



**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 O.P. RAWAT  
ELECTION COMMISSIONER

HON'BLE Dr. NASIM ZAIDI  
CHIEF ELECTION COMMISSIONER

HON'BLE A.K. JOTI  
ELECTION COMMISSIONER

### Dispute Case No.1 of 2017

**In re: Dispute relating to Samajwadi Party under Paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968.**

Dated : 16<sup>th</sup> January, 2017


Present :

For the group led by Shri Akhilesh Yadav and Shri Ram Gopal Yadav

1. Shri Kapil Sibal, Senior Advocate
2. Dr. Rajiv Dhawan, Senior Advocate
3. Shri Nizam Pash, Advocate
4. Shri Vaibhav Yadav, Advocate
5. Shri Adit Subramaniam, Advocate
6. Shri Koshy John, Advocate

For the group led by Shri Mulayam Singh Yadav

1. Shri Mohan Parasaran, Senior Advocate
2. Shri N. Hariharan, Senior Advocate
3. Shri M.C. Dhingra, Advocate
4. Shri Gaurav Dhingra, Advocate
5. Ms. Gauri Neo Ramapal, Advocate
6. Shri D.L. Chidananda, Advocate
7. Shri R. Ashwin, Advocate
8. Shri Sarthak Nayak, Advocate
9. Shri Varun Sharma, Advocate
10. Ms. Gyatri, Advocate
11. Shri S.P.M. Tripathi, Advocate

  
एन. टी. भूटिया/N. T. BHUTIA  
अवर सचिव/Under Secretary  
भारत निर्वाचन आयोग  
Election Commission of India  
निर्वाचन सदन, अशोक रोड, नई दिल्ली  
Nirvachan Sadan, Ashoka Road, New Delhi

## ORDER

The Samajwadi Party is a recognised State Party in the State of Uttar Pradesh with the Symbol "Bicycle" as its reserved symbol in that State under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter, the 'the Symbols Order' for short). As per the intimation given to the Commission by the Party vide its letter dated 17-10-2014, under the signature of Shri Ram Gopal Yadav, Shri Mulayam Singh Yadav was elected as the Party President at the National Convention of the party held on 8<sup>th</sup> October, 2014. Shri Ram Gopal Yadav was shown as the National General Secretary of the party. The list of members of the National Executive of the party comprising 51 members was also submitted to the Commission. As per the Constitution of the Party, the term of office bearers and National Executive is three years.

2. There was media report about a convention held in Lucknow on 1<sup>st</sup> January, 2017 in which Shri Akhilesh Yadav was reportedly elected as the Party President. On 02-01-17, a delegation led by Shri Mulayam Singh Yadav met the Commission and handed over a letter dated 02-01-17 alongwith copies of his two previous letters of 30-12-16 and 01-01-17. The crux of the contention in these letters was that the convention held on 01-01-17 was without his approval and hence illegal. It was also mentioned that Shri Ram Gopal Yadav who was the party functionary communicating with the Commission on behalf of the party was expelled and,

therefore, no communication from him should be entertained by the Commission. On 3<sup>rd</sup> January, 2017, a letter to the same effect was also received from Shri Amar Singh, claiming to be the General Secretary of the Samajwadi Party.

3. On 3<sup>rd</sup> January, 2017, a delegation led by Shri Ram Gopal Yadav also met the Commission and made submissions about the convention held on 01-01-17 and about election of Shri Akhilesh Yadav as the new Party President. Later, in the evening of 03-01-17, Shri Ram Gopal Yadav filed an application making submissions about the convention held on 01-01-17 and about the resolutions and decisions made in the convention including election of Shri Akhilesh Yadav as the Party President. It was, inter alia, submitted :-

(i) As per Section 15(10) of the Constitution of the Party, meeting of National Executive is required to be called by the Party President atleast once in two months. However, no meeting of the National Executive was held since 25-06-2014 which was a significant violation of the Party Constitution.

(ii) As per Section 20 of the Constitution of the Party, seven member Central Parliamentary Board is the authority to select candidates for elections to State Legislature and Parliament. However, for the current election to Uttar Pradesh Legislative Assembly, Shri Mulayam Singh Yadav, the then National President declared the candidates without convening meeting of the Parliamentary Board even once, in violation of the Party Constitution.

(iii) On the request of thousands of delegates of the National Council of the party, Shri Ram Gopal Yadav and the then National Vice-President

requested the National President to convene the special National Convention many times, but he did not take any action. A petition signed by 3474 delegates urging to call special National Convention was submitted to the applicant (Shri Ram Gopal Yadav) and the National Vice-President. Although the applicant discussed the matter with the then National President, and made sincere request to persuade him to follow the Constitution of the Party, the latter paid no attention.

(iv) The applicant convened a Press Conference on 14-11-16 urging the National President to convene a special National Convention. He annexed copies of the Press cuttings carrying the report in this regard.

(v) It was in the above background that the applicant called the special National Convention on 01-01-17. As the National President did not attend the convention, the National Vice-President chaired the convention as per the provisions of the Party Constitution.

(vi) At the convention, a resolution was unanimously passed by voice vote to elect Shri Akhilesh Yadav as the National President of the Party.

(vii) It was requested that the Samajwadi Party whose President is Shri Akhilesh Yadav may be recognised as the true, genuine and only Samajwadi Party.

(viii) The application of Shri Ram Gopal Yadav was accompanied by signed lists of 31 members of the National Executive, 5242 party delegates, 195 MLAs of Uttar Pradesh Legislative Assembly, 48 MLCs of Uttar Pradesh Legislative Council, 4 MPs of Lok Sabha and 11 MPs of Rajya, who were claimed to have attended the said convention on 1<sup>st</sup> January, 2017.

4. On 4<sup>th</sup> January, 2017, the papers submitted by Shri Mulayam Singh Yadav and Shri Ram Gopal Yadav were exchanged and the Commission directed them to submit their reply with all supporting documents by 9<sup>th</sup> January. They were also asked to submit individual affidavits from members of the organisational and Legislature Wings of the party whose support they are claiming.

5. On 7<sup>th</sup> January, 2017, Shri Ram Gopal Yadav submitted his reply to the letters of Shri Mulayam Singh Yadav and Shri Amar Singh. The submissions in the reply are summarised below:-

- (i) As regards the alleged expulsion of Shri Ram Gopal Yadav, provisions of the party constitution were not followed. Section 30 of the constitution mandates that a three member committee has to be constituted to consider cases of indiscipline and after proper enquiry the committee has to submit report to the National President. However, in the case of the alleged expulsion of Shri Ram Gopal Yadav, there was no consideration by any committee. The letter dated 30<sup>th</sup> December, 2016, which was issued without any reference to the committee is null and void. Further, no notice or opportunity of hearing was given in the matter.
- (ii) The letter of 30<sup>th</sup> December, 2016 expelling the applicant was withdrawn and nullified on 31<sup>st</sup> December, 2016 on the directions of the then National President and the same was communicated to the electronic and print media. He submitted a print of the official twitter handle of the State President announcing the withdrawal of the expulsion letter.

- (iii) The applicant was fully authorised to convene the National Convention based on the request of thousands of delegates and elected representatives.
- (iv) The applicant was the National General Secretary when he convened the special national convention and he was within his legal rights and duties to convene the same. He reiterated the submissions in his application regarding the alleged background for convening the national convention. As regards the letter dated 2<sup>nd</sup> January, 2017 of Shri Mulayam Singh Yadav, the applicant stated that on the said date Shri Akhilesh Yadav was the President of the Party and the letter of Shri Mulayam Singh Yadav showing himself as the National President should be ignored.
- (v) As regards the letter dated 3<sup>rd</sup> January, 2017 submitted by Shri Amar Singh, the applicant submitted that Shri Amar Singh was unanimously expelled from the party at the convention on 1<sup>st</sup> January, 2017 and he was no longer General Secretary of the party and had no right to address communication to the Commission in that capacity.

6. The applicant also submitted individual affidavits from 28 members of the National Executive of the party, 15 MPs, 205 MLAs and 56 MLCs elected on the ticket of the party, affirming that they had requested for convening the National Convention and that Shri Akhilesh Yadav was elected as the National President of the party at the said Convention. Individual affidavits from 4400 delegates of the National Convention were also submitted.

7. Shri Mulayam Singh Yadav submitted his reply on 9<sup>th</sup> January, 2017. The submissions in his reply are summarised below:

- (i) Shri Ram Gopal Yadav already stood expelled from the party. Therefore, the national convention held on 1<sup>st</sup> January, 2017 was unauthorised and illegal.
- (ii) No demand for convening national convention was made to him under Section 14(2) of the Constitution of the party.
- (iii) Shri Mulayam Singh Yadav continues to be the National President of the party. He has neither resigned from the post nor is there any provision in the party constitution to remove the elected National President. Therefore, there is no question of electing Shri Akhilesh Yadav as the National President when the post is already occupied.
- (iv) At the national level, the constitution of the party only provides for "Rashtriya Sammelan" and it can be convened only by the National President. He did not convene any such meeting. No notice was issued and there was no agenda circulated for the meeting. Under the constitution of the party, agenda for the meeting of "Rashtriya Sammelan" has to be approved by the "Rashtriya Karyakarni" (National Executive).
- (v) Samajwadi Party has a written constitution that has been submitted to the Commission in connection with its registration under Section 29A of Representation of the People Act, 1951. All members of the party are expected to abide by the constitution of the party and any defiance can attract the disciplinary action. He had issued a circular on 30<sup>th</sup> December, 2016 that the meeting convened by Shri Ram Gopal Yadav on 1<sup>st</sup> January, 2017 was illegal and attending the meeting would be construed as an act of indiscipline.
- (vi) In the reply, reference was also made to the above mentioned letters dated 30<sup>th</sup> December, 2016, 1<sup>st</sup> January, 2017 and 2<sup>nd</sup> January, 2017 of Shri Mulayam Singh Yadav.

- (vii) Allegation by Shri Ram Gopal Yadav of violation of constitution of the party by Shri Mulayam Singh Yadav is wrong and there was no request letter from Shri Ram Gopal Yadav or any other party functionary submitting proposal for agenda for convening meeting of national council. Shri Ram Gopal Yadav has not placed on record any document to show any violation of party constitution on the part of Shri Mulayam Singh Yadav. Majority support for any illegal resolution cannot legalise the illegal election of Shri Akhilesh Yadav as Party President.
- (viii) In the application filed by Shri Ram Gopal Yadav, there is no claim of any split in the party.

8. On 12<sup>th</sup> January, 2017, Shri Mulayam Singh Yadav filed rejoinder to the reply of Shri Ram Gopal Yadav. He reiterated the submission that the present dispute does not involve 'split' in the party and that frivolous dispute raked up by an expelled member (Shri Ram Gopal Yadav) has no relevance. He also reiterated the other submissions made earlier that Shri Mulayam Singh Yadav continues to be the President of the party and there was no situation warranting election of any other person to the post.

9. Realizing the urgency of the matter in view of the fast approaching general election to the Uttar Pradesh Legislative Assembly, the Commission heard the two groups on 13-01-17. Opening the arguments on behalf of Shri Ram Gopal Yadav, Shri Kapil Sibal, Senior Advocate mainly made the following submissions:-



- (i) This matter before the Commission under paragraph 15 of the Symbols Order has arisen following split in the Samajwadi Party.
- (ii) Such disputes form part of the political process of decision making within political parties as to who represents the party.
- (iii) In a democratic set up, it is the various formal layers of the party that form the structure of the party. The various formal layers in a party would be the elected representatives to the legislative bodies and the chosen representatives in the organisational/representative bodies of the party.
- (iv) In the letter issued by the Commission on 4<sup>th</sup> January, 17, asking the two groups to furnish their responses supported by relevant documents and evidence of support in the organisational and Legislature Wings of the party, it was clearly recorded that the Commission has taken cognizance of the application before the Commission under paragraph 15 of the Symbols Order and there is satisfaction about the fact of existence of two splinter groups within the party.
- (v) Paragraph-15 of the Symbols Order mandates that when the Commission is satisfied on the basis of information in its possession that there are two splinter groups within a recognised party, the question comes within the Commission's jurisdiction for adjudication. The Commission may either decide that one of the groups represents the party or that neither of the groups represents the party.
- (vi) The Commission decides the dispute matter after considering the facts and circumstances of the case. It is well established and settled that relevant test for deciding such dispute in

recognised political party is the relative numerical support commanded by the rival groups among the members of the organisational and Legislature Wings of the party.

- (vii) On 30<sup>th</sup> December, 2016, Shri Mulayam Singh Yadav expelled Shri Akhilesh Yadav who is the Chief Minister of the State, and Shri Ram Gopal Yadav, the National General Secretary of the party. On the next day, i.e., 31<sup>st</sup> December, 2016, the expulsion order was revoked.
- (viii) Demand was made by 3474 delegates of the national convention to convene a special national convention. As far back as on 14<sup>th</sup> November, 2016, Shri Ram Gopal Yadav had addressed a press conference in which he urged the party president to call a special national convention. The delegates who demanded convening of the national convention were from among the same delegates who had attended the last national convention held on 8<sup>th</sup> to 10<sup>th</sup>, October, 2014, in which Shri Mulayam Singh Yadav was elected as the National President.
- (ix) On 1<sup>st</sup> January, 2017, a special National Convention of the party was held in Janeshwar Mishra Park in Lucknow. The National President chose not to attend the convention and the convention was chaired by the National Vice-President in the absence of the National President.
- (x) Refusal on the part of the party President in convening meeting ignoring the demand from the majority of the party formation can not prevent the party from going ahead with its activities including convening of the meeting as was done in the present case.

- (xi) In the reply filed by Shri Mulayam Singh Yadav on 9<sup>th</sup> January, 2017, he has merely tried to claim that “*Aapatkaaleen Rastriya Pratinidhi Sammelan*” held on 1<sup>st</sup> January, 2017 was called by Shri Ram Gopal Yadav who was expelled from the party. It is important to note that in cases of such disputes it is the extent of support within the party that forms the critical material for determination under paragraph 15 of the Symbols Order. In the present case, the demand for the national convention was made by an overwhelming majority of party representatives of the party at all layers of the party. Shri Mulayam Singh Yadav has not denied that the convention was held.
- (xii) Political party has the status of a voluntary organisation, and it is for the party to run its internal affairs including election of the President of the party. Under paragraph 15 of the Symbols Order, the Commission does not go into the technicalities of convening of the meeting.
- (xiii) Section 29A of the Representation of the People Act, 1951 has nothing to do with adjudication of dispute under paragraph 15 of the Symbols Order. Section 29A deals with registration of a party, and in *Indian National Congress vs. Institute for Social Welfare & others* (AIR 2002 SC 2158) the Supreme Court has held that any violation of the provisions of the Act can have no legal consequences against the party.
- (xiv) In *Sadiq Ali Vs. Election Commission of India & others* [1972 (4) SCC 664, AIR 1972 SC 187], it has been held that in matters of disputes among splinter groups of a party, the test of majority support among the members of the organisational and legislature wing of the party is the critical test to decide the dispute.

10. Shri Mohan Parasaran, Senior Advocate appeared on behalf of Shri Mulayam Singh Yadav. His submissions were mainly as follows:-

- (i) The present case before the Commission is distinct from all other cases of dispute brought before the Commission in the past. In this case, Shri Mulayam Singh Yadav, the founder of the party is the President currently. What was done at the convention called by Shri Ram Gopal Yadav was to make Shri Mulayam Singh Yadav, the *margdarshak* of the party which was akin to elevating him to a higher status. Shri Ram Gopal Yadav has not made any claim that Shri Mulayam Singh Yadav has been removed from the party. This being the case, it cannot be said that there is any split in the party. This is merely a dispute pertaining to administration and management of the party and not a case of split within the meaning of paragraph 15 of the Symbols Order.
- (ii) The mention made in the Commission's letter of 4<sup>th</sup> January, 2017, can only be treated as a prima facie view and the question whether there is actually a split can only be decided after hearing the groups.
- (iii) Section 17 of the constitution of the party enabling the Vice-President to chair the national convention would apply only in cases where the convention itself is a legally convened convention. In this case, there is no validity to the calling of the convention as it was called by an expelled member without any approval from the National President as per the requirements of the party constitution. The President is not going to attend such an invalid convention. The absence of the President in such

situation can not be treated as an excuse for the Vice-President to claim that he was authorised to chair the convention under Section 17 of the party constitution.

- (iv) Shri Akhilesh Yadav has not filed any paper staking his claim of having been elected as the party President in place of Shri Mulayam Singh Yadav.
- (v) When Shri Ram Gopal Yadav addressed the Press conference on 14<sup>th</sup> November, 2016, he was an expelled member following his expulsion on 13<sup>th</sup> October, 2016. The expulsion was rescinded only on 17<sup>th</sup> November, 2016.
- (vi) Under Section 23 of the party constitution, special national convention can be called only by the National President that too with a notice of one month before the convention can be held.
- (vii) After insertion of Section 29A in the Representation of the People Act, 1951, there is a primacy attached to party constitution which was not the case at the time of *Sadiq Ali's* case (supra). When the party submits its constitution as part of the documents for registration, it is imperative that the party follows the provisions in the party constitution. It is a matter of giving effect to the party constitution. The party constitution cannot be belittled. Therefore, a convention called in total violation of the provisions of the party constitution can have no legal implication. If the convention was not proper, all claims based on the convention must fail.
- (viii) Citing the judgment of Supreme Court in *All Party Hill Leaders Conference vs. Captain W.A. Sangma and others* (AIR 1977 SC 2155), the learned Senior Counsel submitted that in the present

case there is no expulsion or split and the Commission should go by the provisions of the party constitution.

- (ix) In the Commission's order dated 8<sup>th</sup> March, 2004, in the dispute case in the Nationalist Congress Party, the Commission did go into the question of validity of the convention convened by Shri P.A. Sangma in that case and recorded the finding that the convention was not a valid convention.

11. Supplementing the submissions of Shri Parasaran, Shri N. Hariharan, Senior Counsel also submitted that in the absence of any split, the Commission is not required to go into the question of numerical majority, and the essential ingredient for invoking paragraph 15 of the Symbols Order is formation of two distinct groups within the party with different names, requiring a determination by the Commission. He submitted that although he does not intend to go into the individual affidavits presented by Shri Ram Gopal Yadav, a bare perusal of the papers submitted by him shows that the documents were manufactured for presenting the case. He stated that the affidavits were in English language whereas many of the persons who have signed the same do not follow the language. The fact that there are stereotype errors in the language of the affidavits shows that these were arranged and manufactured by Shri Ram Gopal Yadav. He also submitted that in the affidavits also, there is no mention about any split in the party. He further submitted that the alleged election of Shri Akhilesh Yadav was by 'voice vote' without following any of the provisions of the party constitution, and, further, that the notice for the convention mentioned that the convention

would be held at Ram Manohar Lohia Law University, whereas it was held in a different place. He also reiterated some of the submissions already made by Shri Parasaran.

12. In his rejoinder submissions, Shri Sibal referred to the letter dated 3<sup>rd</sup> January, 17, submitted by Shri Amar Singh on behalf of Shri Mulayam Singh Yadav in which he has made a clear mention about the existence of a splinter group in the party. Referring to the allegation about certain minor error in the language of the affidavit made by the other group, Shri Sibal referred to what appears to be a major mis-construction in the letter of Shri Amar Singh where he has stated "*I refute my point on the illegibility of January 01, 2017 convention of Samajwadi Party and unconstitutionality of the resolutions passed thereby.*" Shri Sibal also referred to the order dated 12<sup>th</sup> March, 1996 of the Commission in the case of dispute in Telugu Desam Party in which also the respondent had claimed that there was no split in the party and that he continued to be the President and the matter of alleged election of the petitioner as party President was an internal matter of the party. However, the Commission did not go into those aspects and decided the dispute based on the superior numerical support enjoyed by the petitioner group. Shri Sibal submitted that the present case was a similar one and the test of majority is the only test to decide the dispute. Referring to the Commission's order in the case of Nationalist Congress Party, Shri Sibal submitted that in that matter also the Commission went on to assess the relative numerical strength of

supporters for the two parties in the legislative and organisational wings of the party. He concluded by saying that Shri Ram Gopal Yadav has filed individual affidavits of support from overwhelming majority of members in all layers of the party, the Lok Sabha MPs, Rajya Sabha MPs, MLAs, MLCs, National Executive, and the delegates of National Council, the total number amounting to almost 90% of the total strength, whereas Shri Mulayam Singh Yadav has not submitted any affidavit to show support enjoyed by him in any of these categories.

13. The Commission, having perused the documents and materials on its record and having heard the learned senior counsels appearing on behalf of Shri Ram Gopal Yadav and Shri Mulayam Singh Yadav and also having considered the written submissions made by them, considers that there are two following issues which require determination by the Commission in the present proceedings:-

**Issues**

- 1) Whether the Commission is satisfied that there is a split in the Samajwadi Party resulting in the formation of two rival sections or groups in the party – one, led by Shri Akhlesh Yadav and Shri Ram Gopal Yadav and the, other, led by Shri Mulayam Singh Yadav – within the meaning of para 15 of the Symbols Order;
- 2) If so, which of the said sections or groups is the Samajwadi Party for the purposes of the Symbols Order.



14. The above issues may now be considered by the Commission.

*Issue No.1 – Whether the Commission is satisfied that there is a split in the Samajwadi Party resulting in the formation of two rival sections or groups in the party – one, led by Shri Akhlesh Yadav and Shri Ram Gopal Yadav and the, other, led by Shri Mulayam Singh Yadav – within the meaning of para 15 of the Symbols Order.*

15. Before considering the above issues, it would be apt to have a look at para 15 of the Symbols Order. That para reads as follows:-

***“15. Power of Commission in relation to splinter groups or rival sections of a recognized political party –***

*When the Commission is satisfied on information in its possession that there are rival sections or groups of a recognized 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 recognized political party and the decision of the Commission shall be binding on all such rival sections or groups.”*

16. Shri Kapil Sibal, learned senior counsel representing the group led by Shri Akhilesh Yadav, submitted that the Samajwadi Party has split in the above mentioned two groups and the matter falls squarely within the ambit of paragraph 15 of the Symbols Order for its determination. He also submitted that the law is

settled that the Election Commission is the sole authority to determine such disputes. In support of his above submissions, Shri Sibal referred to the Commission's letters dated 4<sup>th</sup> January, 2017 addressed to Shri Mulayam Singh Yadav and Shri Ram Gopal Yadav in which the Commission itself has mentioned that *'having taken cognizance of the application and on satisfaction that there are two splinter groups in the Samajwadi Party within the meaning of paragraph 15 of the Symbols Order, the Commission has directed that you may file your reply to the application, latest by 9<sup>th</sup> January, 2017 (Monday)'*. He contended that in view of the above communications dated 4<sup>th</sup> January, 2017 of the Commission, there cannot be any dispute with regard to the satisfaction of the Commission regarding formation of the two rival groups in the party each of whom claims to be that party in terms of para 15 of the Symbols Order. He also referred to the communications dated 30<sup>th</sup> December, 2016, 1<sup>st</sup> January, 2017 and 2<sup>nd</sup> January, 2017, addressed to the Commission by the Shri Mulayam Singh Yadav, intimating the Commission that Shri Ram Gopal Yadav has been expelled from the party for his anti-party activities on 30<sup>th</sup> December, 2016 and that no communication addressed by Shri Ram Gopal Yadav should be entertained by the Commission. In his letters dated 1<sup>st</sup> January, 2017 and 2<sup>nd</sup> January, 2017, Shri Mulayam Singh Yadav had himself informed the Commission that an emergency National Convention was convened by Shri Ram Gopal Yadav on 1<sup>st</sup> January, 2017 at Janeshwar Mishra Park, Lucknow, in which certain resolutions were allegedly passed and he prayed that no

cognizance should be taken by the Commission of those resolutions as the said convention itself was unconstitutional and convened by a person who stood expelled from the party. Shri Sibal further pointed out that Shri Mulayam Singh Yadav in his letters dated 1<sup>st</sup> and 2<sup>nd</sup> January, 2017 had stated that the Central Parliamentary Board of the party had declared the above Convention as unconstitutional and also declared the resolution said to have been passed at that Convention illegal and null and void. Shri Sibal further submitted that the above referred convention, though claimed by Shri Mulayam Singh Yadav as unconstitutional, was attended by overwhelming majority of the delegates of the party and more than 90% of the elected Members of Parliament and Uttar Pradesh State Legislature elected on the ticket of the Samajwadi Party. In view of the above facts and circumstances, Shri Sibal contended that there could not be any doubt in the mind of anyone that there are two rival groups in the Samajwadi Party and as each of those groups claims to be that party there has been a split in the party within the meaning of para 15 of the Symbols Order which needs determination by the Commission.

17. On the other hand, Shri Mohan Parasaran, senior learned counsel appearing for Shri Shri Mulayam Singh Yadav, submitted that there is no split in the party because, even as per their own case set up by the Shri Akhilesh Yadav group, Shri Mulayam Singh Yadav continues to be in the Samajwadi Party. He submitted that the sole claim made by Shri Akhilesh Yadav group is that Shri Akhilesh Yadav has

been elected as the President of the party at the above mentioned convention held on 1<sup>st</sup> January, 2017, and thus the question before the Commission is whether Shri Akhilesh Yadav has been rightly elected as the President of the party in accordance with the party constitution and the dispute relates to the internal administration or management of the party which does not mean that there is a split in the party resulting in the formation of two rival groups within the meaning of para 15 of the Symbols Order. He referred to the application dated 3<sup>rd</sup> January, 2017 of Shri Ram Gopal Yadav wherein according to him, Shri Ram Gopal Yadav has claimed in para 8 of that application that Shri Akhilesh Yadav is liable to be recognized as the National President of the Samajwadi Party and there is no claim in that application that Shri Akhilesh Yadav is heading a rival section or group in the party which should be recognized as the party under paragraph 15 of the Symbols Order. He further added that Shri Shri Mulayam Singh Yadav has already informed the Commission that the so-called convention held on 1<sup>st</sup> January, 2017 at Lucknow was unconstitutional and violative of Section 14(2) of the party constitution whereunder a national convention could be convened only by the National President and not by anyone else. His further submission was that the so-called election of Shri Akhilesh Yadav was equally unconstitutional as Shri Mulayam Singh Yadav continued to hold the office of the National President and there was no vacancy in that office on 1<sup>st</sup> January, 2017, which could be filled by the election of Shri Akhilesh Yadav. He thus contented that the question raised by Shri Ram

Gopal Yadav in his application dated 3<sup>rd</sup> January, 2017, was not of split in the Samajwadi Party but of recognition of Shri Akhilesh Yadav as the party President and thus no question arises for consideration of the Commission in terms of para 15 of the Symbols Order.

18. Shri Parasaran also submitted that the reference to the word 'split' in the Commission's letter dated 4<sup>th</sup> January, 2017 to Shri Mulayam Singh Yadav should mean only the *prima facie* presumption of the Commission and not an irrefutable presumption of satisfaction of the Commission in terms of para 15 of the Symbols Order. He stated that for arriving at a irrebuttable satisfaction about the existence of a split in the party, the Commission has to first hear both the groups and the Commission could change its *prima facie* view if any of the groups could rebut that presumption.

19. Shri N. Hariharan, learned senior counsel and Shri M.C. Dhingra, learned counsel, both appearing for Shri Mulayam Singh Yadav, also endorsed the above submissions made by Shri Mohan Parasaran.

20. The Commission has carefully considered the above rival submissions and contentions of Shri Kapil Sibal and Shri Mohan Parasaran. As has been rightly pointed out by Shri Sibal, the very first communication dated 30<sup>th</sup> December, 2016 of Shri Mulayam Singh Yadav to the Commission gave a clear indication as to an impending split in the Samajwadi Party. Subsequent developments of holding a

convention by Shri Ram Gopal Yadav on 1<sup>st</sup> January, 2017, passing of resolution in that convention electing Shri Akhilesh Yadav as the President of the Party, declaring convention as unconstitutional by Shri Mulayam Singh Yadav and reiterating his claim that he continues to be the National President of the party are clear manifestations of the split having been formalized on that day. The contention of Shri Mohan Parasaran that Shri Ram Gopal Yadav in his application dated 3<sup>rd</sup> January, 2017, had merely claimed that Shri Akhilesh Yadav may be recognized as the National President of Samajwadi Party is an obvious misreading of para 8 of Shri Ram Gopal Yadav's said application dated 3<sup>rd</sup> January, 2017. In this para 8, Shri Ram Gopal Yadav had averred "*that in the light of aforesaid facts and circumstances, the present Samajwadi Party whose symbol is 'Cycle' and the National President is Shri Akhilesh Yadav is liable to be recognized by the Election Commission of India as the true, genuine and only Samajwadi Party*". A mere look at that paragraph would show that the claim made in that para is not that Shri Akhilesh Yadav be recognized as the National President of the Samajwadi Party, but the real claim is that the Samajwadi Party whose National President is Shri Akhilesh Yadav is liable to be recognized by the Election Commission as true, genuine and only Samajwadi Party. Para 8, when read in the context of the foregoing paragraphs 1 to 7 of Shri Ram Gopal Yadav's letter dated 3<sup>rd</sup> January, 2017, makes an unambiguous claim that there is a rival group in the Samajwadi Party which is led by Shri Akhilesh Yadav as the National President and this group

should be recognized by the Commission as the true, genuine and only Samajwadi Party. Such claim squarely falls within the ambit of paragraph 15 of the Symbols Order. Even Shri Mulayam Singh Yadav, in his affidavit dated 9<sup>th</sup> January, 2017, has claimed that he continues to be the President of the Samajwadi Party whose reserved symbol is 'Bicycle' and thus, by necessary implication, he recognizes the existence of a rival claim to the name and symbol of the party by Shri Akhilesh Yadav group. It was contended by the learned senior counsel of Shri Mulayam Singh Yadav that Shri Akhilesh Yadav has not made any claim to the name and symbol of the party. That contention stands negated by the individual affidavit dated 5<sup>th</sup> January, 2017 of Shri Akhilesh Yadav, filed as part of the documents submitted by Shri Ram Gopal Yadav on 7<sup>th</sup> January, 2017, making an assertion to the fact that he has been elected as the National President of the party at the convention held on 1<sup>st</sup> January, 2017, in which he himself was personally present. If there be any doubt whether there is a split in the party and whether there are rival groups both claiming to that party, that doubt stands removed by the own admission of the group led by Shri Mulayam Singh Yadav in the letter dated 3<sup>rd</sup> January, 2017 of Shri Amar Singh, who claims to be the General Secretary of Samajwadi Party and who wrote that letter to the Commission having been authorized by Shri Mulayam Singh Yadav. In that letter dated 3<sup>rd</sup> January, 2017 of Shri Amar Singh, he has stated that *'in this context, this is our humble submission that the decision pertaining to Samajwadi Party and its allotted symbol of "cycle"*

*must be viewed strictly by the laws of the party constitution and not by an engineered design of a splinter group'* (emphasis supplied). In the face of such clear admission on behalf of Shri Mulayam Singh Yadav's group, any submission or contention to the contrary, of the learned senior counsels appearing on behalf of that group lose all weight and have no legs to stand that there is no split in the party.

21. Issue No. 1 is accordingly decided that the Commission is satisfied that a split has arisen in the Samajwadi Party resulting in the formation of two rival groups – one, led by Shri Akhilesh Yadav and the, other, led by Shri Mulayam Singh Yadav, each claiming to be that party, and, therefore, the matter needs to be determined by the Commission under para 15 of the Symbols Order.

*Issue No. 2 – If so, which of the said sections or groups is the Samajwadi Party for the purposes of the Symbols Order.*

22. Shri Kapil Sibal submitted that once a dispute arises relating to a split in a recognized political party, which needs determination by the Commission under para 15 of the Symbols Order, the Commission has to decide such dispute in accordance with the test of majority approved by the Supreme Court in the case of *Sadiq Ali and Another Vs. Election Commission of India and Ors* [1972 (4) SCC 664, AIR 1972 SC 187]. He further submitted that the Commission is not required to sit in judgment whether the rival groups are acting in accordance with the party



constitution and whether any members or leaders of the party have been rightly expelled or not as these are civil matters to be decided by the civil courts. He further submitted that the Commission cannot indefinitely wait for the decisions of the courts in such civil disputes which may take years and years to come and which may resultantly seriously hamper the functioning of the political parties in their political activities. In support of his above submission, he relied upon the observation of the Supreme Court in *Sadiq Ali's* case (supra) that '*The Commission in deciding that matter under paragraph 15 has to act with a certain measure of promptitude and it has to see that the inquiry does not get bogged down in a quagmire*'

23. Shri Mohan Parasaran, learned senior counsel, on the contrary submitted that the Commission has first to see which of the groups is acting according to the provisions of the party constitution which binds all members of the party and even the rival groups or sections of that party. His contention was that the group led by Shri Akhilesh Yadav has not been acting in accordance with any of the provisions of the party constitution and their whole claim of electing Shri Akhilesh Yadav as the party President is based on an unconstitutional convention held on 1<sup>st</sup> January, 2017 at Lucknow and such claim is thus wholly untenable under the law. He submitted that even at such unconstitutional convention, no resolution was passed to remove Shri Mulayam Singh Yadav from the office of National President and thus there was no vacancy in that office of National President which could be filled

by the election of Shri Akhilesh Yadav. He further submitted that the so-called convention, having not been authorized by the National President to be called in accordance with the party constitution, was also illegal as no proper notice was given or published nor was any agenda for such unauthorized convention circulated or published and even the venue of the convention was changed without any notice to members. According to Shri Mohan Parasaran, Shri Akhilesh Yadav group on the basis of their unconstitutional and illegal activities could not lay any claim to the party's name and symbol. He further contended that the test of majority could be applied by the Commission under para 15 of the Symbols Order only *'when there is a split in the party, say for shift in ideology, alliance with party having contrary ideology against the wishes of a group within the political party, merger with another political party against the wishes of a group within a political party, etc., leading to split'* and that the Commission may take resort to para 15 of the Symbols Order only in the case of such a split and not otherwise (see para 25 of the rejoinder dated 12<sup>th</sup> January, 2017 filed by Shri Mulayam Singh Yadav).

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

therefore, submitted that any dispute relating to the Samajwadi Party has to be decided by the Commission in accordance with the constitution of the party as registered by the Commission in 1992 under section 29A of the Representation of the People Act, 1951.

25. Before proceeding further and deciding as to which test to be applied for determining the dispute between the two rival groups of the Samajwadi Party, it would be appropriate to deal with the question raised by Shri Parasaran that the enactment of section 29A of the Representation of the People Act in 1989 has brought about a material change in relation to the determination of disputes between rival groups of a political party registered under the said section 29A. It would be relevant to take note of the fact that before the enactment of Section 29A, the political parties were registered by the Election Commission under the erstwhile para 3 of the Symbols Order. Now, after 15<sup>th</sup> June, 1989, i.e., the date of enforcement of the said section 29A, political parties continue to be registered by the Election Commission under the said section 29A instead of para 3 of the Symbols Order. A comparative look at the provisions of the said para 3 of the Symbols Order and the said 29A of the Representation of the People Act, 1951, would show that the provisions of para 3 of the Symbols Order have been bodily lifted and wholly incorporated in section 29A with the only addition that the parties have been asked to give an undertaking in terms of sub-section (5) of the said section 29A at the time of their registration. Even before the enforcement of

section 29A, all political parties were registered by the Commission on the submission of their party constitutions, apart from other material information asked for in the above referred para 3 of the Symbols Order. Thus, the incorporation of section 29A in the Representation of the People Act, 1951 has not made any material change in the procedure of registration of political parties, as the furnishing of the party constitutions by the applicant parties was and is a pre-requisite both under para 3 of the Symbols Order and section 29A of the Representation of the People Act, 1951. It is, therefore, futile to contend that the test of majority as approved by the Supreme Court in the case of *Sadiq Ali* (supra) is no longer applicable in relation to determination of disputes under para 15 of the Symbols Order. Further, the said section 29A of the Representation of the People Act, 1951, deals only with the registration of the political parties by the Commission and not with the recognition of such registered political parties which matters continue to be governed by the provisions of the Symbols Order. Para 15 of the Symbols Order is thus applicable in relation to determination of the splits in all recognized political parties whether registered before 1989 or thereafter. In this context, it may also be pertinent to point out that all disputes in recognized political parties which arose for determination by the Commission after the enactment of the said section 29A have been decided by the Commission by applying the test of majority as approved by the Supreme Court in the case of *Sadiq Ali* (supra). See, for example, order dated 12<sup>th</sup> March, 1996 of the Election Commission in the

matter of split in Telugu Desam Party, orders dated 19<sup>th</sup> December, 1997 in the disputes relating to Rashtriya Janata Dal and All India Rashtriya Janata Party, orders dated 7<sup>th</sup> August, 1999 and 17<sup>th</sup> January, 2000 in the matter of split in the Janata Dal, resulting in the formation of Janata Dal (United Dal) and Janata Dal (Secular), order dated 8<sup>th</sup> March, 2004 in the matter of split in Nationalist Congress Party, etc. etc.

26. It is thus evident from the above that the test of majority in determining disputes between rival sections or groups of recognized political party has not become otiose, irrelevant or inapplicable even after coming into force of the said section 29A in the statute book in 1989.

27. Now, coming to the question as to what test has to be applied by the Commission or what parameters have to be kept in view by the Commission while deciding matters under para 15 of the Symbols Order, Shri Kapil Sibal, as mentioned above, has taken the stand that the Commission is required only to apply the test of majority or numerical strength of the rival groups or sections in the legislative and organizational wings of the party. Shri Mohan Parasaran has taken the contrary view that the Commission has first to judge the relative claims of the rival sections or groups on the touchstone of their functioning as per the provisions of the party constitution.

28. In the context of the above rival submissions and contentions of Shri Kapil Sibal and Shri Mohan Parasaran, it is relevant to take note of the Commission's order dated 11<sup>th</sup> January, 1971 in the matter of first split in the Indian National Congress which arose in 1969 after the promulgation of the Symbols Order in 1968. In that order, the Commission observed that the test based on the provisions of the constitution of the party was hardly of any assistance in view of the removals from membership and expulsions from the committees of the party of the members belonging to one group by those belonging to the opposition group. Here also, both the groups claim to have removed or expelled certain important leaders (including the Chief Minister of the State) by one group and counter removals and expulsions of important leaders (including the Uttar Pradesh State President of the party) by the other. On the basis of whatever little documentary evidence has been brought on record in the present proceedings by both the groups, it can hardly be said that either of the groups has been functioning in accordance with the party constitution in the matter of aforesaid expulsions and counter expulsions. For example, Section 30 of the constitution of Samajwadi Party provides that for the purpose of taking disciplinary action against any member for anti-party activity, a three member committee would be formed and it will be on the basis of the report of the three member disciplinary committee that the President will take decision. There is nothing on record to show that any such committee was constituted by either of the groups for taking any disciplinary action against the members and

leaders who are said to be removed from their party posts or expelled from the party. It is also alleged that no meeting of the National Executive was held after the last National Convention of the party held on 8<sup>th</sup> – 10<sup>th</sup> October, 2014, though Section 15(10) of the party constitution mandates that the National Executive will meet at least once in every two months. Further, Shri Mulayam Singh Yadav group claims that the resolutions passed at the so-called National Convention on 1<sup>st</sup> January, 2017, were annulled by the central parliamentary board of the party. However, it is observed that the function of the central parliamentary board, as per Section 20 of the party constitution, is to select party candidates for elections to parliament, state legislatures and other local bodies and authorities. It is not empowered to ratify the actions taken by the National President in other matters like disciplinary action taken by him. That is the function of the National Executive under Section 15 of the party constitution and not of the central parliamentary board, but National Executive has allegedly not met since 8<sup>th</sup> – 10<sup>th</sup> October, 2014. In view of the above, the insistence by Shri Mohan Parasaran that the Commission should decide the matter on the test of functionality of the rival groups on the touchstone of the party constitution is hardly of any assistance to him and the Commission cannot go into validity or otherwise of the removals and expulsions and counter removals and counter expulsions of members or leaders by one group or the other. For the same reasons, it is not necessary for the Commission to go into the question whether the convention held by Shri Akhilesh

Yadav on 1<sup>st</sup> January, 2017 at Lucknow was convened in accordance with the provisions of the party constitution or not, as here also, there are contentious issues relating to the interpretation and application of various provisions of the party constitution. Pertinent here to take note of the submission made by Shri Kapil Sibal that if a substantial number of members of the party feel disappointed with the functioning of the party managers and those managers obstruct the redressal of their grievances under the party constitution, the political functioning of the political party cannot be frustrated by their inaction or their failure to act in accordance with the party constitution. In any democratic institution, which the political parties are, the will of majority should prevail in the internal functioning of the party and if the majority will is suppressed or not allowed to have a proper expression, it will amount to 'tyranny of the minority'. According to the submission of Shri Kapil Sibal, the holding of the convention on 1<sup>st</sup> January, 2017 was manifestation of expression of the majority will which was not being allowed to have its say by the National President. However, as observed above, the Commission would not like to go into the question of constitutionality or otherwise of the said convention dated 1<sup>st</sup> January, 2017.

29. Having thus come to the conclusion that the present dispute cannot be decided on the touchstone of the functioning of the rival groups as per the party constitution, the Commission has to necessarily apply the test of majority, i.e., numerical strength of the rival groups, both in the legislative and organizational



wings of the party. In taking this view, the Commission is fortified by the observations and ruling of the Supreme Court in above referred case of *Sadiq Ali* (supra). The Supreme Court, upholding the test of majority applied by the Commission in the matter of above referred dispute in the Indian National Congress in 1969 by its order dated 11<sup>th</sup> January, 1971, observed that:

*"It is, in our opinion, not necessary for this Court to express any opinion for the purpose of this appeal about the validity of the above mentioned removals and expulsions nor is it necessary to express any view about the propriety of the rejection of the requisition. Likewise it is not essential to say anything as to whether one or both the groups were in the wrong and if so, to, what extent in the controversy relating to the split in the Congress. All that this Court is concerned with is whether the test of majority or numerical strength which has been taken into account by the Commission is in the circumstances of the case a relevant and germane test. On that point, we have no hesitation in holding that in the context of the facts and circumstances of the case, the test of majority and numerical strength was not only germane and relevant but a very valuable test."*

30. In the same judgment, the Apex Court also observed that:

*"As Congress 'J' 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."*

*It may be mentioned that according to paragraph 6 of the Symbols Order, one of the factors which may be taken into account in treating a political party as a recognised political party is the number of seats secured by that party in the House of People or the State Legislative Assembly or the number of votes polled by the contesting candidates set up by such party. If the number of seats secured by a political party or the number of votes cast in favour of the candidates of a political party can be a relevant consideration for the recognition of a political party, one is at a loss to understand as to how the number of seats in the Parliament and State Legislatures held by the supporters of a group of the political party can be considered to be relevant. 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."*

31. The facts and circumstances of the present case are to a large extent similar to those in the case of the split in the Indian National Congress and, therefore, the Commission is perfectly justified in applying the same test of majority in the present case as well. Relevant to add that the facts and circumstances of the dispute relating to the Telugu Desam Party decided by the Commission by its order dated 12<sup>th</sup> January, 1996 were also similar to the present case, where also the same test of majority was applied to determine the dispute between the two rival groups of the party under para 15 of the Symbols Order. Likewise, as mentioned above, the same test of majority was applied by the Commission in deciding all matters relating to splits in recognized political parties mentioned in para 25 above. The

reliance placed by Shri Mohan Parasaran on the decision of the Supreme Court in *All Party Hill Leaders' Conference v Captain WA Sangma and Ors* (AIR 1977 SC 2155) is hardly of any assistance to him as that case related to merger of political parties and in that case the Supreme Court mainly decided that the order of the Election Commission under para 15 or 16 of the Symbols Order is an order passed by the Commission in its quasi judicial capacity and that such order could be straightaway questioned before the Supreme Court under Article 136 of the Constitution. More relevant here is the decision dated 8<sup>th</sup> March, 2004 of the Commission in the matter of Nationalist Congress Party on which both Shri Mohan Parasaran and Shri Kapil Sibal relied in support of their cases. In this case, despite the Commission finding that Shri Sharad Pawar was not properly removed from his office of President of the Nationalist Congress Party, ultimately decided that Shri Sharad Pawar group was the Nationalist Congress Party as his group was enjoying majority support in the legislative and organizational wings of the party applying the above test of majority upheld by the Supreme Court in *Sadiq Ali's* case (supra).

32. On behalf of Shri Mulayam Singh Yadav group, a reference has also been made to a pending dispute before the Commission relating to Rashtriya Lok Samata Party, a recognized State Party in the State of Bihar. The reference to this case has been made by the learned counsel of Shri Mulayam Singh Yadav group in the written submissions made by him on 14<sup>th</sup> January, 2017, i.e., after the close of

the hearing in the matter on 13<sup>th</sup> January, 2017. In that hearing on 13<sup>th</sup> January, 2017, no reference was made by anyone to this case. However, it is pertinent to clarify that the facts and circumstances of the case relating to the Rashtriya Lok Samata Party are different from those in the present case. In that case of Rashtriya Lok Samata Party, it was alleged that the party President, on the records of the Commission, was managing fraudulent organizational elections in some of the States and the party units, that he was indulging in some illegal activities, and that, therefore, he had been removed from the post of the President at some meeting of some party leaders/workers. However, the letter received in this behalf from one Shri Shiv Kumar, was not accompanied by any supporting documents, nor was any claim made as to who were supporting his claim. Even despite a letter having been written to Shri Shiv Kumar on 25<sup>th</sup> October, 2016 by the Commission, to adduce evidence by 16<sup>th</sup> November, 2016, in support of his claim, nothing further has been heard from him so far, to enable the Commission to take cognizance of the dispute in the party under para 15 of the Symbols Order.

33. The Commission is thus of the considered view that the test of majority has to be applied in the present proceedings for determining the dispute between two rival groups of the Samajwadi Party under para 15 of the Symbols Order. The Commission has now to see which of the two rival groups enjoys the majority support among the legislature and organizational wings of the party.

34. In his application dated 3<sup>rd</sup> January, 2017, Shri Ram Gopal Yadav, on behalf of Shri Akhilesh Yadav group claimed, *inter alia*, that the resolution passed at the convention held on 1<sup>st</sup> January, 2017 at Lucknow was supported by (i) 31 members of the National Executive out of 47 members, (ii) 195 members of the Uttar Pradesh Legislative Assembly out of 229 members of the party in that Assembly, (iii) 48 members of the Uttar Pradesh Legislative Council out of 68 party members in that Council, (iv) 4 members of Parliament out of 5 members in the Lok Sabha, (v) 11 members of Parliament out of 19 members in the Rajya Sabha, and (vi) 5242 delegates. He also submitted, with that application, lists of the aforesaid members alongwith their signatures in token of their having attended that convention and supported the resolution.


35. While forwarding that application and its enclosures to Shri Mulayam Singh Yadav with the Commission's letter dated 4<sup>th</sup> January, 2017, the Commission had directed Shri Shri Mulayam Singh Yadav to file his reply to the application, latest by 9<sup>th</sup> January, 2017 (Monday). It was stated in that letter that *'It may be noted that your reply should be supported by an affidavit and authenticated copies of all relevant documents on which you propose to rely. You should also file individual affidavits from the members of the organizational and legislature wings of your party whose support you claim'*. The above apart, Shri Ram Gopal Yadav was also directed by the Commission by a letter on the same date, i.e., 4<sup>th</sup> January, 2017, that he should also file individual affidavits from all members of

organizational and legislature wings whose support he was claiming for his group latest by the said date, i.e., 9<sup>th</sup> January, 2017. By the aforesaid communications, both the groups were also directed that they should serve a copy of their replies alongwith copies of all other documents being filed by them directly in advance to the other group and proof of service should be submitted to the Commission.

36. In response to the above communications of the Commission, Shri Ram Gopal Yadav, with his affidavit dated 6<sup>th</sup> January, 2017 (filed in the Commission on 7<sup>th</sup> January, 2017), submitted individual affidavits of the following members of legislative and organizational wings in support of his claim of the majority support among the members of the party for Shri Akhilesh Yadav group:-

S.No.	Category of Members	Number of members supporting Shri Akhilesh Yadav group
(i)	Members of Uttar Pradesh legislative assembly	205 out of 228
(ii)	Members of Uttar Pradesh Legislative Council	56 out of 68
(iii)	Members of Parliament (Lok Sabha and Rajya Sabha)	15 out of 24
(iv)	National Executive Members	28 out of 46
(v)	National Convention Delegates*	4400 out of 5731
(vi)	Total Delegates	4716 out of 5731

\* who had attended the last Convention of the party held on 8<sup>th</sup> – 10<sup>th</sup> October, 2014.

  
 एन. टी. भुटिया / N. T. BHUTIA  
 अवर सचिव / Under Secretary  
 भारत निर्वाचन आयोग  
 Election Commission of India  
 निर्वाचन सदन, अटल रोड, नई दिल्ली  
 Nirvachan Sadan, Atal Road, New Delhi

37. On the other hand, Shri Mulayam Singh Yadav, with his reply dated 9<sup>th</sup> January, 2017, did not file any affidavit (except his own affidavit) of any member of Parliament or State Legislature or of any delegates; nor did he make claim of any support among the aforesaid category of members for his group, inspite of the fact that he had been specifically directed by the above said letter dated 4<sup>th</sup> January 2017 to file all such affidavits in support of his claim. Further, pertinent to add here that though the Commission had directed both the groups to serve their replies alongwith their supporting documents on the other group directly, it is alleged by Shri Akhilesh Yadav group in a sworn affidavit that Shri Mulayam Singh Yadav group refused to receive the copy of the aforesaid affidavit dated 6<sup>th</sup> January, 2017 of Shri Ram Gopal Yadav and supporting documents annexed thereto. Ultimately, the Commission had to serve a copy of those documents on Shri Mulayam Singh Yadav through its own secretariat on 9<sup>th</sup> January, 2017.

38. Realizing the urgency of the matter in view of the fast approaching general elections, particularly in the state of Uttar Pradesh where the first notification calling the general election for the first phase from 73 Assembly Constituencies is scheduled to be notified on 17<sup>th</sup> January, 2017, the Commission fixed an urgent hearing in the matter on 13<sup>th</sup> January, 2017. While sending the notice to both the groups on 10<sup>th</sup> January, 2017, the Commission again specifically directed both the groups that if they have any further documents to submit, they should do so by 5.00 p.m., on 12<sup>th</sup> January, 2017 alongwith the synopsis of the oral arguments that

they may advance at the hearing. Again, Shri Mulayam Singh Yadav group did not file any affidavit of any members of Parliament or state legislature or of any delegates to claim any support among those members for his group. In all his replies, Shri Mulayam Singh Yadav only made the contention that there was no split in the party which needed determination under para 15 of the Symbols Order. However, in his rejoinder dated 12<sup>th</sup> January, 2017, it was only vaguely stated that :

*'(28) The applicant reserves his right to file his detailed submissions in respect of genuineness of the aforesaid affidavits allegedly sworn by the deponents thereof. However, a bare perusal of the said affidavits reveal that they contain the same contents in English so much so that the errors/mistakes which have crept in one has been carried in most of them. For instance, in number of affidavits instead of word "held" the word "help" has been printed and the same error has been carried in majority of affidavits. It appears that the deponents have been seemingly called upon to sign on dotted lines. Moreover, the most of such deponents are not versed with English language, the affidavits allegedly sworn by them are in English and it has not been mentioned that the contents were read over to them in vernacular.*

*(29) It is further submitted that those affidavits do not contain averment that the affidavits have been sworn by the deponents without any fear, favour or influence, which is essential in such like situations.'*

39. Except for the above vague allegation Shri Mulayam Singh Yadav group despite repeated opportunities given to it as above, neither filed any affidavit from



any member nor indicated even the name of one member whose affidavit was considered by him to be suspect, or questioned the above numbers claimed by Shri Ram Gopal Yadav either on 13<sup>th</sup> January, 2017 at the time of hearing or at any time thereafter. At the hearing, the learned counsel for his group wanted to make a mountain of a mole hill by referring to the typographical mistake of the word 'help' instead of the word 'held' in some of the affidavits filed by the other groups (as has been raised by him in para 28 of his rejoinder quoted above). But he had no answer when a more glaring mistake was pointed out to him by the learned counsel for the other group in the letter dated 3<sup>rd</sup> January, 2017 of Shri Amar Singh where he had stated in the concluding para that '*I refute my point on the illegibility of January 01, 2017 convention of Samajwadi Party and unconstitutionality of the resolution passed thereby*'.

40. In view of the above, a mere look at the figures given in the table in paragraph 36 above, will evidently demonstrate that Shri Akhilesh Yadav enjoys overwhelming majority support, both among the legislative and organizational wing of the party.

41. As a logical consequence of the above finding and applying the test of majority support approved by the Supreme Court in the case of *Sadiq Ali* (supra) and consistently applied by the Commission thereafter in all cases of disputes in recognized political parties arising before it from time to time for determination in

terms of para 15 of the Symbols Order, the Commission hereby answers the Issue No.2 by holding that the group led by Shri Akhilesh Yadav is the Samajwadi Party and is entitled to use its name and its reserved symbol "Bicycle" for the purposes of the Election Symbols (Reservation and Allotment) Order, 1968.

ORDERED ACCORDINGLY

Sd/-

(O.P. RAWAT)  
ELECTION COMMISSIONER


Sd/-

(Dr. NASIM ZAIDI)  
CHIEF ELECTION COMMISSIONER

Sd/-

(A.K. JOTI)  
ELECTION COMMISSIONER

New Delhi the 16<sup>th</sup> January, 2017

  
एन. टी. भूटिया/N. T. BHUTIA  
अवर सचिव/Under Secretary  
भारत निर्वाचन आयोग  
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