

## BEFORE THE ELECTION COMMISSION OF INDIA

Coram:

H.S. Brahma  
Election Commissioner of India

Dr. S. Y. Quraishi  
Chief Election Commissioner  
of India

V.S. Sampath  
Election Commissioner of India

*In re:* Dispute in Uttarakhand Kranti Dal, a recognised State Party in the State of Uttarakhand –Petition filed by Shri Trivendra Singh Pawar under paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968.

Present :

For the Petitioner, Shri Trivendra Singh Pawar group:

1. Shri Meha Aggrawal, Advocate
2. Shri Abhishek Garg, Advocate
3. Shri K. S. Airy
4. Shri A.P. Juyal
5. Shri N.S. Rawat
6. Shri Virendra Mohan Uniyal
7. Shri Pratap Shahi
8. Shri Trilok Singh
9. Shri Nandan Singh Bora
10. Shri Shiv Charan Mundepi
11. Shri Vinod Rawat
12. Shri D.K. Garg

For the Respondent, Shri Diwakar Bhatt group :

1. Shri Satya Pal Jain Sr. Advocate
2. Shri. J.S. Rawat, Advocate
3. Shri R.Ramakrishana Advocate
4. Shri Rajan Khosla, Advocate
5. Shri Indu Shekhar Advocate
6. Shri P.C. Bhatt
7. Shri Sateesh Semwal
8. Shri Sri Krishna Bhatt
9. Shri B.D. Raturi
10. Shri Dinesh Badola
11. Shri Lalmani Semwal
12. Shri Sumit Sharma
13. Shri Vishal Patel
14. Shri Bharat Joshi

*Upon hearing the submissions made by the learned counsels and the representatives of the party on 19.08.2011, 02.09.2011 and 23.09.2011, and upon considering the written submissions of the parties, and after having perused the records of the case, and having carefully examined and considered all relevant facts and circumstances of the case and propositions of law placed before it, the Commission passes, the following*

**ORDER**

This is a case of dispute between two groups of Uttarakhand Kranti Dal, a recognised State Party ('UKD' for short) in the State of Uttarakhand with 'Chair' as its reserved symbol in that State, each claiming to be the UKD under paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968, ('Symbols Order' for short).

2. As per the Commission's records, Shri Trivendra Singh Pawar is the President of the UKD. The term of office-bearers is two years and the last organisational election of UKD was held in July, 2010.

3. One group is led by Shri Trivendra Singh Pawar (hereinafter referred to as 'the petitioner') and the other is led by Shri Diwakar Bhatt, (hereinafter referred as "the respondent").

4. In Jan' 2011, communications were received from the petitioner's group and the respondent's group, each group intimating about removal and counter-removal of the respondent and the petitioner, among others, by each others group. The petitioner's group inter-alia informed that the respondent had been expelled from the primary membership of the party on 4.1.2011, on account of his indiscipline and anti-party activities and requested the Commission not to take cognizance of any communication made by unauthorised/expelled persons. The other group alleged that the President of the party i.e. Shri Trivendra Singh (petitioner), was taking decisions without following the party's constitution and democratic principles and had withdrawn the support given by the party to the ruling Bharatiya Janata Party in the State of Uttarakhand, without consulting the party's members and illegally expelled the respondent and some of the office-bearers, like, Shri Krishan Bhatt and Shri Satish Semwal. Respondent's group also stated that on 16.1.2011, a special convention was convened by the party under the chairmanship of acting President Shri D. N.Todaria and in that meeting the Respondent, Shri Diwakar Bhatt, was elected as the party's President. A new list of office-bearers of the party was also

furnished by the respondent's group and they claimed that the group led by the respondent represents the party. Thereupon, the letters/communications received by them were exchanged between them for their comments thereon.

5. In the meantime, on 01.06.2011, the petitioner filed a formal petition under para 15 of the Symbols Order, 1968 intimating the Commission that a dispute within the party had arisen. He inter-alia informed that due to unethical and unconstitutional activities of the respondent, he had removed him from the party. However, the respondent took some of the members of the party with him, called an unauthorised meeting and illegally expelled all the other elected members. In his petition, he has mainly submitted that :-

(i) The respondent is/has been illegally using party's name and banner for his personal gain by calling general meetings and board meetings, which is against the Constitution of the party, as he is no more a member of the party. Respondent called a meeting on 16.01.2011, after a gap of 12 days of his expulsion from the party without following the procedure given in the constitution of UKD.

(ii) The respondent himself, in his written statement in a similar matter before the State Election Commission of Uttarakhand, admitted the fact of his expulsion from the party, though he alleged that as he was illegally removed from the UKD by the Chairperson under section 12 of the constitution of UKD, whereas for a valid removal from the party section 20 of the constitution of the party should have been invoked. In response to that objection, while citing the provisions of sections 12 and 20 of the party's constitution, the petitioner has submitted that it is clear from the language of section 12 of the constitution that the expulsion of respondent was constitutional as at the time of expulsion neither the Central Committee nor the working committee was in session and hence the President as per the

powers conferred upon him by the constitution, used his power to expel the respondent in the interest of the party.

6. In view of the above, the petitioner prayed for a direction by the Commission -

(a) To restrain the respondent from violating the Constitution of UKD;

(b) To restrain the respondent and other expelled members from using party name and symbol;

(c) To recognise petitioner group as real office-bearers of the UKD, and

(d) To cancel the registration of the respondent's party registered under the name of Uttarakhand Kranti Dal (Democratic).

7. The petition of the petitioner was sent to the respondent for his reply vide Commission's notice dated 08.06.2011. In response to the notice, the respondent, on 30.06.2011, furnished his reply. While refuting the allegations made by the petitioner, the respondent inter-alia stated that out of 3 MLAs of the party in the present State Legislative Assembly, 2 MLAs were supporting him and he also enjoyed the support of vast majority in the organisational side of the party. As regards his expulsion from the party, he submitted that the alleged expulsion proceedings were neither permissible nor tenable under the provisions of the party constitution as the petitioner was neither authorised nor competent to initiate such proceedings. He submitted that illegal decisions of the petitioner could not be ratified by the General House of the party and that the party could not be one man show and the party had to discharge its functions through its office-bearers in the various committees i.e., Central Committee, Working Committee, etc. In the absence of aforesaid Committees, the party is headed by the Working President which is a temporary arrangement and the working President can never be empowered to take major decisions, except to discharge routine functions of the party. Even if it be presumed that Central Committee or Working Committee were not in session, the petitioner was not empowered and authorised to issue order of alleged expulsion of the respondent from the party. As regards his claim as

President of the Party, he submitted that on 16.01.2011, a convention was duly held at Dehradun to conduct the election for the Central Executive Committee of the party and in that meeting he (the respondent) was elected as the President of the party. He also stated that in the election of new Central Executive Committee headed by the respondent in the said convention, a large number of delegates from various villages, blocks and districts participated. He claimed that the group led by him represents the party. In support of his claim, he also submitted 318 affidavits from persons stated to be the office-bearers of UKD at State, District, Block and village levels.

8. The Commission fixed a hearing in the matter on 19<sup>th</sup> August, 2011. Simultaneously, a copy of the aforesaid reply dated 30.06.2011, submitted by the respondent was sent to the petitioner asking him to furnish his rejoinder to the reply of the respondent, if any, by 12.08.2011. Thereupon, on 12.08.2011, the petitioner furnished his rejoinder to the reply of respondent.

9. At the hearing on 19.08.2011, the petitioner's counsel requested the Commission to adjourn the hearing as the senior main counsel for the petitioner who was to lead the arguments was unwell and was not available. The Commission accepted the prayer and fixed 02.09.2011, as the next date of hearing in the matter. On 02.09.2011, the petitioner's counsel filed an additional rejoinder affidavit dated 01.09.2011 and also some other additional documents. The counsel for the respondent submitted that they had to be given some time to reply to these additional documents. He also submitted that some of the documents served on him were totally illegible and that the petitioner could not go on filing series of rejoinders and that there should be an end to submission of rejoinder/additional rejoinders/documents. The counsel for petitioner requested that he may be permitted to file a comprehensive rejoinder affidavit. The Commission agreed to this request and directed the petitioner to file a comprehensive rejoinder affidavit by 05.09.2011.

10. On 05.09.2011, the petitioner filed his fresh rejoinder to the reply filed by the respondent. The main submissions in the rejoinder were the following :-

- (i) The respondent is a habitual defector, who is in the habit of defecting from the party and he was the primary cause of the split in the party in the years 1996, 2003 and now in 2011. The respondent was the president of his own registered unrecognized political party, namely, Uttarakhand Kranti Dal (Democratic), which is still a registered political party in the list of the Commission.
- (ii) The expulsion of the respondent from the party was as per the provisions of the party constitution and in exercise of power of the President given under section 12 of the party's constitution. The decision to expel the respondent from the primary membership was taken with the consent of the Central Executive Committee of the party. The decision making power of the party lies with the Working Committee and when the Working Committee is not in session the power is vested in the Party President. The Patron and senior members have no power to go against the decision of the Working Committee and against the party President. Hence, decision taken by any member in violation of the decisions of Working Committee and party President is illegal and unconstitutional. The meeting held on 10.01.2011 (at which the decision to expel the respondent was ratified) was attended by 44+1 (President) members of Working Committee out of 57 members of the Working Committee, 53+1 (President) of the Central Committee out of 79 member of the Central Committee, 15 District Presidents out of 21 District Presidents, which clearly shows that the notice calling the meeting was duly served upon all the members and they participated in the meeting held on 10.1.2011. Further, all the members present in the meeting held on 10.1.2011 voted and approved the decision of the President of the party. Furthermore, in the written statement of respondent there was no averment to the effect that the members referred to above had not attended the meeting. The President acted in conformity with the rules, procedures and the Constitution of the UKD and hence question of any arbitrary action or one man show does not arise.
- (iii) The proceedings of the meeting allegedly held by the respondent on 05.01.2011 at which the respondent allegedly suspended the president of the party and seized his power, as claimed in the reply

of the respondent, does not give any details as to who attended the meeting, where the meeting was held, who called the meeting, who made Shri D. N.Todaria, the working President and under what provisions the said meeting was called and conducted. In fact, as per the clause 13 of the party's Constitution, in the absence of President, the acting President (Krayakari Adhyaksh) would have to officiate as President and Shri D.N. Todaria, who was only a Vice-President could not have acted as Officiating President in the presence of Acting President (Karyakari Adhyaksh) Shri A.P.Juyal, who as per the proceedings of the alleged meeting dated 05.01.2011 was never removed. Further, as per clause 11 of the party's Constitution, a meeting could be called at the request of 1/3<sup>rd</sup> members of the Central Committee. However, no averments have been made in the written statement that 1/3<sup>rd</sup> members of the Central Committee requested to call the meeting at any time. Furthermore, there is no provision under the constitution of the party for removing, suspending or seizing the power of the President. Clause 14 of the party's Constitution stipulates that the President has the power to take decision and the Vice-President shall assist him in the work. Thus, assisting the President does not mean that he is bound by the decisions of the Vice-Presidents. Further, the convention held on 16.01.2011, and the election of members at the meeting is nothing but anti-party activities as neither the working committee members nor the President were informed about the meeting and moreover it was carried out by the expelled members of the party.

(iv) As per the Constitution of the party, there is a Central Committee consisting of 101 members which may vary from time to time. Besides, the Central Committee, there is a Working Committee consisting of 52 members. The group led by the petitioner is not only in majority but is having the support of all the original members, who have been enrolled genuinely by the party. In support of his claim, he submitted affidavits given by--

- (a) 17 District Presidents out of 21 Presidents,
- (b) 41 Members of Working Committee out of 56 Members,
- (c) 50 members of Central Committee out of 78 members,

- (d) 22 persons who contested assembly election and
- (e) 3 Lok Sabha candidates who contested Lok Sabha Election.

So far as the respondent is concerned, he is not only defector but he has also illegally enrolled frivolous members after his expulsion from the primary membership of the party and on the basis of the frivolous membership he is claiming majority support.

(v) The entire written statement filed on behalf of respondent is based on forged and fabricated documents. These documents are antedated and prepared by the respondent after his expulsion from the party on 4.1.2011. Further, the respondent by fabricating false and forged documents and by organising certain meetings of the frivolous members enrolled by the respondent after his expulsion, cannot be allowed to say that the petitioner who is one of the oldest members and office-bearers of the party has been expelled by the respondent and it is for the respondent to prove that he is commanding majority in the party before challenging the locus standi of the petitioner for filing the petition. Further, the list of members of Working Committee submitted by the respondent vide his communication dated 29.01.2011 was forged and fabricated as many members mentioned therein are supporting the petitioner.

(vi) As regards respondent's claim of majority in the legislative wing of the party, he submitted that Shri Om Gopal Rawat, sitting M.L.A, has neither been expelled by the party nor has he resigned from the primary membership of the party. He has also neither written any letter to the president of the party indicating his intention that he is not supporting the party nor made any public statement in electronic and print media in this regard. Hence, the affidavit of Shri Rawat filed by the respondent is of no consequence and cannot be relied upon. In fact, he gave the affidavit under the impression that since the Speaker of the Assembly has not recognized the expulsion of the respondent, there has been no split in the party.

(vii) The respondent himself admitted that Uttarakhand Kranti Dal (Democratic) was amalgamated with the Uttarakahnd Kranti Dal. However, the respondent never gave any intimation to the Commission regarding merger of his Party, Uttarakahand Kranti Dal (Democratic), with UKD and thus violated the provisions of Section 29A(9) of the R.P.Act, 1951 which requires intimation of any material matters to the Commission without any delay. In fact, respondent is unauthorisedly and illegally holding membership in two political parties i.e. UKD(Democratic) and UKD. Hence, the respondent cannot be treated as a bonafide member of UKD.

11. On the above ground, the petitioner requested that the symbol of the party 'Chair' may be kept intact and the petitioner's party being the real and genuine UKD may be allowed to use the symbol.

12. In response to the amended rejoinder dated 05-09-2011 of the petitioner, the respondent filed his reply on 09.09.2011. He made the following submissions :-

- (i) The reserved symbol `Chair' of the party is in the possession of the respondent and the petitioner is seeking relief of injunctions and declarations against the use of party's symbol `Chair" which is a dispute of civil nature and in view of Section 9 of Civil Procedure Code, the Commission has no jurisdiction to entertain a petition of civil dispute and the forum competent under the law to deal with such petition is a civil court. The Commission's jurisdiction would be to decide the dispute with regard to the election symbol under para 15 of the Election Symbols (Reservation & Allotment) Order, 1968 and not a dispute which is of a civil nature. Therefore, the petition filed by the petitioner is not maintainable and thus liable to be dismissed.
- (ii) In the petition, the petitioner has neither pleaded nor claimed recognition of his group on the basis of the majority either in the legislative wing or in the organisational level of the party. Further, the onus and burden of proof that he enjoys majority in the party lies on the petitioner and not on the respondent. Further, on the

basis of the pleadings, documents filed and relied upon before the Commission, the petitioner's group has failed to prove its claim to be recognised as the real office-bearers of the party and, therefore, the respondent group headed by Shri Diwakar Bhatt who was duly elected in the Party convention held on 16.01.2011 is the real UKD, and is entitled to the use of the reserved symbol 'Chair' for the purpose of Para 15 of the Election Symbols (Reservation and Allotment) Order, 1968.

- (iii) The respondent group has the support and enjoys the confidence of two MLAs out of its three MLAs in the Uttarakhand State Assembly. Further, the petitioner has not stated that the petitioner's group has the support of the majority of the MLAs in the State Assembly and, therefore, it is proved beyond doubt that the group led by the respondent has majority in the legislative wing of the party. Hon'ble Speaker of the State Assembly has also recognised the respondent as the leader of the Uttarakhand Kranti Dal in State Assembly. The respondent's group has the support of (i) two out of three MLAs of the party, (ii) majority of the candidates who fought, contested and were elected on the party symbol 'Chair' in the local bodies, State Assembly and General Election to the Lok Sabha, as the the candidates of the UKD, (iii) support of founding members of UKD, elected representatives of District Panchayat Members, Gram Pradhans, Sarpanches, (iv) 72 members out of 101 members of Central Committee, 84 members of various party wings and various members from District Units and block committees. He has also submitted original affidavits of 25 elected members of local bodies. Some affidavits were already submitted earlier.
- (iv) The alleged expulsion of the respondent from the party on 04.01.2011 is malafide, unlawful and in violation of the provisions of the party constitution and principles of nature justice, as the show cause notice dated 01.01.2011 was never served on the respondent and the alleged expulsion was done without giving an opportunity to

reply to the alleged show cause notice. It is also wrong and denied that the expulsion of the respondent was approved by the General Body on 10.01.2011. Further, section 20 of the party constitution provides the procedure for taking disciplinary action and section 20(c) gives the provisions of appeal but the petitioner with the malafide intention dissolved the disciplinary committee and took all powers unilaterally and arbitrarily against the provisions of the party constitution. It is also wrong and denied that the Central Executive Committee had ever given its consent to expel the respondent from the primary membership of the party. Even the Central/Working Committee has no power to approve and ratify the illegal and unlawful decisions of the party President.

- (v) The petitioner's averments that the respondent has furnished forged and fabricated documents is wrong. In fact, the documents/affidavits submitted by the petitioner are fabricated, false, forged and manipulated by the petitioner. Further, the petitioner has filed the additional documents and affidavits of the UKD members without referring to the same in his pleadings and the same cannot be considered and relied upon by the Commission. Further, it is also wrong and denied that those persons who have sworn the affidavits in favour of the respondent are not the primary members of the party. The affidavits filed by the respondent are genuine and from the duly elected/nominated members at the organisational level of the party.
- (vi) Shri Om Gopal Rawat, sitting MLA, has given his full support to the respondent and till date he has neither withdrawn his affidavit supporting the respondent nor given any letter of support to the petitioner and he is ready to make a statement before the Commission with regard to his support to the respondent. Shri Rawat has tendered his affidavit having understood the contents of the affidavit and the averment of the petitioner that he is under confusion is totally wrong.

(vii) It is wrong that the respondent had joined the UKD though he was the President of his own registered unrecognised political party known as Uttarkahand Kranti Dal (Democratic). Further, the present petition is filed by the petitioner in his individual capacity and not as a president of the UKD and the Commission itself treated the present petition as a dispute between the two groups of UKD, one headed by the petitioner and the other by the respondent. Therefore, the petitioner cannot claim himself as a duly registered and recognised party. Furthermore, UKD is a registered and State recognised political party and duly headed by the respondent and not by the petitioner who has already been expelled by the party for violation and acting against the provisions of the party constitution. As regards Uttarkahand Kranti Dal (Democratic), he has submitted that the said party had been duly merged with the UKD and he had contested and was elected on UKD Symbol in 2007 State assembly election, but the petitioner never challenged the merger and joining of the respondent with UKD since 2006 and now he is raising the issue with mala fide intention. Further, there is no provision to give intimation regarding de-registration of the UKD(D) to the Commission.

(viii) The petitioner on the one hand has claimed that his group represents the party. However, the petitioner accepted the decision of State Election Commission dated 21.03.2011 that “ अग्रिम आदेशों तक उत्तराखण्ड क्रांति दल को आबंटित आरक्षित प्रतीक चिह्न कुर्सी अनुपलभ्य (Freeze) रहेगी । ये दोनों गुट ( 1 ) उत्तराखण्ड क्रांति दल टी ( त्रिवेन्द्र सिंह पवार ) व ( 2 ) उत्तराखण्ड क्रांति दल डी ( दिवाकर भट्ट ) कहे जायेंगे । इन्हें मुक्त प्रतीक आवंटित किया जायेगा दोनों गुट मुक्त प्रतीक के लिए दिनांक 22.03.2011 को 12 बजे तक अपना आवेदन आयोग में प्रस्तुत करें । 16. दोनों गुटों को यह भी निर्देश दिये जाते हैं कि वह दलीय संविधान के अनुसार चुने गये केन्द्रीय समिति, कार्यसमिति के समस्त पदाधिकारियों व अनुशासन समिति के पदाधिकारियों की पूरी सूची , बैठकों का [एजेंडा/बैठकों](#) का कार्यवृत्त , वार्षिक सम्पेक्षा रिपोर्ट व आयकर विभाग से अदेयता प्रमाण-पत्र दिनांक 29.04.2011 तक आयोग को उपलब्ध करायेंगे ।' If he had any objection to the said decision he would have

challenged the said order. Even if it is assumed that the petitioner's group is the real and genuine party, then why would the petitioner approach the Commission for recognition when according to the petitioner, the petitioner is registered and recognised party. The petition filed by the petitioner prima-facie proves the fact that the election symbol and party flag are with the respondent till date and the respondent's group is the real and genuine party with majority both in the legislative and organisational side of the party,

- (ix) Under Clause 5(a) of the amended party constitution, there is a provision of Visheshadhikar Samiti comprising the party President, Leader of House, Ex-Party President, Acting President, Chairman of Party Parliamentary Board, one Vice-President and one General Secretary of the party whose responsibility is to take urgent decision in case of emergency/crisis in the party. Therefore, the Visheshadhikar Samiti in its wisdom called a meeting on 05.01.2011 wherein the petitioner was suspended and his power as party president was seized. Further, though it is correct that Sh. D. N.Todaria was nominated as Vice-President of the party, however, the vice-President has all powers and duties as of the party President.

13. In view of the above submissions, he prayed that the petition filed by the petitioner may be dismissed and the respondent be allotted election symbol `Chair and his faction recognised as the real UKD.

14. The Commission heard the matter on 23.09.2011. On behalf of the petitioner, Shri Meha Aggrawal, Senior Advocate alongwith Abhishek Garg, Advocate, and on behalf of the respondent Shri Satya Pal Jain, Senior Advocate alongwith Shri J.S. Rawat Advocate, Shri R.Ramakrishana and Shri Rajan Khosla, Advocates appeared.

15. At the hearing, Shri Meha Aggrawal, learned counsel for the petitioner submitted that as per party's constitution as amended on 24/25.7.2005, the strength of the Central Committee is 101 members and the Working Committee is 56 members. Further, there is a provision of High Power Committee/Vishesh Adhikar Samiti also. However, the High Power Committee had never been constituted. Furthermore, in 2003, there was a split in the party and the Commission vide its order dated 30.01.2004, recognised the petitioner's group as the larger group having support of majority of MLAs and allowed petitioner's group to retain the symbol of `Chair'. After the aforesaid judgment, the respondent formed a new party with the name Uttarakhand Kranti Dal (Democratic) and the same was registered by the Commission on 8.4.2005. In 2007, the Uttarkahand Kranti Dal(Democratic) was orally merged with the UKD; however, no intimation was given by respondent to the Commission as required under Section 29-A(9) of the R. P. Act, 1951. He further submitted that on 6.12.2010, the Central Committee of 78 members was constituted and Working Committee was also extended to 56 members. He submitted that in exercise of the power conferred under Clause 12(Va) of the Constitution, on 01.01.2011, the President suspended the respondent from the party and he was given a show cause notice as to why he should not be expelled from the party. Thereafter, in absence of any reply from the respondent, the President was constrained to expel the respondent from the party on 04.01.2011. The said decision of expulsion of respondent was communicated to the respondent, to the Hon'ble Commission, to the Governor and to the Speaker of the State Assembly by separate letters dated 04.01.2011. The meeting held on 10.01.2011 was attended by:- 45 members of Working Committee out of total 57 members, 54 of the Central Committee members out of total 78 members, 15 District Presidents out of 21 District Presidents, elected and nominated in the special convention held on 25.07.2010 and subsequent decision taken on 06.10.2010. The participation of large numbers of members of Central Committee, Working Committee and District Presidents proves beyond doubt that the notices for calling the meeting were duly served upon all the members and they participated in the meeting held on 10.01.2011. In the general election to the Uttarakhand Legislative Assembly held in February, 2007 , the UKD had put up candidates in 62 out of the 70 constituencies. Out of these candidates, 27 candidates have left the party or have expired, 22 candidates have given affidavits in

support of the President-petitioner. In May 2009, five candidates contested Lok Sabha election on U.K.D. ticket. Out of these, three candidates have given affidavits in support of the petitioner-President. So far as the elections of Panchayats are concerned, these elections were not on party's reserved symbol. All the aforesaid members unanimously approved the decision of the party taken on 27.12.2010 and 04.01.2011. They have also filed their respective affidavits before the Commission. The proceedings of the meeting dated 10.01.2011 were also sent to the Commission.

16. Shri Aggrawal further submitted that the respondent after his expulsion from the party on 04.01.2011, called an alleged meeting on 05.01.2011 under the Presidentship of Shri D.N. Todaria, who was a nominated Vice-President. The meeting was convened by Shri Lalmani Semwal, a nominated General Secretary. In the said alleged meeting dated 05.01.2011, the petitioner was suspended and his powers as party President were seized. He submitted that the Maha Sammellan of the party stated to have been held on 16.01.2011 was an illegal one. It was in the illegal meeting that the respondent's claims to have been elected as President of the party and other persons were claimed to have been elected/nominated as members of the Central and Working Committee and a High Power Committee constituted. Admittedly, the affidavits filed by the respondent from persons of organisational wing of the party were in fact from the persons who were allegedly elected and nominated as members of Central/Working Committees in party Maha Sammellan allegedly held on 16.01.2011. The learned senior counsel submitted that these were affidavits of those persons, who had no relation with U.K.D. He stated that these persons were strangers to the activities of the U.K.D. and were hired by respondent from different walks of life and most of them had come to eat and drink only. He submitted that all the electronic and print media had published this news and the relevant clippings were enclosed with the rejoinder affidavit. The legally elected members of the Working Committee who were elected in the special convention held on 25.07.2010 by 550 delegates and legally nominated members of Central Committee and Working Committee nominated on 06.10.2010 never supported the respondent and therefore the respondent is having no support from the elected/nominated members of Central Committee and Working Committee and the elected District Presidents of 21 Districts.

17. The Id. counsel has further submitted that as per clause 13 of the Constitution of the party, in the absence of the President, the Acting President shall act as President. As per clause 14 of the Constitution of the party, the role of the Vice-Presidents is to help the President/Acting President (Karyakari Adhyaksh) in the working of the party and when the President/Acting President (Karyakari Adhyaksh) is not present, the senior most Vice-President will act as the President of the party. In these circumstances, the alleged meeting of 05.01.2011 and Maha Sammellan of 16.01.2011 called by unauthorized persons having no authority to call such meetings had no validity. Shri D.N. Todaria was neither an acting President nor the senior most Vice-President and was only a nominated Vice-President. Similarly, the convener of the said meeting Shri Lal Mani Semwal was only a nominated General Secretary. These persons were having no authority to preside over/convene the meetings. Further, the respondents has filed affidavits from several persons who are common in Central Committee, Working Committee and have also contested assembly election 2007 and Lok Sabha Election in May, 2009; therefore, their affidavits have been filed in different capacities, as members of Central Committee, members of Working Committee, as candidates of Assembly election and as candidates of Lok Sabha Election. Referring to the contention of the respondent's counsel that the petition filed by the petitioner is not maintainable, he submitted that the said contention is baseless in view of the law declared by the Hon'ble Supreme Court of India in the case of Sadiq Ali and Anr. Vs. Election Commission of India [1972 (4) SCC 664] that the Election Commission is the exclusive authority to decide such matters. As regards the support of 2 M.L.As, namely the respondent and Shri Om Gopal Rawat, to the respondent's group, he stated that the party had already expelled the respondent. So far as the other M.L.A., Shri Om Gopal Rawat is concerned, he was declared elected by a meager margin of 4 votes only and his election is under challenge before the Hon'ble High Court of Uttarakhand at Nainital. The Hon'ble High Court Uttarakhand at Nainital has heard the arguments and the judgment is reserved and is likely to be pronounced soon. Otherwise also, he being an M.L.A. of the party, at the maximum he can be treated as an unattached M.L.A. and his support to any of the groups cannot be of any consequence/relevance. In these circumstances, it is obvious that the petitioner group is enjoying the majority of the members of Central Committee, Working Committee, District Committees and the members who contested election

on party's symbol for legislative assembly in the year 2007 and for Lok Sabha in the year 2009, and they all have supported the action taken by the party. The petitioner's group is, thus, enjoying the support of organizational wing of the party and also of one of the M.L.As, Shri Pushpesh Tripathi. From the aforesaid facts that the petitioner's group is enjoying the support of the majority in the organizational wing and in view of the law laid down by the Apex Court in Sadiq Ali and Anr. Vs. Election Commission of India, [ (1972) 4 SCC 664] and A.P.H.L. Conference, Shillong Versus W.A. Sangma, { AIR 1977 SC 2155}, the petitioner's group is entitled to retain the symbol of '**Chair**'.

18. Shri S.P. Jain, learned Senior Counsel appearing for the respondent, submitted that the disputes raised and the prayers sought by the petitioner in the petition are of civil nature and, therefore, the petition is not maintainable. The relief(s) sought by the petitioner for declarations and injunctions can be granted by the civil court only. He has further submitted that the faction represented by the respondent has the support of following :

a) Two out of three M.L.As of the party, b) majority of the candidates who fought, contested and were elected on the party symbol "CHAIR" in the Local Bodies, States Assembly & Lok Sabha General Election as the candidates of the UKD, whose duly sworn affidavits have been placed on record with reply to supplementary/additional rejoinder dated 01.09.2011 c) support of founding members of UKD, elected representatives of District Panchayat Members, Gram Pradhans, Sarpanches whose duly sworn affidavit are placed on records with reply to supplementary/additional rejoinder dated 01.09.2011 d) 72 members out of 101 members of Central Committee, 84 members of various party wings, 15 members from District Haridwar, 09 members from District Roorkee, 11 members from District Rudraprayg, 19 members from District Tehri, 23 members from District Dehradun, 35 members from District Kotdwar, 22 members from District Pauri and 21 members of Various Block committees whose duly sworn affidavit are placed on records with written statement.

19. Shri Jain further submitted that the meeting called by the petitioner on 10.01.2011 was against the provisions in the party constitution and was attended by those people who were neither the members of the Central/Working Committees nor the primary members of the party. The petitioner was neither empowered nor competent to cancel the primary membership of the respondent or to expel him from the party. Clause 20 of the

party constitution provides the procedure for taking disciplinary action and sub-clause (c) of clause 20 makes the provisions of appeal. The petitioner unauthorisedly dissolved the disciplinary committee with malafide intention and took all powers unilaterally and arbitrarily against the provisions of the constitution. The petitioner can not shift the onus of proof to the respondent. The petitioner ought to have referred any alleged act of indiscipline on the part of the respondent to the Disciplinary Committee as per section 20 of party constitution and only on the recommendations of the Disciplinary Committee, the President would be empowered to take the decision of expulsion. Furthermore, neither the Central Committee nor the party constitution authorized the petitioner to expand the membership of Working Committee of party and thus the list of members of Working Committee as furnished by the petitioner is not only illegal and untenable, but is contrary to the provisions of the party constitution. There are only 32 members in the Working Committee of the party as per section 12 of the party constitution, 20 elected and 12 nominated members. The nomination of 12 members is made by the party President. From the documents filed by the petitioner, it is evident that the petitioner had nominated 51 members instead of 12 members in the working committee on 05.12.2010, which was contrary to section 12 of the party constitution. The petitioner also nominated presidents of various boards/committee/cells and expanded the working committee on 06.12.2010, which is in violation of the party constitution and can not be accepted. The petitioner has filed the affidavits of the nominated members in the working committee expanded on 06.12.2010, including in it his sycophants and this body can not be said to be true representative of the party.

20. Shri Jain further stated that on 04.01.2011, the petitioner called the meeting for 10.01.2011, while as per the provisions in the party constitution, 7 days notice is required for the meeting of Party Central/Working Committee. He also stated that the petitioner has neither pleaded nor claimed recognition of his group on the basis of the majority either in the legislative wing or organization level of the party in the petition. However, for the sake of arguments, even if it is assumed though not admitted that the petitioner group is enjoying majority or numerical strength as laid down by the **Hon'ble Supreme Court of India in Sadiq Ali V/s Election Commission of India (AIR 1972 SC 187)** the onus and burden of proof lies on the petitioner to prove his group's majority, both in the legislative wing or organization level of the party. This burden, he has not discharged, and that the respondent's group who is enjoying the possession of election symbol "CHAIR" should not be dispossessed of that symbol, as the petitioner himself admitted that the respondent is in possession of the

symbol as otherwise there was no occasion for the petitioner' group to seek restrain/protection order from this Hon'ble Commission.

21. Shri R. Ramakrishna, also appearing on behalf of the respondent, submitted that the chronology of events that took place in the party since December, 2010 onwards clearly indicates that the petitioner acted unilaterally, usurping all the powers of the Party's elected bodies and did not even bother to extend principles of natural justice to his victims. The respondent was dismissed even before the expiry of the notice period. The respondent's actions were only a sequel to those of the petitioner and even then all actions were in strict conformity with the Party Constitution. While all actions of the petitioner were unilateral and dictatorial, all actions of the respondent were democratic taken in a group of office bearers and principles of natural justice were strictly adhered to. Even in the context of the removal of the petitioner, a 7 day notice was given and order of removal was issued after the expiry of 11 days. This contrasts with the 3 days notice given to the respondent and the actual removal ordered even before the expiry of the notice period. In fact, all actions of the petitioner smack of arbitrariness and reflect a fascist approach to governance. All his actions were part of a predetermined design. On 6 Dec, 2010 he inducted 45 new members to an 11 members body planning to have his own coterie to support his action.

22. Shri Ramakrishna has further stated that all these actions were taken by the petitioner in a unilateral dictatorial manner and that he justifies his actions by an incorrect interpretation of Section 12(ले) of the constitution which reads as follows :

"उत्तराखण्ड क्रान्ति दल के अधिवेशन एवं केन्द्रीय समिति एवं कार्यसमिति की बैठक में सभापति का कार्य अध्यक्ष करेगा । जब केन्द्रीय समिति व कार्यसमिति की अधिवेशन और बैठक न हो रही हो तो अध्यक्ष केन्द्रीय समिति व कार्यसमिति के अधिकारों का प्रयोग करेगा ।"

The petitioner's argument is that "since the working Committee was not in session on 27.12.2010 and 01.01.2011 he was within his rights to assume the powers of the working committee. Section 12(ले) is inelegantly worded when it talks of जब केन्द्रीय समिति व कार्यसमिति की अधिवेशन और बैठक न हो रही

हो | A literal interpretation of this would imply that except for the few hours when these bodies are in session, the President can assume all their powers. This can result in absurd situations such as a working committee meets between 10 AM and 5 PM on a specified day and resolves to move in the direction of East and at 6 pm the President can decide to move in the direction of West. A more rational and reasonable interpretation will be that so long as the organs of the party are duly constituted the President cannot usurp their functions". He has further submitted that the respondent's claim to the identity of UKD and its recognised symbol is already justified by the existence of a majority (two MLAs against one) in the Legislative wing. As per Sadiq Ali's decision, this by itself can justify the respondent being recognised by the Commission as the inheritor of UKD's identity and symbol. This is further fortified by the events in the organisational wing where strict adherence to the Party's constitution by the respondent stands contrasted with the total negation of the Party's constitution by the Petitioner in his arbitrary decisions.

23. At the conclusion of hearing both the parties were asked to submit their written arguments. Both the groups submitted their written arguments.

24. We have carefully analysed the submissions of both the groups and we have also examined the documents and evidence furnished by them in support of their respective cases and claims. It appears that the bone of contention between the two factions was a decision regarding continuance of alliance with the Bharatiya Janata Party, in the State of Uttarakhand. The two groups conducted separate and parallel meetings and took decisions regarding expulsion and counter expulsions and having a bearing on the political developments in the State. In disputes of this nature, the Commissions has consistently followed the test of majority support in the organizational wing and legislative wing of the party, enjoyed by rival factions, to decide the dispute. This test had met the approval of the Supreme Court in Sadiq Ali vs. Election Commission (AIR 1972 SC187) in the case of split in the Indian National Congress in 1969-1970.

25. As per the Constitution of the UKD, there are two apex level representative bodies/committees of the Party, viz., Kendriya Samiti and Karya Samiti. As per article 11 of the party constitution, the Kendriya Samiti consists of 101 members including the President of the Party, and as per article 12 of the Constitution, the Karya Samiti consists of 32 members including the Party President. The term of office of office bearers and committees of the Party is two years, as per article 6 of the Party Constitution. As per the information furnished by the Party vide its letter dated 11-05-2010, and its memorandum dated 09-07-2010, copy of which was received in the

Commission on 19-07-2010, the internal election of the Party was scheduled to be held on 25-07-2010, the foundation day of the Party. The list of candidates who filed nominations for various posts was also given in the letter dated 11-05-2010. Later, by a letter dated 06-12-2010 (signed by Sh. Trivendra Singh), the Party informed that Sh. Trivendra Singh Pawar was elected as the President of the Party at that election held on 25-07-2010. This fact is not in dispute. This letter was received in the Commission on 22<sup>nd</sup> December, 2010. Alongwith the letter dated 06-12-2010, the list of 56 members of Karya Samiti was also submitted. The list mentioned that it was the 'expanded Karya Samiti'. The list of members of Kendriya Samiti was, however, not submitted.

26. The first communication related to the present dispute was received in the Commission on 07-01-2011, by way of a letter dated 04-01-11 from Sh. Trivendra Singh, in which he stated that Sh. Diwakar Bhatt, MLA, was expelled from the Party on the ground of defiance of the directive/decision of the Party to withdraw support to the ruling government. Sh. Trivendra Singh sent further letters dated 13-01-2011 and 20-01-2011, stating that Sh. Diwakar Bhatt had convened illegal meeting on behalf of the Party and that the decision of expulsion of Sh. Bhatt from the Party was ratified by Kendriya Karyakarini of the Party on 10-01-2011. He requested that Sh. Bhatt be restrained from misusing the flag and symbol of the Party.

27. On the other hand, Sh. Diwakar Bhatt also submitted letters dated 11-01-2011 and 14-01-2011, stating that the decision to withdraw from the ruling government was a unilateral decision taken by Sh. Trivendra Singh without approval of the Kendriya Karyakarini and that in a meeting of the senior leaders of the Party under the chairmanship of Sh. D.N. Todariya, Vice-President of the Party, it was decided to expel Sh. Trivendra Singh from the post of President, and to hold a general body meeting of the party on 16-01-11. However, no mention was made about the date on which this meeting of the leaders of the party was held. Later, Sh. Todariya submitted a letter dated 16-01-2011, received in the Commission on 31-01-2011, in which he stated that a general body meeting of the Party was held on 16-01-2011, and Sh. Bhatt was elected as the President of the Party. He also submitted a separate list of central office bearers and members. Thereafter, as mentioned above, a formal petition dated 01-06-2011 was filed by the petitioner Sh. Trivendra Singh Pawar under para 15 of the Symbols Order, 1968.

28. In the general election to the legislative assembly of Utrakhand held in February, 2007, three MLAs, namely, Sh. Diwakar Bhatt (respondent), Sh. Pushpesh Tripathi and Sh. Om Gopal Rawat, were elected on the

Party's ticket. Out of these 3 MLAs, Sh. Pushpesh Tripathi has submitted affidavit in support of Sh. Trivendra Singh Pawar, whereas Sh. Om Gopal Rawat has submitted affidavit affirming support to Sh. Diwakar Bhatt. Thus, the group led by Sh. Bhatt has the support of 2 MLAs and the group of Sh. Trivendra Singh has the support of one MLA.

29. As regards the organizational wing of the Party, the only apex representative body of the Party whose list of office bearers/members is on the record of the Commission prior to the dispute between the two groups is the Karya Samiti. A list of 56 member of the Karya Samiti was submitted with the letter dated 6<sup>th</sup> December, 2010 of the Party. Sh. Trivendra Singh subsequently submitted another list of Kendriya Karyakarini (dated 06-12-2010), after the conclusion of the hearing on 23-09-11. This list contains 72 names. However, the list submitted after the hearing can not be taken into account as this was not submitted at any earlier point of time, particularly before the start of the dispute. Thus, the relevant list is the one submitted on 06-12-10 containing 56 names.

30. Out of the 56 members given in the list of Karya Samiti submitted with the letter of 06-12-2010, 41 members have submitted affidavits of support to the group headed by Sh. Trivendra Singh Pawar and 9 members have affirmed support to Sh. Diwakar Bhatt.

31. From the above position, it would be seen that the group headed by Sh. Diwakar Bhatt has majority support in the legislative wing of the Party (two out of three MLAs), while the group led by Sh. Trivendra Singh Pawar enjoys the support of one of the three MLAs, and majority support in the Karya Samiti of the Party, the only representative body which can be taken into account for this purpose for the reasons mentioned above. Thus, it is a fractured support for the two groups one enjoying majority support in the legislative wing and the other in the organizational wing and neither of them commands a clear majority, as per the documents brought on record. Consequently, neither of the groups can be sole rightful claimant to be the Party to the exclusion of the claim of the other group. In the circumstances, it would be opposed to the principles of equity and fair play if either of the groups is given recognition as the UKD, ignoring the claims of the other group. Therefore, the Commission cannot recognize either of the two groups as the UKD.

32. At the same time, in view of the imminent general election to the legislative assembly of Uttarakhand the Commission does not want to deprive both groups of the opportunity of contesting the election on a reserved

symbol. That would be equally unfair. The Commission is of the view that the elections will be the real opportunity for both the groups to prove their electoral support and popular mandate. In several similar cases in the past, the Commission has adopted a middle course by way of interim arrangement for the purpose of the impending election, and granted interim recognition to the disputing groups pending further adjudication after the election. The Commission's order dated 7<sup>th</sup> August, 1999, in the case of split in the Janata Dal, on the eve of the then ensuing general election to the House of the People and Legislative Assemblies of some of the States, is one such example.

33. Taking into account the totality of the facts and circumstances, the Commission hereby decides, as an interim measure, for the purposes of the ensuing general election to the Uttarakhand Legislative Assembly, that the two groups may be granted interim recognition as State Parties in Uttarakhand, under different names and with different symbols. This, in the Commission's view, will be in the interest of equity and fair play and will meet the ends of justice, in the circumstances of the case. Accordingly, the Commission hereby directs :

- (1) That the two groups, viz., the group led by Sh. Trivendra Singh Pawar and the group led by Sh. Diwakar Bhatt, are hereby granted interim recognition as State parties in the State of Uttarakhand for the purpose of the ensuing general election to the legislative assembly of Uttarakhand;
- (2) The name 'Uttarakhand Kranti Dal' and the symbol 'Chair' which was allotted as the reserved symbol of UKD shall remain frozen until further orders of the Commission.
- (3) The two groups may choose separate names and inform the Commission of the name so chosen by them within 7 days of receipt of this order. It would be open to the two groups to use the name of the mother party with separate appellation/suffixes, but different from the names of other existing political parties.
- (4) The two groups shall indicate the choice of symbol to be allotted to them as their reserved symbol during the period they enjoy the interim recognition as State Party. This shall also be communicated to the Commission within 7 days.
- (5) The two groups shall submit the list of their respective office bearers to the Commission.

(6) The time that would have been allotted on Doordarshan and All India Radio for broadcast for recognized parties, for the UKD as per the existing policy, shall now be divided equally between the two parties, for the ensuing general election to the Uttarakhand Legislative Assembly.

34. The Commission will take up the matter for further orders in due course after the ensuing general election to the Uttarakhand Legislative Assembly.

Ordered accordingly.

sd/-

(H.S. BRAHMA)

ELECTION COMMISSIONER

sd/-

(S.Y.QURAIISHI)

CHIEF ELECTION COMMISSIONER

sd/-

(V.S.SAMPATH)

ELECTION COMMISSIONER

New Delhi

27<sup>th</sup> December, 2011