



भारत निर्वाचन आयोग
Election Commission of India

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

BEFORE THE ELECTION COMMISSION OF INDIA

CORAM:

Hon'ble Sh. SUNIL ARORA
ELECTION COMMISSIONER

Hon'ble Sh. A.K. JOTI
CHIEF ELECTION
COMMISSIONER

Hon'ble Sh. O.P. RAWAT
ELECTION COMMISSIONER

Dispute Case No. 5 of 2017

In re: Dispute Case No. 5 of 2017 – Dispute in Janata Dal (United)– Application filed by Sh. Chhotubhai Amarsang Vasava under Paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968

Shri Chhotubhai Amarsang Vasava	Petitioner
Vs.		
Sh. Nitish Kumar and others	Respondents

ORDER

1. This order pertains to an application filed by Sh. Chhotubhai Amarsang Vasava, (hereinafter referred to as 'Petitioner') under Paragraph-15 of the Election Symbols (Reservation & Allotment) Order, 1968 (referred to as 'Symbols Order') seeking a direction that the group of Janata Dal (United) led by him may be recognised as the said Party under the said Paragraph 15. The Janata Dal (United) [hereinafter 'the Party'] is a recognised State Party in the State of Bihar with the election symbol 'Arrow' allotted to it as its reserved symbol in Bihar.

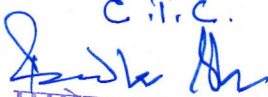
As per the Commission's record, Sh. Nitish Kumar is the President of the Party,

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PRAMOD KUMAR SHARMA
Secretary

elected in 2016, as per the information furnished by the Party under Sub-section(9) of Section 29A of the Representation of the People Act, 1951.


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

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regards the said MLC of Maharashtra, viz., Sh. Kapil Harischandra Patil, it is seen that there is an affidavit of support from him to the other group as well.

4. On the other hand, the learned senior counsel for the Respondent's group, Shri Rakesh Dwivedi, contended that the present strength the National Council of the Party consists of 195 members as reconstituted on the basis of the organizational elections held in October, 2016. The organizational elections of the Party culminated in the election of the President of the Party on 16-10-2016 at the meeting of the reconstituted National Council in Rajgir, Nalanda. The list of 195 members of the National Council was submitted to the Commission on 10th November, 2016 by Shri Aneel Hegde, Returning Officer for the Party elections, in response to the letter sent to the Party by the Commission on 24-10-2016, asking the Party to furnish information about its organizational elections. The information furnished on 10-11-2016 regarding the organizational elections including the list of National Council consisting of 195 members was taken on record and put on the Commission's website as per the standard practice. There was no objection from the Petitioner against the said list prior to the present application. There was a representation dated 04-10-2016, submitted by Shri Govind Yadav and three others alleging irregularities in the membership campaign and the process of the party elections. The said representation was disposed of by the Commission with intimation to the representationists that the Commission does not go into disputed questions regarding membership issues and validity of internal elections of the Party, and that it would be open to them to approach the appropriate Party forum or competent Courts for the purpose. The

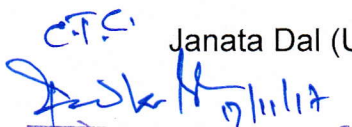
Respondent's group has submitted individual affidavits of support from 138


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persons out of the said 195 members of the National Council. In addition, the Respondent's group has also filed affidavits from both the two(2) MPs of Lok Sabha elected on the Party's ticket, seven(7) out of ten Rajya Sabha Members of the Party, all seventy-one(71) MLAs of the Party in Bihar Legislative Assembly and all thirty(30) MLCs of the Party in Bihar Legislative Council. The affidavits so submitted also include the affidavit of Shri Kapil Harischandra Patil, MLC of Maharashtra, who has also submitted affidavit of support in favour of the Petitioner's group.

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

C.T.C. Janata Dal (United).


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सचिव/Secretary

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

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

8. Detailed Order in this regard will follow shortly.

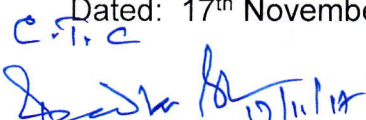
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(SUNIL ARORA)
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(O.P. RAWAT)
ELECTION
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New Delhi

Dated: 17th November, 2017


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