

In re: - Rashtriya Janata Dal – Withdrawal of recognition as a National Party.

ORDER

The 'Rashtriya Janata Dal' is a recognized National Party with the symbol "Hurricane Lamp" reserved for it under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as 'Symbols Order'). The 'Rashtriya Janata Dal' (hereinafter referred to as 'the Party') was recognized as National Party by the Election Commission in the year 2008, on fulfilment of conditions laid down in paragraph 6B(i) of the Symbols Order, in respect of the States of Bihar, Jharkhand, Manipur and Nagaland.

2. The issue to be decided here is about withdrawal of its recognition as National Party on its failure to fulfil the said conditions at the subsequent elections, under the provisions of paragraphs 6B and 6C of the Symbols Order.

3. The recognition of a political party and its continued recognition as national or state party are governed by the provisions of paragraphs 6A, 6B and 6C of the Symbols Order. For facility of reference, the said paragraphs 6A, 6B and 6C are reproduced below: -

“6A. Conditions for recognition as a State Party – A Political Party shall be eligible for recognition as a State Party in a state, if, and only if, any of the following conditions is fulfilled:

- (i) At the last general election to the Legislative Assembly of the State, the candidates set up by the party have secured not less than six percent of the total valid votes polled in the State; and, in addition, the party has returned at least two members to the Legislative Assembly of that state at such general election; or
- (ii) At the last general election to the House of the People from that State, the candidates set up by the party have secured not less than six percent of the total valid votes polled in the State; and, in addition, the party has returned at least one member to the House of the People from that State at such general election; or
- (iii) At the last general election to the Legislative Assembly of the State, the party has won at least three percent of the total number of seats in the Legislative Assembly, (any fraction exceeding half being counted as one), or at least three seats in the Assembly, whichever is more; or
- (iv) At the last general election to the House of the People from the State, the party has returned at least one member to the House of the People for every 25 members or any fraction thereof allotted to that state.

6B. Conditions for recognition as a National Party – A Political party shall be eligible to be recognized as National Party, if, and only if, any of the following conditions is fulfilled:

- (i) The candidates set up by the party, in any four or more States, at the last general election to the House of the People, or to the Legislative Assembly of the State concerned, have secured not less than six percent of the total valid votes polled in each of those states at that general election; and, in addition, it has returned at least four members to the House of the People at the aforesaid last general election from any State or States; or
- (ii) At the last general election to the House of the People, the party has won at least two percent of the total number of seats in the House of the People, any fraction exceeding half

- being counted as one, and the Party's candidates have been elected to that House from not less than three States; or*
- (iii) *The party is recognized as State party in at least four States.*

6C. Conditions for continued recognition as a National or State Party. – *If a political party is recognized as a State party under paragraph 6A, or as a National Party under paragraph 6B, the question whether it shall continue to be so recognized after any subsequent general election to the House of the People or, as the case may be, to the Legislative Assembly of the state concerned, shall be dependent upon the fulfillment by it of the conditions specified in the said paragraphs on the results of that general election.”*

4. In pursuance of the provisions of the above referred paragraph 6C of the Symbols Order, a review of the poll performance of every political party is required to be made by the Election Commission after every general election to the House of the People or, as the case may be, to the State Legislative Assembly.

5. Accordingly, the poll performance of the Rashtriya Janata Dal, at the last general election to the House of the People, held in 2009, and general elections to the Legislative Assemblies of Bihar held in 2005, Manipur in 2007, Nagaland in 2008 and Jharkhand in 2009 was reviewed by the Commission in terms of the said paragraphs 6A, 6B and 6C of the Symbols Order.

6. The poll performance of the Party at the general election to the House of the People, 2009 and the general elections to the existing Legislative Assemblies of Bihar (2005), Jharkhand (2009), Manipur (2007) and Nagaland (2008), is given below:-

House of the People, 2009

Name of the State	% of valid votes polled	No. of seats won, if any
Bihar	19.31%	4
Jharkhand	5.33%	0
Manipur	0.36%	0
Nagaland	Did not contest	-

Legislative Assemblies

Name of the State	% of valid votes polled	No. of seats won, if any
Bihar	23.45%	54
Jharkhand	5.03%	5
Manipur	6.67%	3
Nagaland	6.56%	0

7. Thus, the Party's performance at the general elections to the House of the People (2009) and Legislative Assemblies of the States of Bihar (2005), Manipur (2007), Nagaland (2008) and Jharkhand

(2009) did not meet the requirements laid down for the continued recognition of the said party as a National Party.

8. The Election Commission gave the Party an opportunity of making a representation to the Commission as to why the recognition should not be withdrawn. A show cause notice was issued to the Party on 4th May, 2010, and the Party was asked to make its representation, if any, by 24th May, 2010. The Party submitted its reply stating that, technically, the Party was slightly below the conditions laid down for continuance of recognition as a National Party, but the Party deserved the status of National Party having State Party status in three states as well as having secured more than six percent votes in three states and 5.33% votes in Jharkhand State in Lok Sabha and 5.03% in assembly election. The Party further stated that they contested the election together with Lok Janshakti Party and jointly secured more than six percent votes in Jharkhand. The Party also urged the Commission to relax the conditions and to allow it continued recognition as a National Party.

9. The Commission further granted the Party a personal hearing in the matter on 2nd July, 2010. Shri Prem Chand Gupta, MP, alongwith Prof. Ram Deo Bhandary, Secretary General, appeared before the full Commission on scheduled date, and conceded that the Party did not fulfil the prevailing criteria for continued recognition as a National Party as laid down in the Symbols Order. The representatives of the Party stated that since the State of Jharkhand is presently under President rule with the Assembly under suspended

animation, there could be the possibility of early Assembly election in Jharkhand. They submitted that in view of the coming general election in Bihar the Party may be allowed to retain its National Party status for the time being and till the assembly elections in Jharkhand.

10. The provisions of paragraph 6A, 6B and 6C of the Symbols Order, quoted in paragraph 3 above, would show that the recognition, and also the continued recognition, of a political party as State Party or National Party depends on the fulfilment of the stipulated conditions referred to above. If a political party becomes eligible and is granted recognition as a State Party or National Party on fulfilment of the stipulated conditions for recognition, it will continue to enjoy that status so long as it continues to fulfil those conditions at the subsequent general elections, as has been expressly provided in paragraph 6C of the Symbols Order. Therefore, the poll performance of every recognized political party needs to be reviewed under the said paragraphs after every general election held in a State either to Lok Sabha or to the State Legislative Assembly. The Supreme Court in Janata Dal (Samajwadi) Vs. Election Commission of India (AIR 1996 SC 577) has upheld this position. The relevant portion from the judgment of the Apex Court says: -

“..... it cannot be conceived that a political party having been recognised as a National party or State party as the case may be on having fulfilled the conditions prescribed in paragraph 6(2) shall continue as such in perpetuity although it has forfeited the right to be recognised as a National party or a State party. In paragraph 2(2) of the

said Symbols Order, it has been specifically provided that the General Clauses Act, 1897 shall as far as may be applicable in relation to the interpretation of the said order as it applies in relation to the interpretation of a Central Act. Section 21 of the General Clauses Act provides that where by any Central Act or Regulation, power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction, and conditions if any to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued. As paragraph 2 (2) of the order in clear and unambiguous term makes provision of the General Clauses Act applicable to the Symbols Order, it need not be impressed that provisions of Section 21 of the General Clauses Act, also become applicable vesting power in the Election Commission which had issued the aforesaid order dated 16.4.1991 recognising the appellant as a National Party to rescind the said order as appellant in the elections to the Legislative Assemblies of the States mentioned above ceased to fulfill the conditions prescribed in paragraph 6 (2) of the Order read with para 7(1) thereof.”

11. Thus, the law on the point is conclusively settled by the above decision of the Supreme Court that a Party once recognized cannot claim to enjoy continued recognition in perpetuity. It has to show the minimum electoral support for recognition or continued recognition, as measured in terms of paragraph 6A, 6B and 6C of the Symbols Order, at every general election. It is relevant to note here that the above decision of the Supreme Court was rendered in 1996, much before the Symbols Order was amended in December, 2000 and later in May, 2005 to expressly provide in para 6C, quoted above,

that the political parties which fail to fulfil the conditions for continued recognition as prescribed in paras 6A and 6B would be de-recognised.

12. As already stated, the Party does not fulfil the conditions for continued recognition as a National Party as laid down in the above quoted paragraph 6B of the Symbols Order either at the general election to the House of the People held in 2009 or at the relevant last general elections to the Legislative Assemblies in the States of Bihar, Jharkhand, Manipur and Nagaland.

13. The request of the Party to relax the conditions by making amendments in the criteria so as to benefit them has no merit. Also, the prayer made by Shri Prem Chand and Prof. Bhandari that the Party may be allowed to retain its National Party status till the next general election to Legislative Assembly of Jharkhand cannot be acceded to in view of the law laid down by the Hon'ble Supreme Court in the above referred cases of Janata Dal (Samajwadi). As of now, there is no general election in Jharkhand. The provisions of the Symbols Order regarding recognition are clear and unambiguous.

14. Having regard to the above, the Commission is satisfied that the Rashtriya Janata Dal is no longer entitled to recognition as a National Party under the provisions of paragraphs 6B and 6C of the Symbols Order. Accordingly, the said Party shall hereafter cease to be recognized as a National Party. The Party will, however, continue to be recognized as a State Party in the States of Bihar, Jharkhand

and Manipur with the symbol “Hurricane Lamp” as its exclusively reserved symbol in the said States of Bihar, Jharkhand and Manipur.

Ordered accordingly.

(V.S. Sampath)
Election Commissioner

(Navin B. Chawla)
Chief Election Commissioner

(Dr. S.Y. Quraishi)
Election Commissioner

Place: New Delhi

Date : 29th July, 2010

In re: - Arunachal Congress – Withdrawal of recognition as a State Party in the State of Arunachal Pradesh.

ORDER

The 'Arunachal Congress' (hereinafter referred to as 'the Party') is a recognized State Party in the State of Arunachal Pradesh with the symbol "Two Daos Intersecting" reserved for it in the said State under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as 'Symbols Order').

2. The issue to be decided here is about withdrawal of its recognition as State Party in Arunachal Pradesh on its failure to fulfil the conditions at the subsequent elections, under the provisions of paragraphs 6A and 6C of the Symbols Order.

3. The recognition of political parties and their continued recognition as State Party are governed by the provisions of paragraphs 6A and 6C of the Symbols Order. For facility of reference the said paragraphs 6A and 6C are reproduced below:-

“6A. Conditions for recognition as a State Party – A Political Party shall be eligible for recognition as a State Party in a state if, and only if, any of the following conditions is fulfilled:

- (i) At the last general election to the Legislative Assembly of the State, the candidates set up by the party have secured not less than six percent of the total valid votes polled in the State; and in, addition,*

- the party has returned at least two members to the Legislative Assembly of that state at such general election; or*
- (ii) At the last general election to the House of the People from that State, the candidates set up by the party have secured not less than six percent of the total valid votes polled in the State; and, in addition, the party has returned at least one member to the House of the People from that State at such general election; or*
 - (iii) At the last general election to the Legislative Assembly of the State, the party has won at least three percent of the total number of seats in the Legislative Assembly, (any fraction exceeding half being counted as one), or at least three seats in the Assembly, whichever is more; or*
 - (iv) At the last general election to the House of the People from the State, the party has returned at least one member to the House of the People for every 25 members or any fraction thereof allotted to that state.*

6C. Conditions for continued recognition as a National or State Party. – *If a political party is recognized as a State party under paragraph 6A, or as a National Party under paragraph 6B, the question whether it shall continue to be so recognized after any subsequent general election to the House of the People or, as the case may be, to the Legislative Assembly of the state concerned, shall be dependent upon the fulfillment by it of the conditions specified in the said paragraphs on the results of that general election.”*

4. In pursuance of the provisions of the above referred paragraph 6C of the Symbols Order, a review of the poll performance of every political party is required to be made by the Election Commission after every general election to the House of the People or, as the case may be, to the State Legislative Assembly.

5. Accordingly, the poll performance of the Party, at the general election to the House of the People, held in 2009, and general

election to the Legislative Assembly of Arunachal Pradesh held in 2009, was reviewed by the Commission in terms of the said paragraphs 6A and 6C of the Symbols Order.

6. The poll performance of the party at the general election to the House of the People, 2009 and the general election to the existing Legislative Assembly of Arunachal Pradesh (2009) is given below:-

Name of election	Name of the State	% of valid votes polled	No. of seats won, if any
House of the People, 2009	Aruanchal Pradesh	9.30%	Nil
L.A. of Arunachal Pradesh, 2009	Aruanchal Pradesh	Did not set up any candidate	--

7. Thus, the party's performance at the general election to the House of the People (2009) and Legislative Assembly of the State of Arunachal Pradesh (2009) did not meet any of the requirements laid down for the continued recognition of the said party as a State Party in Arunachal Pradesh.

8. The Election Commission gave the party an opportunity of making a representation to the Commission as to why its recognition should not be withdrawn. A show cause notice was issued to the party on 25th May, 2010 and the party was asked to make its representation, if any, by 11th June, 2010. The notice was also sent to the Chief Electoral Officer, Arunachal Pradesh, for service on the party. But, the Chief Electoral Officer reported that the Party's office was not in existence at the address mentioned in the Notice (which is

the address of the Party as per the Commission's records), and hence he issued a Press Notice quoting the contents of the Commission's notice. The party did not submit any reply to the said show cause notice.

9. The Commission, however, decided to grant the party a personal hearing in the matter on 21st July, 2010. The Party was informed about the hearing vide the Commission's letter dated 7th July, 2010. The intimation of hearing was also given through the Chief Elector Officer, Arunachal Pradesh. The Party neither appeared for the said hearing nor gave any representation. The Chief Elector Officer, Arunachal Pradesh vide his letter dated 23rd July, 2010 has intimated that due to non-existence of the Party office as per their address on the record of the Commission which was given in the Show Cause Notice, the notice could not be served upon the Party. Since the notice for hearing could not be served on the Party, the Chief Electoral Officer, Arunachal Pradesh again issued a Press Notice in three newspapers giving the contents of the Notice. Again, there was no response from the Party. Nor did any representative of the Party appear before the Commission for the hearing. In view of this, the Commission has to decide the matter on the basis of available facts and provisions of the Symbols Order.

10. The provisions of paragraph 6A and 6C of the Symbols Order, quoted in paragraph 3 above, would show that the recognition, and also the continued recognition, of a political party as State Party depends on the fulfilment of the stipulated conditions referred to

above. If a political party becomes eligible and is granted recognition as a State Party on fulfilment of the stipulated conditions for recognition, it will continue to enjoy that status so long as it continues to fulfil those conditions at the subsequent general elections, as has been expressly provided in paragraph 6C of the Symbols Order. Therefore, the poll performance of every recognized political party needs to be reviewed under the said paragraphs after every general election held in a State either to Lok Sabha or to the State Legislative Assembly. The Supreme Court in Janata Dal (Samajwadi) Vs. Election Commission of India (AIR 1996 SC 577) has upheld this position. The relevant portion from the judgment of the Apex Court says: -

“..... it cannot be conceived that a political party having been recognised as a National party or State party as the case may be on having fulfilled the conditions prescribed in paragraph 6(2) shall continue as such in perpetuity although it has forfeited the right to be recognised as a National party or a State party. In paragraph 2(2) of the said Symbols Order, it has been specifically provided that the General Clauses Act, 1897 shall as far as may be applicable in relation to the interpretation of the said order as it applies in relation to the interpretation of a Central Act. Section 21 of the General Clauses Act provides that where by any Central Act or Regulation, power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction, and conditions if any to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued. As paragraph 2(2) of the order in clear and unambiguous term makes provision of the General Clauses Act applicable to the Symbols Order, it need not be impressed that provisions of Section 21

of the General Clauses Act, also become applicable vesting power in the Election Commission which had issued the aforesaid order dated 16.4.1991 recognising the appellant as a National Party to rescind the said order as appellant in the elections to the Legislative Assemblies of the States mentioned above ceased to fulfill the conditions prescribed in paragraph 6 (2) of the Order read with para 7(1) thereof.”

11. Thus, the law on the point is conclusively settled by the above decision of the Supreme Court that a party once recognized cannot claim to enjoy continued recognition in perpetuity. It has to show the minimum electoral support for recognition or continued recognition, as measured in terms of paragraph 6A and 6C of the Symbols Order, at every general election. It is relevant to note here that the above decision of the Supreme Court was rendered in 1996, much before the Symbols Order was amended in December, 2000 and later in May, 2005 to expressly provide in para 6C, quoted above, that the political parties which fail to fulfil the conditions for continued recognition as prescribed in paras 6A and 6B would be de-recognised.

12. As already stated, the Party does not fulfil the conditions for recognition as a State Party in the State of Arunachal Pradesh as laid down in the above quoted paragraph 6A of the Symbols Order either at the last general election to the House of the People held in 2009 or at the relevant last general election to the Legislative Assembly in the State of Arunachal Pradesh held in 2009.

13. Having regard to the above, the Commission is satisfied that the 'Arunachal Congress' is no longer entitled to recognition as a State Party in Arunachal Pradesh under the provisions of paragraphs 6A and 6C of the Symbols Order. Accordingly, the said party shall hereafter cease to be recognized as a State Party in the State of Arunachal Pradesh and shall not be entitled to the exclusive reservation of the symbol "Two Daos Intersecting" as its reserved symbol in the State of Arunachal Pradesh. The question whether the Party is in existence and functioning will be examined later, in view of the report of the Chief Electoral Officer of the State that there is no office of the Party at the address on the records of the Commission and the fact that the Party did not respond to either of the Press Notices issued by the Chief Electoral Officer regarding the Commission's show cause notice and the notice for hearing.

Ordered accordingly.

(V.S. Sampath)
Election Commissioner

(Navin B. Chawla)
Chief Election Commissioner

(Dr. S.Y. Quraishi)
Election Commissioner

Place: New Delhi

Dated: 29th July, 2010

In re: - Janata Dal (United) – Withdrawal of recognition as a State Party in the State of Jharkhand.

ORDER

The ‘Janata Dal (United)’ (hereinafter referred to as ‘the Party’) is a recognized State Party in the States of Bihar and Jharkhand with the symbol “Arrow” reserved for it in the said States under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as ‘Symbols Order’).

2. The issue to be decided here is about withdrawal of its recognition as State Party in Jharkhand on its failure to fulfil the conditions at the general elections to the House of the People from Jharkhand and in the general election to the Jharkhand Legislative Assembly both held in 2009, under the provisions of paragraphs 6A and 6C of the Symbols Order.

3. The recognition of political parties and their continued recognition as state party are governed by the provisions of paragraphs 6A and 6C of the Symbols Order. For facility of reference the said paragraphs 6A and 6C are reproduced below:-

“6A. Conditions for recognition as a State Party – A Political Party shall be eligible for recognition as a State Party in a state if, and only if, any of the following conditions is fulfilled:

- (i) *At the last general election to the Legislative Assembly of the State, the candidates set up by the party have secured not less than six percent of the total valid votes polled in the State; and in, addition, the party has returned at least two members to the Legislative Assembly of that state at such general election; or*
- (ii) *At the last general election to the House of the People from that State, the candidates set up by the party have secured not less than six percent of the total valid votes polled in the State; and, in addition, the party has returned at least one member to the House of the People from that State at such general election; or*
- (iii) *At the last general election to the Legislative Assembly of the State, the party has won at least three percent of the total number of seats in the Legislative Assembly, (any fraction exceeding half being counted as one), or at least three seats in the Assembly, whichever is more; or*
- (iv) *At the last general election to the House of the People from the State, the party has returned at least one member to the House of the People for every 25 members or any fraction thereof allotted to that state.*

6C. Conditions for continued recognition as a National or State Party. – *If a political party is recognized as a State party under paragraph 6A, or as a National Party under paragraph 6B, the question whether it shall continue to be so recognized after any subsequent general election to the House of the People or, as the case may be, to the Legislative Assembly of the state concerned, shall be dependent upon the fulfillment by it of the conditions specified in the said paragraphs on the results of that general election.”*

4. In pursuance of the provisions of the above referred paragraph 6C of the Symbols Order, a review of the poll performance of every

political party is required to be made by the Election Commission after every general election to the House of the People or, as the case may be, to the State Legislative Assembly.

5. Accordingly, the poll performance of the Party, at the general election to the House of the People, held in 2009 and general election to the Legislative Assembly of Jharkhand held in 2009, was reviewed by the Commission in terms of the said paragraphs 6A and 6C of the Symbols Order.

6. The poll performance of the party at the general election to the House of the People, 2009 and the general election to the existing Legislative Assembly of Jharkhand (2009) is given below: -

Name of election	Name of the State	% of valid votes Polled	No. of seats won, if any
House of the People, 2009	Jharkhand	1.21%	Nil
Legislative Assembly (2009)	Jharkhand	2.78%	2

7. Thus, the Party's performance at the general election to the House of the People (2009) and Legislative assembly of the State of Jharkhand (2009) did not meet any of the requirements laid down for the continued recognition of the said party as a State Party in Jharkhand.

8. The Election Commission gave the party an opportunity of making a representation to the Commission as to why the recognition should not be withdrawn. A show cause notice was issued to the party on 25th May, 2010 and the party was asked to make its representation, if any, by 11th June, 2010. The party did not submit any reply to the said show cause notice of the Commission

9. The Commission, however, decided to grant the party a personal hearing in the matter on 21st July, 2010. Shri Javed Raza, General Secretary of the party, appeared before the full Commission on the scheduled date. He conceded that the party was aware of the fact that they did not fulfil the prevailing criteria for continued recognition as a State Party in the State of Jharkhand as laid down in the Symbols Order.

10. The provisions of paragraph 6A and 6C of the Symbols Order, quoted in paragraph 3 above, would show that the recognition, and also the continued recognition, of a political party as State Party depends on the fulfilment of the stipulated conditions referred to above. If a political party becomes eligible and is granted recognition as a State Party on fulfilment of the stipulated conditions for recognition, it will continue to enjoy that status so long as it continues to fulfil those conditions at the subsequent general elections, as has been expressly provided in paragraph 6C of the Symbols Order. Therefore, the poll performance of every recognized political party

needs to be reviewed under the said paragraphs after every general election held in a State either to Lok Sabha or to the State Legislative Assembly. The Supreme Court in Janata Dal (Samajwadi) Vs. Election Commission of India (AIR 1996 SC 577) has upheld this position. The relevant portion from the judgment of the Apex Court says: -

“..... it cannot be conceived that a political party having been recognised as a National party or State party as the case may be on having fulfilled the conditions prescribed in paragraph 6(2) shall continue as such in perpetuity although it has forfeited the right to be recognised as a National party or a State party. In paragraph 2(2) of the said Symbols Order, it has been specifically provided that the General Clauses Act, 1897 shall as far as may be applicable in relation to the interpretation of the said order as it applies in relation to the interpretation of a Central Act. Section 21 of the General Clauses Act provides that where by any Central Act or Regulation, power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction, and conditions if any to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued. As paragraph 2(2) of the order in clear and unambiguous term makes provision of the General Clauses Act applicable to the Symbols Order, it need not be impressed that provisions of Section 21 of the General Clauses Act, also become applicable vesting power in the Election Commission which had issued the aforesaid order dated 16.4.1991 recognising the appellant as a National Party to rescind the said order as appellant in the elections to the Legislative Assemblies of the States mentioned above ceased to fulfil the conditions prescribed in paragraph 6 (2) of the Order read with para 7(1) thereof.”

11. Thus, the law on the point is conclusively settled by the above decision of the Supreme Court that a party once recognized cannot claim to enjoy continued recognition in perpetuity. It has to show the minimum electoral support for recognition or continued recognition, as measured in terms of paragraph 6A and 6C of the Symbols Order, at subsequent general election to retain the recognition. It is relevant to note here that the above decision of the Supreme Court was rendered in 1996, much before the Symbols Order was amended in December, 2000 and later in May, 2005 to expressly provide in para 6C, quoted above, that the political parties which fail to fulfil the conditions for continued recognition as prescribed in paras 6A and 6B would be de-recognised.

12. As already stated, the Party does not fulfil the conditions for recognition as a State Party in the State of Jharkhand as laid down in the above quoted paragraph 6A of the Symbols Order either at the general election to the House of the People held in 2009 or at the relevant last general election to the Legislative Assembly in the State of Jharkhand.

13. Having regard to the above, the Commission is satisfied that the 'Janata Dal (United)' is no longer entitled to recognition as a State Party in Jharkhand under the provisions of paragraphs 6A and 6C of the Symbols Order. Accordingly, the Janata Dal (United) shall hereafter cease to be recognized as a State Party in the State of Jharkhand. The Party will, however, continue to be recognized as a

State Party in the State of Bihar with the symbol “Arrow” as its exclusively reserved symbol in the said State of Bihar.

Ordered accordingly.

(V.S. Sampath)
Election Commissioner

(Navin B. Chawla)
Chief Election Commissioner

(Dr. S.Y. Quraishi)
Election Commissioner

Place: New Delhi

Dated: 29th July, 2010

In re: - Marumalarchi Dravida Munnetra Kazhagam – Withdrawal of recognition as a State Party in the State of Tamil Nadu

ORDER

The 'Marumalarchi Dravida Munnetra Kazhagam' (hereinafter referred to as 'the Party') is a recognized State Party in the State of Tamil Nadu with the symbol "Top" reserved for it in the said State under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as 'Symbols Order').

2. The issue to be decided here is about withdrawal of its recognition as State Party in Tamil Nadu on its failure to fulfil the conditions at the subsequent elections, under the provisions of paragraphs 6A and 6C of the Symbols Order.

3. The recognition of political parties and their continued recognition as state party are governed by the provisions of paragraphs 6A and 6C of the Symbols Order. For facility of reference the said paragraphs 6A and 6C are reproduced below:-

“6A. Conditions for recognition as a State Party – A Political Party shall be eligible for recognition as a State Party in a state, if, and only if, any of the following conditions is fulfilled:

- (i) At the last general election to the Legislative Assembly of the State, the candidates set up by the party have secured not less than six percent of the total valid votes polled in the State; and, in addition,*

- the party has returned at least two members to the Legislative Assembly of that state at such general election; or*
- (ii) At the last general election to the House of the People from that State, the candidates set up by the party have secured not less than six percent of the total valid votes polled in the State; and, in addition, the party has returned at least one member to the House of the People from that State at such general election; or*
 - (iii) At the last general election to the Legislative Assembly of the State, the party has won at least three percent of the total number of seats in the Legislative Assembly, (any fraction exceeding half being counted as one), or at least three seats in the Assembly, whichever is more; or*
 - (iv) At the last general election to the House of the People from the State, the party has returned at least one member to the House of the People for every 25 members or any fraction thereof allotted to that state.*

6C. Conditions for continued recognition as a National or State Party. – *If a political party is recognized as a State party under paragraph 6A, or as a National Party under paragraph 6B, the question whether it shall continue to be so recognized after any subsequent general election to the House of the People or, as the case may be, to the Legislative Assembly of the state concerned, shall be dependent upon the fulfillment by it of the conditions specified in the said paragraphs on the results of that general election.”*

4. In pursuance of the provisions of the above referred paragraph 6C of the Symbols Order, a review of the poll performance of every political party is required to be made by the Election Commission after every general election to the House of the People or, as the case may be, to the State Legislative Assembly.

5. Accordingly, the poll performance of the party, at the general election to the House of the People, held in 2009 and general election to the Legislative Assembly of Tamil Nadu held in 2006, was

reviewed by the Commission in terms of the said paragraphs 6A and 6C of the Symbols Order.

6. The poll performance of the party at the general election to the House of the People, 2009 and to the general election to the existing Legislative Assembly of Tamil Nadu (2006) is given below:-

Name of election	Name of the State	% of valid votes polled	No. of seats won, if any
House of the People, 2009	Tamil Nadu	3.67%	1
L.A. of Tamil Nadu, 2006	Tamil Nadu	5.98%	6

7. Thus, the party's performance at the general election to the House of the People (2009) and Legislative Assembly of the State of Tamil Nadu (2006) did not meet any of the requirements laid down for the continued recognition of the said party as a State Party in Tamil Nadu.

8. The Election Commission gave the party an opportunity of making a representation to the Commission as to why the recognition should not be withdrawn. A show cause notice was issued to the party on 25th May, 2010 and the party was asked to make its representation, if any, by 11th June, 2010. The party submitted its reply and has inter-alia submitted that 5.98% of votes secured by the party in general election to the Legislative Assembly of Tamil Nadu held in 2006, should be counted as 6%, treating any fraction

exceeding one half as one as is being counted in the cases of percentage of seats won. In support of their claim of such counting, the party has also referred to the Article 55 of the Constitution of India which provides for manner of election of President and has submitted that treating a fraction exceeding one half as one, is constitutionally recognized. They have also given their own formula of counting of percentage of votes and have requested the Commission to drop the proceedings against the party and allow to continue its status as a State party.

9. The Commission further granted the party a personal hearing in the matter on 21st July, 2010. Shri Vaiko, General Secretary, Shri A. Ganesa Murthy, M.P. and Shri A.S. Pandian of the party, appeared before the full Commission on the scheduled date. Shri Viko mainly reiterated the submissions and contentions made in the Party's written reply to the Commission's show cause notice.

10. The Commission has carefully considered the submission of Shri Viko. His main contention is treating a fraction exceeding one-half being rounded as one is a constitutionally recognized principle under Article 55 of the Constitution of India. The contention of the party that the fraction exceeding one-half be counted as one and 5.98% to be rounded off to 6% is not permissible under the Symbols Order. Even his reference to the provisions of Article 55 of the Constitution is not apt, because the provisions of that Article prescribe a special formula for working out the number of votes to be assigned to members of electoral college for the Presidential election

and do not lay down a universal rule or formula that all fractions exceeding one-half should be counted as one, in all cases. It is noteworthy to mention here that in a similar case of the same party i.e. 'Marumalarchi Dravida Munnetra Kazhagam', decided vide the Commission's Order dated 29.08.1997, the Commission did not agree to treat the poll performance of 3.60% as 4% (which was the minimum requirement of votes at that time) and the recognition granted to the party was withdrawn.

11. Shri Vaiko also submitted that the Commission has the power under the Constitution, Representation of the People Act, 1951 and the Conduct of Elections Rules, 1961 to amend the Symbols Order, so as to promote the cause of free and fair elections, in the interest of democracy. Shri Vaiko is right in his above submission. Undoubtedly, there cannot be any dispute with regard of this proposition of law. The Symbols Order is a creation of the Commission and its constitutional validity is fully upheld by the Supreme Court in Kanahiya Lal Omar Vs. R.K.Trivedi (AIR 1986 SC 111). It is the Commission, and the Commission alone, which can amend the same in the light of its experience and exigencies of the situation. But the Commission has to see, while making any amendment, that it causes no prejudice to any party or places no party in an advantageous position vis-à-vis another similarly placed party, meting out a discriminatory treatment to that party.

12. To consider his further request to issue clarification and direction by using the powers of the Commission under paragraph 18

of the Symbols Order, the said para is reproduced as under for ease of reference:-

“18. Power of Commission to issue instructions and directions.

The Commission, may issue instructions and directions-

(a) for the clarification of any of the provisions of this Order;

(b) for the removal of any difficulty which may arise in

relation to the implementation of any such provisions; and

(c) in relation to any matter with respect to the reservation

and allotment of symbols and recognition of political parties,

for which this Order makes no provision or makes insufficient

provision, and provision is in the opinion of the Commission

necessary for the smooth and orderly conduct of elections.”

From the above provisions of paragraph 18 of the Symbols Order, it is evident that it cannot be resorted to in the present case of the Party as the provisions for recognition and continued recognition of State parties are already laid down under paragraphs 6A and 6C of the Symbols Order.

13. The Commission has considered the formula suggested by the party that when there are six returned members to the Tamil Nadu Legislative Assembly (2006), whereas the requirement is of two members, the remaining four returned members should be given extra weightage of at least 0.01% of votes making the party's performance to the tune of 6.02% (fulfilling the condition of 6%). It cannot, however, grant any relief to the party on the lines suggested

in the present case, as there is no provision in the Symbols Order to that effect.

14. The provisions of paragraph 6A and 6C of the Symbols Order, quoted in paragraph 3 above, would show that the recognition, and also the continued recognition, of a political party as State Party depend on the fulfilment of the stipulated conditions referred to above. If a political party becomes eligible and is granted recognition as a State Party on fulfilment of the stipulated conditions for recognition, it will continue to enjoy that status so long as it continues to fulfil those conditions at the subsequent general elections, as has been expressly provided in paragraph 6C of the Symbols Order. Therefore, the poll performance of every recognized political party needs to be reviewed under the said paragraphs after every general election held in a State either to Lok Sabha or to the State Legislative Assembly. The Supreme Court in Janata Dal (Samajwadi) Vs. Election Commission of India (AIR 1996 SC 577) has upheld this position. The relevant portion from the judgment of the Apex Court says: -

“..... it cannot be conceived that a political party having been recognised as a National party or State party as the case may be on having fulfilled the conditions prescribed in paragraph 6(2) shall continue as such in perpetuity although it has forfeited the right to be recognised as a National party or a State party. In paragraph 2(2) of the said Symbols Order, it has been specifically provided that the General Clauses Act, 1897 shall as far as may be applicable in relation to the interpretation of the said order as it applies in relation to the interpretation of a Central Act. Section 21 of the General Clauses Act provides that where by any Central

Act or Regulation, power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction, and conditions if any to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued. As paragraph 2(2) of the order in clear and unambiguous term makes provision of the General Clauses Act applicable to the Symbols Order, it need not be impressed that provisions of Section 21 of the General Clauses Act, also become applicable vesting power in the Election Commission which had issued the aforesaid order dated 16.4.1991 recognising the appellant as a National Party to rescind the said order as appellant in the elections to the Legislative Assemblies of the States mentioned above ceased to fulfill the conditions prescribed in paragraph 6 (2) of the Order read with para 7(1) thereof.”

15. Thus, the law on the point is conclusively settled by the above decision of the Supreme Court that a party once recognized cannot claim to enjoy continued recognition in perpetuity. It has to show the minimum electoral support for recognition or continued recognition, as measured in terms of paragraph 6A and 6C of the Symbols Order, at every general election. It is relevant to note here that the above decision of the Supreme Court was rendered in 1996, much before the Symbols Order was amended in December, 2000 and later in May, 2005 to expressly provide in para 6C, quoted above, that the political parties which fail to fulfil the conditions for continued recognition as prescribed in paras 6A and 6B would be de-recognised.

16. As already stated, the Party does not fulfil the conditions for recognition as a State Party in the State of Tamil Nadu as laid

down in the above quoted paragraph 6A of the Symbols Order either at the last general election to the House of the People held in 2009 or at the relevant last general election to the Legislative Assembly in the State of Tamil Nadu held in 2006.

17. Having regard to the above, the Commission is satisfied that the Marumalarchi Dravida Munnetra Kazhagam is no longer entitled to recognition as a State Party in Tamil Nadu under the provisions of paragraphs 6A and 6C of the Symbols Order. Accordingly, the said party shall hereafter cease to be recognized as a State Party in the State of Tamil Nadu. The party will, however, continue as a registered un-recognised political party and will be entitled to use the symbol 'Top' earlier reserved for it for six years from the date of the Order subject to fulfillment of the requirements of para 10A of the Symbols Order.

Ordered accordingly.

(V.S. Sampath)

Election Commissioner

(Navin B. Chawla)

Chief Election Commissioner

(Dr. S.Y. Quraishi)

Election Commissioner

Place: New Delhi

Dated: 29th July, 2010

In re: - Pattali Makkal Katchi – Withdrawal of recognition as a State Party in the U.T. of Puducherry

ORDER

The 'Pattali Makkal Katchi' (hereinafter referred to as 'the Party') is a recognized State Party in Puducherry and Tamil Nadu with the symbol "Mango" reserved for it in the said UT/State under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as 'Symbols Order').

2. The issue to be decided here is about withdrawal of its recognition as State Party in UT of Puducherry on its failure to fulfil the conditions at the subsequent elections, under the provisions of paragraphs 6A and 6C of the Symbols Order.

3. The recognition of political parties and their continued recognition as state party are governed by the provisions of paragraphs 6A and 6C of the Symbols Order. For facility of reference the said paragraphs 6A and 6C are reproduced below:-

“6A. Conditions for recognition as a State Party – A Political Party shall be eligible for recognition as a State Party in a state if, and only if, any of the following conditions is fulfilled:

- (i) At the last general election to the Legislative Assembly of the State, the candidates set up by the party have secured not less than six percent of the total valid votes polled in the State; and in, addition,*

- the party has returned at least two members to the Legislative Assembly of that state at such general election; or*
- (ii) At the last general election to the House of the People from that State, the candidates set up by the party have secured not less than six percent of the total valid votes polled in the State; and, in addition, the party has returned at least one member to the House of the People from that State at such general election; or*
 - (iii) At the last general election to the Legislative Assembly of the State, the party has won at least three percent of the total number of seats in the Legislative Assembly, (any fraction exceeding half being counted as one), or at least three seats in the Assembly, whichever is more; or*
 - (iv) At the last general election to the House of the People from the State, the party has returned at least one member to the House of the People for every 25 members or any fraction thereof allotted to that state.*

6C. Conditions for continued recognition as a National or State Party. – *If a political party is recognized as a State party under paragraph 6A, or as a National Party under paragraph 6B, the question whether it shall continue to be so recognized after any subsequent general election to the House of the People or, as the case may be, to the Legislative Assembly of the state concerned, shall be dependent upon the fulfillment by it of the conditions specified in the said paragraphs on the results of that general election.”*

4. In pursuance of the provisions of the above referred paragraph 6C of the Symbols Order, a review of the poll performance of every political party is required to be made by the Election Commission after every general election to the House of the People or, as the case may be, to the State Legislative Assembly.

5. Accordingly, the poll performance of the party, at the general election to the House of the People, held in 2009 and general election

to the Legislative Assembly of Puducherry held in 2006, was reviewed by the Commission in terms of the said paragraphs 6A and 6C of the Symbols Order.

6. The poll performance of the party at the general election to the House of the People, 2009 and the general election to the existing Legislative Assembly of Puducherry (2006) is given below:-

Name of election	Name of the UT	% of valid votes polled	No. of seats won, if any
House of the People, 2009	Puducherry	34.29%	Nil
L.A. of Puducherry, 2006	Puducherry	3.80%	2

7. Thus, the party's performance at the general election to the House of the People (2009) and Legislative Assembly of the UT of Puducherry (2006) did not meet any of the requirements laid down for the continued recognition of the said party as a State Party in Puducherry.

8. The Election Commission gave the party an opportunity of making a representation to the Commission as to why the recognition should not be withdrawn. A show cause notice was issued to the party on 25th May, 2010 and the party was asked to make its representation, if any, by 11th June, 2010. The party submitted its reply and represented that though the party did not win any seat in Lok Sabha, it secured 34.31% votes and secured 2nd position in the

election. The party also returned two candidates to the Legislative Assembly of UT of Puducherry in the Assembly election held in 2006.

9. The Commission further granted the party a personal hearing in the matter on 21st July, 2010. S/Shri R. Velu, IAS (Rtd.) and R. Anandharaman, M.L.A. of the party, appeared before the full Commission on the scheduled date. They also submitted a letter dated 19.07.2010 before the Commission at the time of hearing and made the following contentions and submissions: -

- (a) Though the party did not win any seat in Lok Sabha, it secured 34.31% votes (whereas the requirement is to secure not less than 6%) and secured 2nd position in the election.
- (b) The party also returned two candidates to the Legislative Assembly of UT of Puducherry held in 2006. These two candidates secured 51.69% and 42.49% of Votes polled, respectively.
- (c) The party also submitted that there is an ambiguity in the criteria under paragraph 6(a) 2(i) of the Symbols Order that 6% of votes and in addition at least one member to Lok Sabha which may not be enforceable in the UT of Pudducherry as there is only **one** seat of Lok Sabha. As per this condition only the winning party in Pudducherry will be recognized and the party like PMK which though has got second position but cannot get one Member of Lok Sabha as there is only one seat in UT.

(d) That the provisions may be suitably amended by the Commission using powers under paragraph 18 of the Symbols Order so as to apply to a small UT like Puducherry which has only one seat of Lok Sabha.

10. The Commission has carefully considered the above submissions of the Party. The provisions of paragraph 6A and 6C of the Symbols Order, quoted in paragraph 3 above, would show that the recognition, and also the continued recognition, of a political party as State Party depend on the fulfilment of the stipulated conditions referred to above. If a political party becomes eligible and is granted recognition as a State Party on fulfilment of the stipulated conditions for recognition, it will continue to enjoy that status so long as it continues to fulfil those conditions at the subsequent general elections, as has been expressly provided in paragraph 6C of the Symbols Order. Therefore, the poll performance of every recognized political party needs to be reviewed under the said paragraphs after every general election held in a State either to Lok Sabha or to the State Legislative Assembly. The Supreme Court in Janata Dal (Samajwadi) Vs. Election Commission of India (AIR 1996 SC 577) has upheld this position. The relevant portion from the judgment of the Apex Court says: -

“..... it cannot be conceived that a political party having been recognised as a National party or State party as the case may be on having fulfilled the conditions prescribed in paragraph 6(2) shall continue as such in perpetuity although it has forfeited the right to be recognised as a National

party or a State party. In paragraph 2(2) of the said Symbols Order, it has been specifically provided that the General Clauses Act, 1897 shall as far as may be applicable in relation to the interpretation of the said order as it applies in relation to the interpretation of a Central Act. Section 21 of the General Clauses Act provides that where by any Central Act or Regulation, power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction, and conditions if any to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued. As paragraph 2(2) of the order in clear and unambiguous term makes provision of the General Clauses Act applicable to the Symbols Order, it need not be impressed that provisions of Section 21 of the General Clauses Act, also become applicable vesting power in the Election Commission which had issued the aforesaid order dated 16.4.1991 recognising the appellant as a National Party to rescind the said order as appellant in the elections to the Legislative Assemblies of the States mentioned above ceased to fulfill the conditions prescribed in paragraph 6 (2) of the Order read with para 7(1) thereof.”

11. Thus, the law on the point is conclusively settled by the above decision of the Supreme Court that a party once recognized cannot claim to enjoy continued recognition in perpetuity. It has to show the minimum electoral support for recognition or continued recognition, as measured in terms of paragraph 6A and 6C of the Symbols Order, at every general election. It is relevant to note here that the above decision of the Supreme Court was rendered in 1996, much before the Symbols Order was amended in December, 2000

and later in May, 2005 to expressly provide in para 6C, quoted above, that the political parties which fail to fulfil the conditions for continued recognition as prescribed in paras 6A and 6B would be de-recognised.

12. As already stated, the Party does not fulfil the conditions for recognition as a State Party in the UT of Puducherry as laid down in the above quoted paragraph 6A of the Symbols Order either at the last general election to the House of the People held in 2009 or at the last general election to the Legislative Assembly in the UT of Puducherry held in 2006. The Commission has considered all the submissions made by Shri Velu, at the hearing. The Commission has to go by provisions of the Symbols Order as applicable now. The provisions of Para 6A have been in force from 2005 onwards and it was by virtue of the same provisions that the PMK continued its recognition in Puducherry after the 2004 Lok Sabha election. The Commission has consistently and strictly applied the provisions of the Symbols Order for determining the eligibility of the recognized parties for continued recognition, in the past. The Commission cannot take a different view in this case.

13. As regards the contention that going by the criteria fixed in clause (ii) of Para 6A, only the Party that wins the Lok Sabha seat will be eligible for recognition, it has to be noted that alternative conditions have been provided in Para 6A to attain recognition based on the poll performance in the general election to the Legislative

Assembly also. The fact is that the Party has not fulfilled any of the criteria in Para 6A of the Symbols Order.

14. Having regard to the above, the Commission is satisfied that the Pattali Makkal Katchi is no longer entitled to recognition as a State Party in Puducherry under the provisions of paragraphs 6A and 6C of the Symbols Order. Accordingly, the said Party shall hereafter cease to be recognized as a State Party in the UT of Puducherry and shall not be entitled to the exclusive reservation of the symbol “Mango” as its reserved symbol in the UT of Puducherry. The Party will, however, continue to be a recognized State Party in the State of Tamil Nadu and being a State Party in Tamil Nadu, will be entitled to use the said symbol ‘Mango’ in UT of Puducherry under para 10 of the Symbols Order.

Ordered accordingly.

(V.S. Sampath)
Election Commissioner

(Navin B. Chawla)
Chief Election Commissioner

(Dr. S.Y. Quraishi)
Election Commissioner

Place: New Delhi

Dated: 29th July, 2010

In re: - Samajwadi Party – Withdrawal of recognition as a State Party in the States of Madhya Pradesh and Uttarakhand

ORDER

The ‘Samajwadi Party’ (hereinafter referred to as ‘the Party’) is a recognized State Party in the States of Madhya Pradesh, Uttarakhand and Uttar Pradesh with the symbol “Bicycle” reserved for it in the said States under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as ‘Symbols Order’).

2. The issue to be decided here is about withdrawal of its recognition as State Party in the States of Uttarakhand and Madhya Pradesh on its failure to fulfil the conditions at the subsequent elections, under the provisions of paragraphs 6A and 6C of the Symbols Order.

3. The recognition of political parties and their continued recognition as State Party is governed by the provisions of paragraphs 6A and 6C of the Symbols Order. For facility of reference the said paragraphs 6A and 6C are reproduced below:-

“6A. Conditions for recognition as a State Party – A Political Party shall be eligible for recognition as a State Party in a state, if, and only if, any of the following conditions is fulfilled:

- (i) *At the last general election to the Legislative Assembly of the State, the candidates set up by the party have secured not less than six percent of the total valid votes polled in the State; and, in addition, the party has returned at least two members to the Legislative Assembly of that state at such general election; or*
- (ii) *At the last general election to the House of the People from that State, the candidates set up by the party have secured not less than six percent of the total valid votes polled in the State; and, in addition, the party has returned at least one member to the House of the People from that State at such general election; or*
- (iii) *At the last general election to the Legislative Assembly of the State, the party has won at least three percent of the total number of seats in the Legislative Assembly, (any fraction exceeding half being counted as one), or at least three seats in the Assembly, whichever is more; or*
- (iv) *At the last general election to the House of the People from the State, the party has returned at least one member to the House of the People for every 25 members or any fraction thereof allotted to that state.*

6C. Conditions for continued recognition as a National or State Party. – *If a political party is recognized as a State party under paragraph 6A, or as a National Party under paragraph 6B, the question whether it shall continue to be so recognized after any subsequent general election to the House of the People or, as the case may be, to the Legislative Assembly of the state concerned, shall be dependent upon the fulfillment by it of the conditions specified in the said paragraphs on the results of that general election.”*

4. In pursuance of the provisions of the above referred paragraph 6C of the Symbols Order, a review of the poll performance of every political party is required to be made by the Election Commission

after every general election to the House of the People or, as the case may be, to the State Legislative Assembly.

5. Accordingly, the poll performance of the Party, at the general election to the House of the People, held in 2009 and general elections to the Legislative Assemblies of Uttarakhand and Madhya Pradesh held in 2007 and 2008 respectively was reviewed by the Commission in terms of the said paragraphs 6A and 6C of the Symbols Order.

6. The poll performance of the Party at the general election to the House of the People, 2009 and the general elections to the existing Legislative Assemblies of Uttarakhand and Madhya Pradesh is given below:-

Name of election	Name of the States	% of votes Polled	No. of seats won, if any
House of the People, 2009	Uttarakhand	1.83%	Nil
L.A. of Uttarakhand, 2007	Uttarakhand	4.96%	Nil
House of the People, 2009	M. P.	2.83%	Nil
L.A. of Madhya Pradesh, 2008	M.P.	1.99%	1

7. Thus, the Party's performance at the general elections to the House of the People (2009) and to the existing Legislative Assemblies of the States of Uttarakhand and Madhya Pradesh did not meet any of the requirements laid down for the continued

recognition of the said Party as a State Party in the States of Uttarakhand and Madhya Pradesh.

8. The Election Commission gave the Party an opportunity of making a representation to the Commission as to why its recognition in the aforesaid two States should not be withdrawn. A show cause notice was issued to the Party on 25th May, 2010, and the Party was asked to make its representation, if any, by 11th June, 2010. The party submitted its reply to the said show cause notice of the Commission, vide its letter dated 10.06.2010. The Party requested the Commission to give one more chance to it till the next general elections to the Legislative Assemblies of the two States.

9. The Commission further granted the Party an opportunity of a personal hearing in the matter on 21st July, 2010. However, the Party did not appear for the said hearing. In view of this, the Commission has to decide the matter on the basis of available facts and the provisions of the Symbols Order.

10. The provisions of paragraph 6A and 6C of the Symbols Order, quoted in paragraph 3 above, would show that the recognition, and also the continued recognition, of a political party as State Party depends on the fulfilment of the stipulated conditions laid down in the said para 6A. If a political party becomes eligible and is granted recognition as a State Party on fulfilment of the stipulated conditions for recognition, it will continue to enjoy that status so long as it continues to fulfil those conditions at the subsequent general

elections, as has been expressly provided in paragraph 6C of the Symbols Order. Therefore, the poll performance of every recognized political party needs to be reviewed under the said paragraphs after every general election held in a State either to Lok Sabha or to the State Legislative Assembly. The Supreme Court in Janata Dal (Samajwadi) Vs. Election Commission of India (AIR 1996 SC 577) has upheld this position. The relevant portion from the judgment of the Apex Court says: -

“..... it cannot be conceived that a political party having been recognised as a National party or State party as the case may be on having fulfilled the conditions prescribed in paragraph 6(2) shall continue as such in perpetuity although it has forfeited the right to be recognised as a National party or a State party. In paragraph 2(2) of the said Symbols Order, it has been specifically provided that the General Clauses Act, 1897 shall as far as may be applicable in relation to the interpretation of the said order as it applies in relation to the interpretation of a Central Act. Section 21 of the General Clauses Act provides that where by any Central Act or Regulation, power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction, and conditions if any to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued. As paragraph 2(2) of the order in clear and unambiguous term makes provision of the General Clauses Act applicable to the Symbols Order, it need not be impressed that provisions of Section 21 of the General Clauses Act, also become applicable vesting power in the Election Commission which had issued the aforesaid order dated 16.4.1991 recognising the appellant as a National Party to rescind the said order as appellant in the elections

to the Legislative Assemblies of the States mentioned above ceased to fulfill the conditions prescribed in paragraph 6 (2) of the Order read with para 7(1) thereof.”

11. Thus, the law on the point is conclusively settled by the above decision of the Supreme Court that a party once recognized cannot claim to enjoy continued recognition in perpetuity. It has to show the minimum electoral support for recognition or continued recognition, as measured in terms of paragraph 6A and 6C of the Symbols Order, at every general election. It is relevant to note here that the above decision of the Supreme Court was rendered in 1996, much before the Symbols Order was amended in December, 2000 and later in May, 2005 to expressly provide in para 6C, quoted above, that the political parties which fail to fulfil the conditions for continued recognition as prescribed in paras 6A and 6B would be de-recognised.

12. As already stated, the Party does not fulfil the conditions for recognition as a State Party in the States of Uttarakhand and Madhya Pradesh as laid down in the above quoted paragraph 6A of the Symbols Order either at the last general election to the House of the People held in 2009 or at the relevant last general election to the Legislative Assemblies in the States of Uttarakhand and Madhya Pradesh held in 2007 and 2008 respectively.

13. Having regard to the above, the Commission is satisfied that the ‘Samajwadi Party’ is no longer entitled to recognition as a

State Party in the States of Uttarakhand and Madhya Pradesh under the provisions of paragraphs 6A and 6C of the Symbols Order. Accordingly, the said Party shall hereafter cease to be recognized as a State Party in the States of Uttarakhand and Madhya Pradesh and shall not be entitled to the exclusive reservation of the symbol "Bicycle" as its reserved symbol in the States of Uttarakhand and Madhya Pradesh.

Ordered accordingly.

(V.S. Sampath)
Election Commissioner

(Navin B Chawla)
Chief Election Commissioner

(Dr. S.Y. Quraishi)
Election Commissioner

Place: New Delhi
Dated: 29th July, 2010

In re: - Jharkhand Mukti Morcha – Withdrawal of recognition as a State Party in the State of Orissa.

ORDER

The 'Jharkhand Mukti Morcha' (hereinafter referred to as 'the Party') is a recognized State Party in the States of Jharkhand and Orissa with the symbol "Bow & Arrow" reserved for it in the said States under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as 'Symbols Order').

2. The issue to be decided here is about withdrawal of its recognition as State Party in Orissa on its failure to fulfil the conditions at the general elections to the House of the People and the Legislative Assembly of Orissa held in 2009, under the provisions of paragraphs 6A and 6C of the Symbols Order.

3. The recognition of political parties and their continued recognition as state party are governed by the provisions of paragraphs 6A and 6C of the Symbols Order. For facility of reference, the said paragraphs 6A and 6C are reproduced below: -

“6A. Conditions for recognition as a State Party – A Political Party shall be eligible for recognition as a State Party in a state if, and only if, any of the following conditions is fulfilled:

- (i) *At the last general election to the Legislative Assembly of the State, the candidates set up by the party have secured not less than six percent of the total valid votes polled in the State; and in, addition, the party has returned at least two members to the Legislative Assembly of that state at such general election; or*
- (ii) *At the last general election to the House of the People from that State, the candidates set up by the party have secured not less than six percent of the total valid votes polled in the State; and, in addition, the party has returned at least one member to the House of the People from that State at such general election; or*
- (iii) *At the last general election to the Legislative Assembly of the State, the party has won at least three percent of the total number of seats in the Legislative Assembly, (any fraction exceeding half being counted as one), or at least three seats in the Assembly, whichever is more; or*
- (iv) *At the last general election to the House of the People from the State, the party has returned at least one member to the House of the People for every 25 members or any fraction thereof allotted to that state.*

6C. Conditions for continued recognition as a National or State Party. – *If a political party is recognized as a State party under paragraph 6A, or as a National Party under paragraph 6B, the question whether it shall continue to be so recognized after any subsequent general election to the House of the People or, as the case may be, to the Legislative Assembly of the state concerned, shall be dependent upon the fulfillment by it of the conditions specified in the said paragraphs on the results of that general election.”*

4. In pursuance of the provisions of the above referred paragraph 6C of the Symbols Order, a review of the poll performance of every political party is required to be made by the Election Commission after every general election to the House of the People or, as the case may be, to the State Legislative Assembly.

5. Accordingly, the poll performance of the Party, at the general election to the House of the People from Orissa, and the general election to the Legislative Assembly of Orissa, both held in 2009, was reviewed by the Commission in terms of the said paragraphs 6A and 6C of the Symbols Order.

6. The poll performance of the Party at the aforesaid general elections is given below: -

Name of election	Name of the State	% of valid votes polled	No. of seats won, if any
House of the People, 2009	Orissa	1.75%	Nil
Legislative Assembly of Orissa, 2009	Orissa	1.58%	Nil

7. Thus, the Party's performance at the general election to the House of the People (2009) from Orissa and to the Legislative Assembly of the State of Orissa (2009) did not meet any of the requirements laid down for the continued recognition of the said party as a State Party in Orissa.

8. The Election Commission decided to give the Party an opportunity of making a representation to the Commission as to why its recognition in Orissa may not be withdrawn. Accordingly, a show-cause notice was issued to the Party on 25th May, 2010 and the Party was asked to make its representation, if any, by 11th June, 2010. The party did not submit any reply to the said show cause notice of the Commission.

9. The Commission decided to grant the party a personal hearing in the matter on 21st July, 2010. No representative on behalf of the Party appeared for the said hearing, but the Party informed that due to late receipt of the notices and as the office-bearers of the party remained busy in organizational elections of the Party, they could not furnish reply to the show cause notice and attend hearing on 21-07-2010. The Party requested for another date of hearing and the Commission agreed to the request and fixed 13th August, 2010 as the date for hearing the Party.

10. Shri Supriyo Bhattacharya, Central Organisation Secretary and Shri Binod Kumar Pandey, Executive Member of Central Committee of the Party, appeared before the Commission on the scheduled date. They also jointly submitted a letter before the Commission at the time of hearing and made the following contentions and submissions: -

- (a) The Party is a duly recognized by the Commission and is fully bearing true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and believes in upholding the sovereignty, unity and integrity of India. However, in the syllabus for twelfth class in the book titled 'Prayogic Odiya Bhasha' (at page 127 of the book) in Orissa, the Party has been termed as extremists. This was a false propaganda against the Party, and such propaganda against the Party created a wrong impression about the Party in the minds of electors in Orissa. As a result of this, the Party's poll performance got adversely affected and the Party could not fulfil the prescribed

criteria for continued recognition as a State party in Orissa.

- (b) The Party requested the Commission to get the alleged negative reporting against the Party banned and also allow the Party to retain status of recognized State Party in Orissa.

11. The contentions made by the Party are of no help to the Party in the matter of allowing it the continued status of recognized State Party in Orissa. The Commission, in the past also, has not gone into the reasons for failure in the poll performance of a party at any election.

12. The provisions of paragraph 6A and 6C of the Symbols Order, quoted in paragraph 3 above, would show that the recognition, and also the continued recognition, of a political party as State Party depends on the fulfilment of the stipulated conditions referred to above. If a political party becomes eligible and is granted recognition as a State Party on fulfilment of the stipulated conditions for recognition, it will continue to enjoy that status so long as it continues to fulfil those conditions at the subsequent general elections, as has been expressly provided in paragraph 6C of the Symbols Order. Therefore, the poll performance of every recognized political party needs to be reviewed under the said paragraphs after every general election held in a State either to Lok Sabha or to the State Legislative Assembly. The Supreme Court in Janata Dal (Samajwadi) Vs. Election Commission of India (AIR 1996 SC 577) has upheld this position. The relevant portion from the judgment of the Apex Court says: -

“..... it cannot be conceived that a political party having been recognised as a National party or State party as the case may be on having fulfilled the conditions prescribed in paragraph 6(2) shall continue as such in perpetuity although it has forfeited the right to be recognised as a National party or a State party. In paragraph 2(2) of the said Symbols Order, it has been specifically provided that the General Clauses Act, 1897 shall as far as may be applicable in relation to the interpretation of the said order as it applies in relation to the interpretation of a Central Act. Section 21 of the General Clauses Act provides that where by any Central Act or Regulation, power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction, and conditions if any to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued. As paragraph 2(2) of the order in clear and unambiguous term makes provision of the General Clauses Act applicable to the Symbols Order, it need not be impressed that provisions of Section 21 of the General Clauses Act, also become applicable vesting power in the Election Commission which had issued the aforesaid order dated 16.4.1991 recognising the appellant as a National Party to rescind the said order as appellant in the elections to the Legislative Assemblies of the States mentioned above ceased to fulfill the conditions prescribed in paragraph 6 (2) of the Order read with para 7(1) thereof.”

13. Thus, the law on the point is conclusively settled by the above decision of the Supreme Court that a Party once recognized cannot claim to enjoy continued recognition in perpetuity. It has to show the minimum electoral support for recognition or continued recognition, as measured in terms of paragraph 6A and 6C of the Symbols Order, at every general election. It is relevant to note here that the above decision of the Supreme Court was rendered in 1996, much before the Symbols Order was amended in December, 2000

and later in May, 2005 to expressly provide in para 6C, quoted above, that the political parties which fail to fulfil the conditions for continued recognition as prescribed in paras 6A and 6B would be de-recognised.

14. As already stated, the Party does not fulfil the conditions for continued recognition as a State Party in the State of Orissa as laid down in the above quoted paragraph 6A of the Symbols Order, either at the last general election to the House of the People held in 2009 or at the general election to the Legislative Assembly in the State of Orissa, held in 2009.

15. Having regard to the above, the Commission is satisfied that the 'Jharkhand Mukti Morcha' is no longer entitled to recognition as a State Party in Orissa under the provisions of paragraphs 6A and 6C of the Symbols Order. Accordingly, the said Party shall hereafter cease to be recognized as a State Party in the State of Orissa. The Party will, however, continue to be recognized as a State Party in the State of Jharkhand with the symbol "Bow & Arrow" as its reserved symbol in the said State of Jharkhand.

Ordered accordingly.

(Dr S.Y. Quraishi)
Chief Election Commissioner

(V.S. Sampath)
Election Commissioner

Place: New Delhi
Dated: 26th August, 2010