



Supreme Court of India
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Dated the, July 23, 2014

CONFIDENTIAL

OPINION

Sub: Recognition of Leader of Opposition in Sixteenth Lok Sabha

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I have received a Brief for Opinion on the aforesaid subject from the Secretary-General, Lok Sabha dated 21st July, 2014, bearing No. 46/22/2014/T(B).

I have gone through the Brief for Opinion as also its enclosures.

2. The short point is whether the Indian National Congress (INC) having a strength of 44 members in the Lok Sabha is entitled to have one of its members designated as the "Leader of Opposition" in Lok Sabha.

3. It is necessary to give the legal and historical background, before coming to the conclusion on the aforementioned issue and certain queries stated in the Brief for Opinion.

4. Article 100(3) of the Constitution of India provides that "until Parliament by law otherwise provides, the quorum to constitute a meeting of either House shall be one-tenth of the total number of members of the House."

5. No law to the contrary has been made by the Parliament. The Brief for Opinion indicates that one-tenth of the strength of the Lok Sabha is 55.

6. Article 118 of the Constitution of India relates to "Rules of Procedure" for each House of Parliament. The House can make Rules for regulating its procedure and for conduct of its business. Sub-Clause (2) provides that until rules are made under clause (1), the rules prevalent before the commencement of the Constitution shall continue to have effect, in relation to Parliament subject to such modifications and may be made by Parliament. Accordingly, the Constituent Assembly (Legislative) Rules of Procedure and Conduct of Business in force immediately before the commencement of the Indian Constitution were modified and adopted by the Speaker, of Lok Sabha under Article 118(2) of the Constitution. Such rules are called "Rules of Procedure and Conduct of Business in the House of the People" ("The Rules"). They were gazetted on 17th April, 1952. These Rules have been amended from time to time by the Speaker.

7. The Rules, amended from time to time, comprehensively regulate the procedure in Lok Sabha. Rule 389 deals with "Residuary Powers". The same is reproduced below:



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"All matters not specifically provided for in these rules and all questions relating to the detailed working of these rules shall be regulated in such manner as the Speaker may, from time to time, direct."

8. Certain Directions were issued by the First Speaker of the Lok Sabha late Shri G.V. Mavalankar, pursuant to the power contained in Rule 389. The First Edition of the Directions was brought out in 1956. Currently, the Eighth Edition is in vogue.

9. Directions 120 and 121 are reproduced below along with its Chapter headings:

"120. Recognition of Party or Group.

The Speaker may recognise an association of members as a Parliamentary Party or Group for the purpose of functioning in the House and the decision of the Speaker shall be final".

121. Conditions for recognition.

In recognising a Parliamentary Party or Group the Speaker shall take into consideration the following principles:—

- (1) An association of members who propose to form a Parliamentary Party—*
 - (a) shall have announced at the time of the general elections a distinct ideology and programme of Parliamentary work on which they have been returned to the House;*
 - (b) shall have an organisation both inside and outside the House; and*
 - (c) shall have at least a strength equal to the quorum fixed to constitute a sitting of the House, that is one-tenth of the total number of members of the House.*
- (2) An association of members to form a Parliamentary Group shall satisfy the conditions specified in parts (a) and (b) of clause (i) and shall have at least a strength of 30 members".*

10. The power to recognise a Parliamentary Party or Group for functioning in the House is solely that of the Speaker and the decision of the Speaker is final.

11. Direction 121 deals with consideration of certain principles for coming to a decision for recognition in Direction 120 above. Sub-rule (c) of Direction 121(1) provides that Parliamentary Party must have a strength equal to the quorum required for constituting a sitting of the House which is one-tenth of the total number of members in the Lok Sabha.

12. In the instant fact scenario, the position is that in the Sixteenth Lok Sabha constituted in May, 2014, the strength of the largest Opposition Party in the Lok Sabha i.e. the Indian National Congress is 44 while the quorum of the house is 55.



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13. The historical perspective set out in the Brief for Opinion shows that, till 1969, there was no Leader of Opposition in the Lok Sabha i.e. in the entire tenure of Late Pandit Nehru, as the first Prime Minister of India and even thereafter. The first Leader of Opposition was appointed as such in the Fourth Lok Sabha in the year 1969.

Similarly, there was no Leader of Opposition in the Fifth, Seventh and Eighth Lok Sabhas. The reason is that in the aforementioned Lok Sabhas no Opposition Party commanded a strength equal to the required quorum for a sitting of the House.

14. In view of the above position, it is clear to me that the Speaker is not obliged to recognise any member of the largest Opposition Party in the Lok Sabha as Leader of Opposition in case the said party doesn't have the strength equal to 1/10th of the quorum required for a sitting of the House.

15. However, the contrary point of view stated in the brief takes support of "The Salary and Allowances of Leaders of Opposition in Parliament Act, 1977" and the four other Parliamentary enactments i.e. (a) The Protection of Human Rights Act, 1993; (b) The Central Vigilance Commission Act, 2003; (c) The Right to Information Act, 2005; and (d) The Lokpal and Lokayuktas Act, 2013.

The same need to be examined before taking a final view.

16. The first mentioned Act i.e. "the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977" is an Act to statutorily provide salaries and allowances of Leaders of Opposition. Section 2 defines Leader of Opposition, in relation to either House of Parliament. The same is reproduced below:

*"In this Act, "Leader of the Opposition", in relation to either House of Parliament, means that member of the Council of States or the House of the People, as the case may be, who is, for the time being, the Leader in that House of the party in opposition to the Government having the greatest numerical strength **and recognised as such by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be**". [Emphasis supplied]*

Explanation to Section 2 provides for a situation where there are two or more parties having the same numerical strength in the House. We are not concerned with such situation in the case at hand.

17. It is obvious from the definition of "Leader of Opposition", referred to above, that the recognition of a member as such is not governed by this Act, but such a member has to be recognised by the Speaker.

In other words, the issue of recognition of a member of the House as Leader of Opposition is outside the purview of the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977. Thus, this Act is of no help in contradicting the provisions of the Directions referred to in the earlier part of this opinion.

18. As stated earlier, even after 1977 in the Seventh & Eight Lok Sabhas, there was no Leader of Opposition. The position is that the Directions have been followed, till date.



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19. The four Acts mentioned hereinabove, need to be examined.
20. Two of the above four Acts i.e. the CVC Act 2003 and RTI Act, 2005 clearly contemplate a situation where there is no Leader of Opposition in Lok Sabha i.e. when no member has been appointed as such. In such cases, it is provided, in both the Acts that if no Leader of Opposition is recognised (obviously by the Speaker), then the leader of the single largest Group in Opposition in Lok Sabha will be included in the place meant for Leader of Opposition, in the Selection Committee. Reference may be made in this behalf to the Explanation to Section 4(1)(c) of the CVC Act, 2003 and Explanation to Section 12(3) of the RTI Act, 2005.
21. It is, thus, clear that Parliament was aware that there could well be a situation where the Speaker does not recognise any Leader of Opposition in view of the strength of the largest Parliamentary Party in the House being less than the quorum required for the sitting of the House.
22. The other two Acts, the Protection of Human Rights Act, 1993 and the Lokpal and Lokayuktas Act, 2013 are differently worded. They do not provide for a similar Explanation which is provided in the other two Acts (i.e. CVC & RTI Acts), stated above. However, all the four Acts provide that the selection shall not be rendered invalid under any of the Acts merely on account of a vacancy of any member in the Committee.
23. It is clear to me that in atleast two of the four Acts, Parliament has clearly stated its intention i.e. that there may be a situation where no Leader of Opposition is recognized in Lok Sabha by the Speaker.
- As far as the other two Acts are concerned, it is obvious that the vacancy in the Selection Committee regarding Leader of Opposition, who will not be present in the Committee because of lack of appointment as such, will be treated as a casual vacancy i.e. akin to a member of the Selection Committee not being able to attend the meeting.
24. Even otherwise, the four Acts referred to above are for selection of various persons for the purposes of these Acts for which a high-powered selection committee is contemplated by law. The said four Acts have nothing to do with the actual recognition of a Member of the House as Leader of Opposition which recognition vests solely in the discretion of the Speaker.
25. Another Act mentioned in the Brief for Opinion i.e. "The Leaders and Chief Whips of Recognized Parties and Groups in Parliament (Facilities) Act, 1998". The object of the act is to provide for facilities to Leaders and Chief Whips of recognized parties and groups in Parliament. Even this Act, in my view, is also of little help since "recognition" of Leader of Opposition, Lok Sabha is not provided for. It only provides that a "recognised group" for Lok Sabha, shall be a Party which has not less 30 members and no more than 54 members.

The Act also defines "Recognised Parties" and for purposes of Lok Sabha, such a party has to have strength of not less than 55 members in the House. This shows, again, that quorum is all important. Numerically 55, is the quorum of Lok Sabha and for a party to be recognized under this Act it must have 55 members. Admittedly, the Indian National Congress does not have 55 members in the Lok Sabha.



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26. It is, thus, clear from the provisions of the Constitution, Rules of Procedure, Directions by the Speaker that the Speaker need not recognise a member of the largest Opposition Party in Lok Sabha as the Leader of Opposition if the largest Opposition Party does not have strength equal to the quorum required for a sitting of the House.

27. Traditions and conventions play an important roles in the procedures and conducts of the business of the House. They also show that the position contained in the Directions has not been deviated from, till date. The decision of the Speaker in this behalf is final. The Speaker is the absolute repository of power in regard to procedure and conduct of business, as also for appointment of a member as Leader of Opposition.

28. In the light of the above, I proceed to answer the queries:

Query – (i) In the light of facts obtaining in the 16th Lok Sabha, can a decision on the request made by Indian National Congress for recognising their Leader in Lok Sabha as Leader of Opposition in Lok Sabha be taken merely on the basis of the provisions contained in the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977?

Answer No.

Query – (ii) Alternatively, would cognizance be required to be taken also of the provisions of Directions 120 and 123 of the Directions by the Speaker, Lok Sabha as well as the Leaders and Chief Whips of Recognised Parties and Groups in Parliament (Facilities) Act, 1998?

Answer Yes.

Query – (iii) If the Directions are held to have applicability and relevance, is the alternative plea by INC, that the Leader of INC having backing of UPA (who constitute more than one-tenth the strength of 16th Lok Sabha) can claim the post of LoP in terms of provisions of Direction 121 maintainable?

Answer No.

Query – (iv) Whether absence of any specific provision in the respective relevant law for non-recognition of LoP in the absence of 10% of the total strength of the House can be cited as a valid reason for accord of recognition of LoP?

Answer No.

Query – (v) Whether the relevant provisions of the Protection of Human Rights Act, 1993, the CVC Act, 2003, RTI Act, 2005 & the Lokpal and Lokayuktas Act, 20013 which envisage a role for the LoP in Lok Sabha in respect of appointments to the statutory authorities viz. NHRC, CVC, CIC and Lokpal would mandatorily necessitate appointment of LoP irrespective of other considerations?

Answer No.



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Query – (vi) To what extent Explanation to Section 4(1) of CVC Act, 2003 and Explanation to Section 12(3) of RTI Act, 2005 insofar as these provide that where no Leader of Opposition has been recognised, Leader of single largest group in Opposition of the Government would be deemed to be LoP, will be relevant in the present case?

Answer No.

Query – (vii) Will the provisions in all the said four statutes, to the effect that a vacancy in selection/ search Committees (including that of LoP) would not invalidate appointments to said statutory bodies/ authorities, contemplate situations where a Leader of Opposition may not necessarily exist?

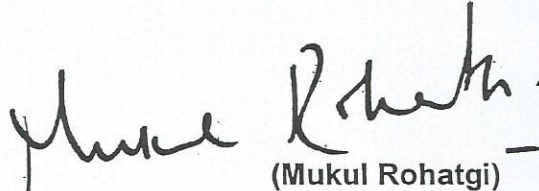
Answer Yes.

Query – (viii) Whether the argument that even if a party is not recognizable, its leader must be recognised as Leader of Opposition, can be held valid in the present case?

Answer No.

Query – (ix) Opinion/advice on any other issue which is felt relevant in the present context?

Answer I have nothing further to add.


(Mukul Rohatgi)
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New Delhi
23.7.2014