as a National or State party by the Commission in accordance with the criteria laid down in the Symbols Order and a symbol reserved for it, such party should not be denied of the facility of a reserved symbol on the ground that it failed to perform up to the required standards at a subsequent general election. According to the party, such a denial of the facility of a common symbol has the effect of extinguishing the party. The party claimed that the reserved symbol could be equated with trademarks, insignia and emblems and, hence, the symbol should not be withdrawn on the basis of one such low performance. The party also prayed for an amendment to the Symbols Order to provide that once a symbol was allotted to a recognised political party, as its reserved symbol, that symbol should continue to be so reserved for it, even if the party ceased to be a recognised political party on a subsequent date. The party submitted that the Symbols Order suffered from a glaring lacuna; it works on the premise that if a political party fared badly in one general election, it lost its *raison d'être*, and must be given an instant burial. It was further added that mere de-recognition with consequent freezing of the symbol, would lead to the eventual demise of a party which had played a crucial role in India's political history, in fact in the restoration of multi-party democracy itself, the existence of which democracy gave the Election Commission its deserved status.

8. In order to afford all reasonable opportunities to the party to present its case, the Commission decided to give a personal hearing to the representatives of the party and a hearing was fixed for 20th July, 2000. Dr. Subramanian Swamy appeared on the said date and prayed for an

adjournment, as he was suffering from flu. He also made a submission that since he had raised the issue of amendment to the Symbols Order, the matter may be placed before the full Commission. The Commission granted the prayer for adjournment and the hearing was adjourned to 8th September, 2000.

9. Dr. Subramanian Swamy appeared before the Commission on 8th September, 2000 and made his oral submissions. He reiterated the submissions made in the reply filed earlier. He conceded straightway that the party did not fulfil the conditions for continued recognition as a State party in Arunachal Pradesh or any other State, on the basis of its poll performance at the aforementioned general elections as per the current amended Symbols Order. He, however, submitted that since the Symbols Order was formulated in 1968, the concept of symbols had undergone a lot of changes, and these were not adequately reflected in the Symbols Order. According to him, the symbol is to be treated as an insignia and not as a contract between the Commission and the political party. He reiterated the plea made in the written submissions that even if the recognition of a political party was withdrawn on the basis of its poll performance at any subsequent election, the party should be allowed to retain and use the symbol allotted to it earlier as a recognised party. He contended that even after withdrawal of recognition, the party continued to retain the name and also continued to use the same party flag, and it would only be logical to let the party continue to use its symbol as well, so long as there was no other genuine claimant to that symbol. He contended that to allow the party the continued use of the symbol which it lost temporarily would do no harm to any other party. Shri Swamy vehemently argued that once recognised as a National or a State Party by the Election Commission, by whatever criteria laid down in the Symbols Order, that political party which continued to be active politically, could not be denied a reserved symbol merely because in one general election or more, its performance was poor unless there is a dispute within the party. He contended that such denial had the effect of extinguishing such political party or contributing substantially to its extinction. He further stated that if the Commission was to include the symbol in the list of free symbols or deny its use by the party by freezing it, it would either be misused by candidates who have no connection with the Janata Party, or in the alternative have the effect of creating conditions for the party's demise. Therefore, he strongly argued that the Symbols Order should be amended. He submitted that the Commission was well within its powers to suitably amend the Symbols Order.

10. The Commission has carefully considered the above submissions of the party. The perusal of the above quoted paragraphs 6 and 7

would show that the recognition, and also the continued recognition, of a political party as National or State Party depends on the fulfillment of the conditions mentioned in paragraph 6(2) or, as the case may be, para 6 (2A). If a political party becomes eligible and is granted recognition as a National or a State party on the fulfillment of the conditions mentioned in the said paragraph at the general election, it will continue to enjoy that status so long as it continues to fulfil those conditions at the subsequent general elections, as has been expressly provided in paragraph 7 of the Symbols Order. Therefore, the poll performance of every recognised political party needs to be reviewed under the said paragraphs after every general election held in a State either to the Lok Sabha or to the State Legislative Assembly. The Supreme Court in *Janata Dal (Samajwadi) Vs. Election Commission of India* (AIR 1996 SC 577) has upheld this position. The relevant portion from the judgement of the Apex Court says:-

“..... it cannot be conceived that a political party having been recognised as a National party or State party as the case may be on having fulfilled the conditions prescribed in paragraph 6 (2) shall continue as such in perpetuity although it has forfeited the right to be recognised as a National party or a State party. In paragraph 2 (2) of the said Symbols Order, it has been specifically provided that the General Clauses Act, 1897 shall as far as may be applicable in relation to the interpretation of the said order as it applies in relation to the interpretation of a Central Act. Section 21 of the General Clauses Act provides that where by any Central Act or Regulation, power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction, and conditions if any to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued. As paragraph 2 (2) of the order in clear and unambiguous term makes provision of the General Clauses Act applicable to the Symbols Order, it need not be impressed that provisions of Section 21 of the General Clauses Act, also become applicable vesting power in the Election Commission which

had issued the aforesaid order dated 16.4.1991 recognising the appellant as a National Party to rescind the said order as appellant in the elections to the Legislative Assemblies of the States mentioned above ceased to fulfil the conditions prescribed in paragraph 6 (2) of the Order read with para 7(1) thereof.”

11. Thus, the law on the point is conclusively settled by the above decision of the Supreme Court that a party once recognised cannot claim to enjoy continued recognition in perpetuity. It has to show the minimum electoral support for recognition or continued recognition, as measured in terms of paragraph 6 (2) of the Symbols Order, at every general election.

12. Having regard to the above, the Commission is satisfied that the Janata Party is no longer entitled to recognition as a State party under paragraphs 6 and 7 of the Election Symbols (Reservation and Allotment) Order, 1968. Dr. Swamy has also conceded that the party did not fulfil the criteria laid down in the Symbols Order for the party’s continued recognition. The Commission has, consistently over long years, applied the same Symbols Order, and, after reviewing the poll performance of political parties after every general election, de-recognised many political parties. The Commission has, therefore, to apply the same rule in the case of Janata Party and can not make any exception. Accordingly, the said party shall cease to be recognised as a State party in the State of Arunachal Pradesh and the symbol “Haldhar within Wheel (Chakra Haldhar)” shall not stand reserved for it in that State. It shall hereafter be a registered - unrecognised political party for the purposes of the said Symbols Order.

13. The Commission has, however, taken note of the criticism of the Symbols Order made by the Janata Party in the hearing, and would consider the same at an appropriate time.

ORDERED ACCORDINGLY

**Sd/-**  
**(T.S. Krishna Murthy)**  
Election Commissioner

**Sd/-**  
**(Dr. M.S. Gill)**  
Chief Election  
Commissioner

**Sd/-**  
**(J.M. Lyngdoh)**  
Election Commissioner



# **ELECTION COMMISSION OF INDIA**

## **CORAM :**

<b>Hon'ble</b> <b>Sh. T.S. Krishna Murthy</b> Election Commissioner	<b>Hon'ble</b> <b>Dr. M.S. Gill</b> Chief Election Commissioner	<b>Hon'ble</b> <b>Sh. J.M. Lyngdoh</b> Election Commissioner
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In re: Janata Dal - Dispute Case No. 1 of 1999 - Application filed by Shri H.D. Deve Gowda under paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968, seeking a declaration that the symbol 'Chakra (Wheel)' be allotted to the group of Janata Dal led by Shri H.D. Deve Gowda.

Dated: 27th September, 2000

## **PRESENT :**

*For the Deve Gowda Group:*

1. Sh. K.K. Manan, Advocate
2. Sh. Luvkesh, Advocate
3. Prof. Madhu Dandavate
4. Dr. Bapu Kaldate, Secretary General
5. Sh. Sanjay Varma, General Secretary
6. Sh. Sri Bhagwan

*For the Sharad Yadav Group:*

1. Sh. A.K. Bajpai, Advocate
2. Sh. Nitinjya Chaudhry, Advocate
3. Sh. M. Raghupathi, General Secretary
4. Sh. Javed Raza, Secretary
5. Sh. N. Balakrishnan, Permanent Secretary
6. Sh. Ramesh Raghav
7. Sh. Mohan Singh
8. Ms. Neena Malhan

*Election Symbols (Reservation and Allotment) Order, 1968 - Para 15 - split in a recognised national party - application of test of majority in organisational and legislature wings of the party - Election Commission not in a position to determine relative strength of rival groups in organisational wing because of the failure of the groups to furnish agreed lists of members - both groups more or less evenly balanced in legislature wing - Election Commission deciding not to recognise either of the groups as the main party.*

Janata Dal - Dispute Case No. 1 of 1999 - Application filed by Shri H.D. Deve Gowda under paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968, seeking a declaration that the symbol 'Chakra (Wheel)' be allotted to the group of Janata Dal led by Shri H.D. Deve Gowda

*Election Symbols (Reservation and Allotment) Order, 1968 - paras 6, 7 and 15 - interim recognition to splinters groups of a recognised National party, during pendency of dispute - recognition of splinter groups as separate parties on determination of the dispute, on the basis of their poll performance at general elections held meanwhile - registration of splinters groups as political parties under Section 29A of the Representation of the People Act, 1951, a precondition for such recognition.*

*Representation of the People Act, 1951 - Section 29 A - registration of political party, a condition precedent for recognition under the Election Symbols (Reservation and Allotment) Order, 1968 - Section 29A (2) (b) - deemed date of formation as political party of splinter group of a recognised party, whose claim as representing the main party is not accepted by Election Commission under the Symbols Order.*

## **SUMMARY OF THE CASE**

The Janata Dal was a recognised National Party and the symbol 'Chakra (Wheel)' was reserved for it under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968. There was a split in the party in July, 1999, resulting in the formation of two rival groups led by Sh. H.D. Deve Gowda and Sh. Sharad Yadav. A dispute was raised in terms of para 15 of the Election Symbols (Reservation and Allotment) Order, 1968 by Sh. Deve Gowda claiming that his group represented the Janata Dal.

During the pendency of the dispute, the Election Commission gave ad-hoc interim recognition to both the groups, as National parties, on 7th August, 1999, in view of the then ensuing general elections to the House of the People and certain State Legislative Assemblies. The group led by Sh. Deve Gowda was recognised under the name of Janata Dal (Secular), and the other rival group led by Sh. Sharad Yadav was recognised as Janata Dal (United), and the Symbols "Kisan Driving Tractor" and "Arrow" were reserved for them respectively, freezing the name of Janata Dal and its reserved symbol "Chakra (wheel)". These two rival groups contested the general elections to the House of the People and certain State Legislative Assemblies in 1999 - 2000, as separate parties under the aforesaid names.

After the aforesaid general elections, the Election Commission heard both the rival groups further and examined the records produced by them. On such examination, the Commission observed that it was not possible for it to determine the relative strength of the two rival groups in the organisational wing of the party, as neither of the groups had submitted any agreed lists of members of the organisational bodies at the various levels. As regards the legislature wing of the party, the Commission observed that

Janata Dal - Dispute Case No. 1 of 1999 - Application filed by Shri H.D. Deve Gowda under paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968, seeking a declaration that the symbol 'Chakra (Wheel)' be allotted to the group of Janata Dal led by Shri H.D. Deve Gowda

both the groups were more or less evenly balanced. In these circumstances, the Commission was of the view that recognition of any of the rival groups as the main party would be opposed to the interests of justice, fairplay and equity. The Commission, accordingly, decided not to recognise either of the two rival groups as the Janata Dal, and froze the name and symbol of that party.

However, the Commission decided to recognise both the rival groups as State parties in which their poll performance at the last general elections in 1999-2000 fulfilled the criteria for recognition. As neither of these groups was registered with the Commission as a political party under Section 29A of the Representation of the People Act, 1951, the Commission decided to give them recognition as State Party on their getting themselves registered as political party under the said Section 29A, within a period of 30 days from the date of the Commission's order. The Commission also directed that the date of the Commission's order shall be deemed to be the date of formation of the two parties for the purposes of Section 29A (2) (b) of the Representation of the People Act, 1951.

## **ORDER**

This is an application filed on 22nd July, 1999, before the Election Commission of India by Shri H.D. Deve Gowda under paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968 ('Symbols Order' for short), seeking a direction that the symbol "Chakra (Wheel)" be allotted to the group of the Janata Dal headed by him. The said application showed that there was a split in the Janata Dal, a recognised National party, and there were two rival groups in the party led by Shri H.D. Deve Gowda and Shri Sharad Yadav.

2. The Commission heard the application on 3rd August, 1999. In view of the disputed questions of fact and law raised by the rival groups, and in view of the then ensuing general elections to the Lok Sabha and the Legislative Assemblies of Andhra Pradesh, Arunachal Pradesh, Karnataka, Maharashtra, and Sikkim, the Commission passed an interim order on the 7th August, 1999, granting ad-hoc recognition to both the groups of the Janata Dal, as National parties, but freezing the name and symbol of the Janata Dal. The Deve Gowda group was given the name 'Janata Dal (Secular)' and allowed the symbol 'Kisan Driving Tractor', while the Sharad Yadav group was given the name 'Janata Dal (United)' with the symbol 'Arrow'. In the interim order, the Commission made it clear that the ad-hoc recognition was only for the purposes of the general elections to be held in August-October, 1999. It was also laid down that the question of their

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recognition and allotment of symbol would be dependent upon the final determination of the dispute, for which their poll performance at the general elections would be relevant, as the same would truly reflect the choice of the electors.

3. As the matter could not be decided before the general elections to the Legislative Assemblies of Bihar, Haryana, Manipur and Orissa held in February, 2000, the Commission passed another interim order on 17th January, 2000, continuing the ad-hoc recognition granted earlier to the two groups, till the final disposal of the matter.

4. After the general elections to the Legislative Assemblies of the above mentioned four States in February-March, 2000, the Commission further took up the matter. In the pleadings before the Commission, the Janata Dal (United) had stated that the Samata Party, a recognised State party, had merged with the Janata Dal (United) and individual affidavits of some of the leaders of the Samata Party, affirming that they belonged to the Janata Dal (United), were also filed in December, 1999. Subsequently, a letter dated 20th January, 2000, was received from Ms. Jaya Jaitly, President of the Samata Party, stating that, at no point of time, had the Samata Party formally merged with any other party, and categorically stating that the Samata Party continued to exist as a separate political party. The Commission decided to further hear the parties, before deciding the matter, and fixed a hearing for 15th May, 2000. In view of the above letter of Ms. Jaya Jaitly, a notice was also issued to the Samata Party. A copy of the said letter from Ms. Jaya Jaitly was sent both to the Janata Dal (United) and the Janata Dal (Secular) and they were asked to file written submissions, if any. The hearing was postponed, on two occasions, on the request of the parties and was finally fixed for 12th September, 2000. None of the parties filed any written statement. Only Ms. Jaya Jaitly sent a letter on 8th May, 2000, stating that the party's position was already explained in its letter dated 20th January, 2000, and that the same may be placed before the Commission.

5. At the hearing on 12th September, 2000, Shri A.K. Bajpai, learned counsel of the Janata Dal (United), made a preliminary submission that if the Commission was taking cognizance of the letter dated 20th January, 2000 of Ms. Jaya Jaitly, the party may be given more time for filing a proper reply. The Commission pointed out to the learned counsel that a copy of the letter of Ms. Jaya Jaitly was made available to the party as long back as in April, 2000, and in the notice forwarding the said letter, they were specifically asked to file written submissions, which they had not done. However, the Commission informed the learned counsel that they

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would be given further time for filing their written submissions after the hearing. The learned counsel accepted this arrangement.

6. Shri Luvkesh, learned counsel appearing on behalf of the Janata Dal (Secular), stated that the issues involved in the matter had to be viewed as on the date of split in July, 1999, as the Janata Dal (United) had fought the 1999-general elections, not on its own, but in alliance with the Samata Party, Lok Shakti and also the Bharatiya Janata Party, whereas, the Janata Dal (Secular) fought the elections on its own. He, therefore, contended that the votes claimed to have been polled by the Janata Dal (United) were, in fact, the votes polled by various parties together and, hence, the same should not be taken into account for evaluating the performance of the Janata Dal (United) at the 1999 elections. He stated that the subsequent conduct of the parties showed that the joining of hands by the Janata Dal (United) with the Samata Party and Lok Shakti was only for the purpose of inflating its showing at the elections in the context of the dispute before the Commission. He claimed that the fact that the Samata Party had denied merger with the Janata Dal (United), and that the alleged merger of the Lok Shakti with the Janata Dal (United) was not recognised by the Commission as a valid merger, proved his point. He also reiterated the contentions made in the earlier hearing that Shri Sharad Yadav violated the spirit of the party constitution of the Janata Dal, by aligning with the Bharatiya Janata Party, which had a communal ideology. He also stated that the Janata Dal (United) had filed certain affidavits from some of the leaders of the Samata Party and those affidavits were denied by those leaders. He also added that the recent media reports indicated that Shri Ram Vilas Paswan, one of the MPs elected on the Janata Dal (United) ticket, was in the process of floating a separate party.

7. Shri Raghupathi, General Secretary, opened the arguments on behalf of the Janata Dal (United). He stated that the allegation of communal ideology attached to the Bharatiya Janata Party had no validity. He submitted that the crucial date for determining the relative strength of the two groups should be the date on which the application was filed by Shri Deve Gowda, and subsequent developments should not be taken into account. He too reiterated the submissions made in the earlier hearing that the Political Affairs Committee of the Janata Dal was not a validly constituted committee to take any decision on behalf of the party. Regarding the question of affidavits filed by Shri George Fernandes and others of the Samata Party, Shri Bajpai, learned counsel, stated that the affidavits in question were duly signed by the persons concerned, and in case of any doubt, the deponents could be summoned to enquire about the validity of their affidavits.

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8. After hearing the two groups, the Commission allowed them time up to 25th September, 2000, to file their written arguments. Shri Sharad Yadav submitted a letter dated 16th September, 2000, stating that the members elected to the Lok Sabha at the general election of 1999, as mentioned in the list submitted by him earlier, were elected as candidates set-up by the Janata Dal (United), and on its symbol. He contended that this fact should be taken into account and no other extraneous consideration should come into play while considering the legislature wing of the party in the Lok Sabha. He also wanted to further inspect the documents and the Commission's file relating to the case. The party had earlier inspected the documents in January, 2000 and, again, on 11th September, 2000, on the eve of the hearing. However, the Commission allowed the inspection once again, and the party representatives carried out the inspection on 22nd September, 2000. Copies of the documents required by the party were also supplied to them. However, the party did not submit any written submissions by the stipulated date of 25th September, 2000, and wanted extension of time for the purpose by another week. The Commission sees no justification for the prayer.

9. Janata Dal (Secular) also did not file any written submissions after the hearing.

10. The Commission has carefully examined and considered all aspects of the case.

11. Both the groups had initially filed individual affidavits, running into several hundreds, stated to be from members and office-bearers of the party, starting from the lowest level of the party organisation, and also from the legislators elected on the party ticket. But, neither of the groups filed any agreed lists of members of the various organisational bodies, even at the apex level of the National Executive or National Council, as they stood constituted when the split arose in July, 1999. The vast divergence of the claims of both the groups in this regard can be well perceived from the fact that, whereas one group claims the membership strength of the National Council at 939, the other group gives the numerical strength of that Council as 689. Further, each group disputes the veracity of many of the affidavits filed by the other group, but without any evidence to substantiate the allegation. Furthermore, some of the deponents of the aforesaid affidavits have given those affidavits in favour of both the groups. Therefore, on the basis of the records produced and doubts and disputes raised in regard thereto by both the groups, it is not possible for the Commission to arrive at any conclusion regarding the relative strength of the two groups in the organisational wing of the Janata Dal, as it was constituted immediately

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prior to the time of the split in July, 1999.

12. In so far as the legislature wing of the Janata Dal, as constituted at the time of the split in July, 1999, is concerned, the support claimed by each of the two rival groups, on the basis of the affidavits of the members concerned at that relevant point of time, is as follows:-

	Janata Dal (United)	Janata Dal (Secular)
Lok Sabha	2	4
	(One member filed affidavits for both the groups)	
Rajya Sabha	1	6
Members of Legislative Assemblies	99	61
Members of Legislative Councils	8	12

A perusal of the above comparative table will show that both the groups were more or less evenly poised, in so far as the legislature wing of the Janata Dal was concerned. Whereas, one group had a slight edge in so far as the members of Parliament were concerned, the other group enjoyed greater support amongst the members of the State Legislative Assemblies. It may not be out of place to point out that the members of the Rajya Sabha and the members of the State Legislative Councils do not come into any reckoning for the purposes of the recognition of a party, as a National party or a State party, under the Symbols Order. On the basis of such more or less equally balanced relative strength of the two groups in the legislature wing of the party, if one of the groups is recognised by the Commission as the Janata Dal, it would be doing gross injustice to the other group. Any such conclusion would not only be unfair, but also opposed to the principles of justice, fairplay and equity. Even in the interim order passed by the Commission on 7th August, 2000, the Commission had made a prima facie observation that the party had split vertically and both the groups were more or less evenly poised. The subsequent enquiry has confirmed the above observation of the Commission.

13. In view of the above facts and circumstances, where the Commission is not in a position, because of the failure of the rival groups themselves, to ascertain the relative strength of the two groups in the organisational wing of the party and where the relative strength of the two groups in the legislature wing of the party is more or less equally poised,

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the Commission is not in a position to persuade itself to recognise one of the two rival groups as the Janata Dal, and allow such group to enjoy the whole of the goodwill of the Janata Dal to the total exclusion of the other group. Para 15 of the Symbols Order, under which the present application has been moved by Shri H.D. Deve Gowda, itself envisages a situation where the Commission may, on enquiry into the dispute, come to the decision that none of the rival groups of a party can be recognised as the political party to which the dispute pertains. For convenience of reference, para 15 of the Symbols Order is reproduced below:-

*"15. Power of Commission in relation to splinter groups or rival sections of a recognised political party-*

*When the Commission is satisfied on information in its possession that there are rival sections or groups of a recognised political party each of whom claims to be that party, the Commission may, after taking into account all the available facts and circumstances of the case and hearing such representatives of the sections or groups and other persons as desire to be heard, decide that one such rival section or group or none of such rival sections or groups is that recognised political party and the decision of the Commission shall be binding on all such rival sections or groups.*

14. Accordingly, the Commission hereby decides, in terms of para 15 of the Symbols Order, that neither of the two groups led by Shri H.D. Deve Gowda and Shri Sharad Yadav can be recognised by the Commission as representing the whole party, i.e., Janata Dal. Consequently, the name of the party Janata Dal and the symbol 'Chakra (Wheel)' reserved for it shall stand frozen.

15. Ordinarily, the matter would have rested there; but not so in this case. There have been certain important post-split developments in the present case, which cannot be overlooked or ignored altogether. By its aforesaid interim order dated 7th August, 2000, the Commission had granted ad-hoc interim recognition to both the groups of the Janata Dal, as National parties, and allotted separate symbols to them. Both these groups have contested general elections to the Lok Sabha and the Legislative Assemblies of Arunachal Pradesh, Sikkim, Maharashtra and Andhra Pradesh in October,

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1999 and to the Legislative Assemblies of the States of Bihar, Haryana, Manipur and Orissa in February, 2000. On the basis of their poll performance at these general elections, the Janata Dal (United) has qualified itself for recognition as a State party in the States of Bihar and Karnataka, on the fulfillment of the criteria laid down for such recognition under para 6 (2) of the Symbols Order. Similarly, the Janata Dal (Secular) is entitled to recognition in the State of Karnataka, on the basis of its poll performance at the said general elections. In the said interim order, the Commission had clarified that the poll performance of both the groups at the aforesaid general elections would be relevant at the time of final determination of the dispute, being the verdict of the electorate truly reflecting their choice.

16. Accordingly, having regard to the above facts and circumstances of the present case, the Commission is inclined to give recognition to the Janata Dal (United) as a State party in the States of Bihar and Karnataka, and to the Janata Dal (Secular) in the State of Karnataka. However, there is one legal obstacle in the grant of such recognition to these parties straightaway. Under para 2(1)(h) of the Symbols Order, a political party, for the purposes of that Order, means a party which is registered with the Commission under Section 29A of the Representation of the People Act, 1951. And, the scheme of the Symbols Order is that only such registered party should be recognised by the Commission as a State or National party, and not an unregistered party. But here, neither of the two parties, namely, Janata Dal (United) and Janata Dal (Secular), is registered with the Commission as a political party under the said section 29A. In view of these peculiar facts and circumstances of the present case, the Commission would be willing to give recognition to both the parties as State parties, as aforesaid, if the parties complete the formalities with regard to their registration under the said Section 29A. The parties should complete such formalities within a period of 30 days from the date of the present order, which will be deemed to be the date of formation of these parties for the purposes of sub-section (2)(b) of the said Section 29A.

ORDERED ACCORDINGLY

**Sd/-**  
**(T.S. Krishna Murthy)**  
Election Commissioner

**Sd/-**  
**(Dr. M.S. Gill)**  
Chief Election  
Commissioner

**Sd/-**  
**(J.M. Lyngdoh)**  
Election Commissioner