



JHARKHAND LEGISLATIVE ASSEMBLY

***Decision of the Speaker, Jharkhand
Legislative Assembly under Tenth Schedule
to the Constitution***

JHARKHAND LEGISLATIVE ASSEMBLY SECRETARIAT, RANCHI

13th August, 2009/22nd Shrawan, 1931 (Saka)



सत्यमेव जयते

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Decision of the Speaker, Jharkhand Legislative Assembly under Tenth Schedule to the Constitution

Dr. Diwakar Minz

..... Petitioner

Versus

Shri Bandhu Tirkey, M.L.A.

Jharkhand Legislative Assembly

..... Respondent

JAHRKHAND LEGISLATIVE ASSEMBLY SECRETARIAT, RANCHI

13th August, 2009/22nd Shrawan, 1931 (Saka)

झारखण्ड विधान-सभा सचिवालय
अधिसूचना

13 अगस्त, 2009

संख्या-कार्मिक-32/07-2646/वि०स०--एतद् द्वारा सर्वसाधारण की जानकारी के लिए भारतीय संविधान की दसवीं अनुसूची (अनुच्छेद 191(2) के साथ पठित) के तहत श्री बंधु तिकी, संवि०स० के विरुद्ध दल परिवर्तन के आधार पर विधान-सभा की सदस्यता से निरहता संबंधी डॉ० दिवाकर मिश्र, बिनधानी, पिस्का नगड़ी रीची द्वारा दायर याचिका पर सुनवाई के उपरान्त अध्यक्ष, झारखण्ड विधान-सभा द्वारा दिनांक 13 अगस्त, 2009 को दिए गए निर्णय (संलग्न) को प्रकाशित किया जाता है ।

माननीय अध्यक्ष महोदय के आदेश से,
कौशल किशोर प्रसाद,
प्रभारी सचिव,
झारखण्ड विधान-सभा, रीची ।

BEFORE HON'BLE SPEAKER, JHARKHAND LEGISLATIVE ASSEMBLY

Dr. Diwakar Minz, Petitioner

V/s

Sri Bandhu Tirkey M.L.A. Jharkhand Legislative
Assembly, Respondent

1. In the matter of an application filed by Dr. Diwakar Minz on 18 May 2007. Against Mr. Bandhu Tirkey M.L.A. for disqualification of his membership from Jharkhand legislative assembly in the provision of 10th schedule of the constitution read with article 191 (2).

2. **FACTS - MAIN POINTS IN THE PLEADINGS**

Mr. Bandhu Tirkey has been elected member of second Jharkhand Vidhan Sabha in February 2005 on the symbol of UGDP from 66 Mandar constituency and the result was declared on 27th February 2005 by the Election Commission of India.

3. It is stated that the United Goam Democratic Party (UGDP) is the registered political party and comes under the definition of political party, that said Mr. Tirkey was a member of UGDP but recently he has joined as a minister in the Madhu Koda led UPA government.
4. It is stated that Mr. Tirkey had voluntarily given up his membership of the political party UGDP by joining Jharkhand Janadhikar Party. Which is a political party and was constituted in the year 2003. In January 2004 an application was filed before the election commission of India for registration.
5. Again it is stated that Mr. Tirkey had change the colour of Jharkhand Janadhikar Party for tri colour to olive colour and it was intimated to press on 04th July 2006 by Mr. Tirkey itself. As for Para 2(1)(A) of the 10th schedule the petitioner requested for the disqualification of Mr. Bandhu Tirkey under 10th schedule read with article 191(2). In addition to that he has mentioned some decision delivered by the Hon'ble Supreme Court. On various occasions such as **Kihotto Hollohan versus Zachillhu**, which is reported in AIR 93 S.C.412. The object on 10th schedule of constitution of India is to curb the evil or mischief of political defection motivated by lure of office or others similar consideration.
6. The judgment of Hon'ble Supreme Court of India of **Ravi S. Naik versus Union of India** and others reported 1994 supplementary to Supreme Court cases 641 was also mentioned. In the said case the Hon'ble Supreme Court has held that even in the absence of formal resignation from the membership of the party to which the member belongs an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs and in the light of above facts and judgment delivered by Supreme Court. It was requested by the petitioner Dr. Diwakar Minz to disqualify the said respondent Mr. Bandhu Tirkey from the membership of Jharkhand Legislative Assembly, in terms of Para 2(1)(a) of the 10th Schedule read with Article 191 (2) of the constitution of India. A show cause notice was issued by the speaker vide letter number 1625 dated the 21st June 2007 to Mr. Bandhu Tirkey and requested him to file the reply within 15 days that why not this petition should be expected for consideration.

7. A letter was also sent to Miss. Joba Manghi who is the leader of UGDP legislative party in Jharkhand Legislative Assembly vide letter number 171 dated the 10th July 2007 to furnish the reply on/or before 23rd July 2007. Mr. Bandhu Tirkey has filed counter affidavit on 7th July 2007 before the speaker.

The main point of the counter affidavit is as follows.

- (i) It was stated that the petition filed by the petitioner is not maintainable and the same should not be accepted for hearing by the Hon'ble Speaker.
- (ii) That from perusal of the said petition, it would be evident that only allegation against the Opposite Party is that the Opposite Party, after he is elected as a Member of Jharkhand Legislative Assembly in February, 2005 on the symbol of U.G.D.P. from 66, Mandar Constituency, has voluntarily given up the membership of the said UGDP, as he joined "Jharkhand Janadhikar Party" which has been declared to be 'Political Party'.
- (iii) Again it is stated that in the said petition it has been alleged that the answering Opposite Party, after being elected as a Member of Jharkhand Legislative Assembly from the political party of U.G.D.P., joined another political party and, therefore, he deserves to be disqualified under the provisions of the 10th Schedule as the answering Opposite Party has voluntarily given up the political party namely, UGDP.
- (iv) That it is stated and submitted that the petition filed by the petitioner against the answering Opposite Party is a frivolous petition which has been filed with a malafide intention for extraneous reasons and, therefore, the same is liable to be rejected at the outset.
- (v) Again he stated that the opposite party has been elected as Member of Jharkhand Legislative Assembly from 66, Mandar Constituency on the ticket of a registered political party namely UGDP. It is further stated and submitted that the answering Opposite Party, after he is elected as a Member of Jharkhand Legislative Assembly, has not joined any other political party and he still continues to be a Member of the Political Party from which he was elected as a Member of the Jharkhand Legislative Assembly.
- (vi) Again he stated that contention of the petitioner that the answering Opposite Party has voluntarily given up the membership of the political party is completely false and incorrect. It is re-iterated that the answering opposite Party was and is still a Member of the Political Party namely UGDP. And any allegation to the contrary is not only false but also frivolous.
- (vii) Again it is stated that it is also relevant to state here that 'Jharkhand Janadhikar Party' is not a political party as it is not registered with the Election Commission of India. It is further stated that under section 2 (f) of the **Representation of Peoples Act, 1951**, "Political Party" has been defined as political party means an association or a body of individual citizens of India registered with the Election Commission as a political party under section 29(A)"
- (viii) Again in the petition the various provision of registration under R.P. Act 1951 is mentioned section 1 is Section 29(A) is also mentioned in the counter affidavit and ultimately and it is also stated and submitted that the petition filed by the petitioner against the Opposite Party is liable to be dismissed with exemplary cost against the petitioner after giving him stern warning for not filing such a frivolous petition in future to unnecessarily harass any person.
- (ix) Ultimately Mr. Bandhu Tirkey the respondent has requested that the answering Opposite Party was and is still a member of UGDP on which ticket he was elected as a Member of Jharkhand Legislative Assembly. It is further reiterated that the answering Opposite Party has not voluntarily given up the membership of his political party namely 'UGDP'. And any allegation to the contrary is completely false and incorrect.

- (x) Under the facts and circumstances mentioned above, it is most humbly prayed that the frivolous petition dated 18-05-2007 filed by the petitioner Dr. Diwakar Minz may kindly be dismissed;
- (xi) The letter was sent to the petitioners Mr. Diwakar Minz vide letter number 1858 dated 11 July 2007 to furnish his opinion on or before 23rd July 2007 but Dr. Diwakar Minz, the petitioner could not provide the opinion and as requested to the speaker on 28th July 2007 to extend the time limit at least for 20 days.
- (xii) Again Dr. Diwakar Minz could get extended time limit up to 3rd August 2007 to furnish his opinion on the counter affidavit of Mr. Bandhu Tirkey. Dr. Diwakar Minz requested several times so his application vide letter dated 13th August 2007 and again on 3rd October 2007 to extend the time and 12th November 2007 extend the time. Ultimately he could get the time up to 10th December 2007 to put his side. Dr. Diwakar Minz filed his rejoinder on 10th December 2007.

8. Dr. Diwakar Minz the petitioners sent letter to the speaker on 10th September 2007. The main point of the rejoinder is as follows.

He quoted the Para 2(2) of the 10th Schedule which reads as follows:

- 2(2) Disqualification on ground of defection** - An elected member of a House who has been elected as such other wise than as a candidate set up by any political party shall be disqualified for being a member of the house if he joins any political party after such election. In support of the contention, various news items published in daily newspaper are annexed.

9. Again he stated that respondent Mr. Tirkey has given his Answer about my petition and tried to define the "political party" only on the basis of **Representation of People's Act, 1951** and as he said that "Jharkhand Janadhikar Party" is not registered with the Election Commission of India. He has used the meaning of political party in a very limited rather narrow canvas. Dr. Diwakar Minz stated that in the parliamentary system of governance which the constitution adopted of the country, the existence of political parties was implicit and inevitable. Even before the country achieved independence, political parties had been playing crucial role in the freedom movement and were also participating in elections at Central and provincial levels. However, the constitution was silent altogether with regard to their existence right up to 1985. It was only in 1985 that their existence and functioning in the political field came to be recognized for the first time by the Constitution, that too not directly but in the form of the 10th Schedule there to as inserted by the constitution (fifty second) Amendment Act, 1985 making political defections a ground for disqualification for membership of parliament and state legislatures.

10. He further stated that even after the existence of political parties being recognized by the constitution there is no precise definition of political party in the constitution or in any statutory law. Political parties are now registered with the Election Commission under section 29A of R.P. Act 1951. But the Act defines a Political party in section 2(1)(f) merely to mean association or a body of individual citizens registered with the Election Commission as a political party under section 29A. Section 29A (1) provides that any association or body of individual citizens of India "calling itself a political party" may apply for registration as a political party. Other enactments like the Income Tax 1961, also speak about political parties include some vein to mean association or bodies of individual citizens registered with the Election Commission as political parties."

11. Again it is stated in the rejoinder that new Encyclopaedia "Britanica" defines a political party as group organized to achieve and exercise power within a political system. According to it, political parties originated in their modern form in Europe and the United States in the 19th Century along with the electoral and parliamentary system. Whose development reflects the evolution of parties? The term party has since been applied to all organized groups seeking political power, whether by democratic election or by revolution. The 20th Century ran the spread of political parties through out the entire world.
12. The law of 'political parties' promulgated by the Garman Parliament on 24th July 1967, defines in Para (1) the term Political parties as parties are associations of citizens who set out to influence either permanently or for a longer period of time the formation of political opinion at federal or hand level & to participate in the representation of the people in the federal parliament bundestag or regional parliament land stag provided that they after sufficient guarantee of the sincerity of their aims in the general character of their circumstances and attendant conditions, particularly in regard to the scale and strength of their organization the number of inscribed members and their image in public opinion. Black's law Dictionary also defines "Political Party" after considering some English cases which reads as follows:-
Political Party a numbers of persons visited in opinion & organized in the manner usual to the then existing Political Parties, **Swindall Verses State Election Board** 168 Oke. 97,32p 2d 691, 695. An unincorporated voluntary association of persons sponsoring certain ideas of government or maintaining certain political principles or beliefs in public policies of government not a governmental agency or instrumentality. **Robinson Verses Holman** 181 Ark, 26 sw 2d 66, 68.
13. The 10th schedule was introduced by fifty second amendment Act, 1985 with effect from 01-03-85 in which political party is not defined. The definition of political party given under section 2(i)(f) of the R.P Act, 1951 was earlier omitted by Act 27 of 1956 and again inserted by Act 1 of 1989 with effect from 15-08-1989. Similarly section 29A on which the opposite party has heavily relied was also inserted in the RP Act. w.e.f 15-06-89. Where as the 10th Schedule came into effect from 01-03-85. So the definition given in the R.P. Act about the political party under section 2(i)(f) or 29A, not necessarily applicable to the 10th schedule of the constitution of India. It is also evident that after the enactment of RP act, if the registration was the main ingredient of a political party. The parliament must have inserted the word registered in the Para 2(2) of the 10th schedule.
14. Again he stated that now the question is that the political party which has not been registered under section 29A can be termed as political party. The wording of section 29(1) is very important which reads as follows 29(1) -
Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this part shall make an application to the Election Commission for it's registration as a political party.
So, it is very clear from the word that an Association or body of individual citizens of India can be a political party, but if it intends to avail the benefits of the provisions under part IVA of the RP Act, 1951, registration is required. These benefits of registered parties are enumerated in section 39B & 29C etc like accepting the contribution, donation etc so it cannot be said that a political party which is not registered, is not a political party at all.
15. From the newspaper reports it appears that the activities of Jharkhand Janadhikar Party is like a political party to which the opposite party has joined and it has not been denied at all. The opposite party has accepted that he has joined, Jharkhand Janadhikar party, but the only contention is that it is not a political party which cannot be accepted in view of findings given above.

16. In the 10th schedule the conduct of the member has also be considered and inference can be drawn. In this case the activities & statements of Mr. Bandhu Tirkey are very much in tune with a political party. The main object of the 10th schedule was also mentioned in the case and ultimately he has requested to disqualify Mr. Bandhu Tirkey M.L.A. from Jharkhand Legislative Assembly under Para 2 (2) of the 10th Schedule read with article 191(2) of the constitution of India.
17. Again a letter was send by the speaker vide the letter number 1209, dated 8 September 2008 to Mr. Bandhu Tirkey the respondent to furnish the reply or rejoinder within 10 days. Mr. Bandhu Tirkey has filed a counter affidavit on 16th September 2008.
18. Mr. Bandhu Tirkey stated and submitted the answering opposite party, in his reply, had categorically stated that he, after his election as a Membership of UGDP, had not joined any other political party and / or had not voluntarily given up the membership of the political party namely UGDP and any statement to the contrary is strongly denied and disputed. It is reiterated that the answering Opposite Party, after his election as a member of Legislative Assembly from the political party of UGDP has not joined any other political party and / or has not voluntarily given up the membership of the political party of UGDP and, thus, the petition filed by the petitioner Dr. Diwaker Minz is not maintainable and frivolous in nature and the same is liable to be rejected at the outset. He has requested to dismiss the petition filed by Dr. Diwaker Minz.
19. A date of hearing was fixed on 13th January 2009 at 11.00 A.M. in which both the petitioner as well as respondent were requested to present either personally or through their Advocates to put their sides verbally or in written. The main points during the pleadings are as follows - Mr. Gopal Krishan Sinha learned counsel appeared for the petitioner whereas Mr. Sumit Gadodia Learned Counsel appeared for the opposite party i.e the respondent. Mr. Gopal Krishna Sinha Advocate stated that I represent Mr. Diwaker Minz who has filed the petition before this Hon'ble Court, regarding disqualification from membership of Jharkhand Vidhan Sabha, Ranchi under 10th Schedule read with article 191 (2) of the

Constitution of India against Shri Bandhu Tirkey M.L.A elected from 66 Mandar Constituency of the symbol of UGDP in the second Jharkhand Legislative Assembly. Before entering into the merit of the case and before placing this acts for the consideration, He stated that his first ground for taken into consideration before this Hon'ble Court is that soon after the election which was held in February 2005 and the result was declared on 27 February 2005 by the Election Commission of India that United Goam Democratic Party is a registered political party which comes under the definition of political party if that said Mr. Tirkey was a member of UGDP but recently he had joined as a Minister in the Madhu Koda led UPA Government. That Mr. Tirkey has voluntarily given up his membership of his political party by joining Jharkhand Janadhikar Party. Which is a political party it was constituted the year 2003. Mr. Sumit Gadodia Learned Counsel for the respondent objected upon the aspect he stated that the facts which are admitted facts can not be disputed I admit that my client is a member of UGDP and was elected from 66 Mandar Constituency. I also admit that he was a minister in Madhu Koda led Government and the third fact is that regarding the political party Jharkhand Janadhikar Party, which was established in the year of 2003 and was registered in year of 2004, I don't admit this fact. Again Mr. Gopal Krishna Sinha Advocate for the petitioner stated that I have given some annexure also it which the cuttings of the statement of the Hon'ble Minister is there in the court of what he has said is in what manner he has declared himself by gaining the public views, and public sympathy that what he is doing. He is doing in a manner, the public has sent to the Vidhan Sabha,

the manner he is dealing soon after leaving the party UGDP. It is for this Hon'ble Court to take a consideration. Again he stated that I had cited that decision also of Hon'ble Supreme Court which will go to show that conduct is also is very much of its importance for taking of a decision by this Hon'ble Court for cancellation of his membership as a member of Vidhan Sabha. Again he stated that the paragraph 6 and 7 of my petition is very much important that will go to show that Mr. Tirkey has change the colour or Jharkhand Janadhikar Party from tri colour to dive colour and it was intimated to press on 4 July 2006 by Mr. Tirkey itself so at the very outset I have presented most humbly that it was Mr. Tirkey who itself intimated to the press on 4 July 2006 that he has changed his party. He cited a judgment of Supreme Court in the case of Ravi S. Nayak versus Union of India reported in 1994 supplementary. Again Mr. Gopal Krishna Sinha stated that his case is even in the absence of formal resignation from the membership of the Party to which the member belongs and inference can be drawn from the conduct of a member that he has submitted before this Hon'ble Court that he is voluntarily given up his membership of the political party to which he belongs and as he has submitted most humbly by giving the reference of the statement of Mr. Tirkey itself dated 4 July 2006. When he has said that I have left the party so if a word of opposition will come before this Hon'ble Court then there is no documentary evidence there is no proof of that Mr. Tirkey has left his party from which he has elected. It does not matter, matter is the conduct of his itself and Hon'ble Supreme Court had decided the issue by saying that I am repeating with kind permission that even in the absence of formal resignation from the membership of a party to which the member belongs an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs, so at this stage, I want to draw attention by saying the kind way Mr. Tirkey was moving all-around the jurisdiction of the Jharkhand, by presenting himself that he is no more existence in UGDP, now he is of other party and he gain popularity otherwise he cashed his popularity by entering into the Jharkhand Janadhikar Party, so conduct of his cannot be denied his photographs his statements, the statement of media, the semblance of people, all these being gathered and the word is conduct there further I taking this limited time further more I want to present further more, I want to present something more in addition to my argument which I have placed the power of this Hon'ble Court. Again Mr. Gopal Krishna Sinha Learned Counsel for the petitioner stated that the answer of this Hon'ble Court whether that was registered or not registered, registration is not the must for that I have given reply and my reply dated 10th December 2007, may kindly be seen for a moment what reply I have given page 3 for a moment before this Hon'ble Court it will answer the question of this Hon'ble Court and it will make the clear picture the reply given by the adversary.

20. Mr. Gopal Krishna Sinha again stated that political parties are now registered with the election Commission under section 29 (a) of R.P Act 1951 but the act defines a political party in section 2(1)(f) merely to mean an association what is the meaning of the party merely to mean an association were a body of individual citizens registered with the Election Commission as a political party under section 29(a), section 29(a)(1) provides that any association or body of individual citizens of India "Calling it's a political party" may apply for registration as a political party other enactments like the Income Tax 1961 also speak the political parties include so wing to mean association or body's of individual citizens registered with the Election Commission has political parties there after giving I have given the meaning of political party by presenting the very reputed dictionary of our country what is the meaning of political party.

21. Again Mr. Sinha stated that 10th Schedule was introduce by 52 amendment that 1985 with effect from 1st March 1985 in which political party is not defined. The definition of political party given under section 2(f) of the R.P act 1951 was earlier omitted by act 27 of 1956 and again inserted by act 1 of 1989 with effect from 15th August 1989. Similarly section 29 (a) on which the

opposite party heavily relied again I am repeating your honour similarly section 29 (a) on which the Opposite party heavily relied was also inserted in R.P. Act i.e. for 15th June 89 where as the 10th Schedule came into effect from 1st March 85. So, the definition given by the R.P. Act about the political party under section 2(f) for 29 (a) not necessarily applicable in the 10th schedule of the Constitution of India. It is also eminent that after the enactments of R.P. Act, if the registration was the main ingredient this is my point for consideration before the Hon'ble Court, if the registration was the main ingredient of the political party, the Parliament must have inserted the word under Para 2 of the 10th schedule it is not there. Mr. Sinha stated that but for the purpose of cancellation of the membership of Mr. Tirkei that is not required at all and I have said repeatedly that News Paper reports it appears that the activities of Jharkhand Janadhikar Party is like a political party it is not a welfare that is only for his personal benefit so the genesis and the collection of news of the News Papers, which I have annexed with my petition that will go show that is for the personal benefit and the decision are very much of its own importance for kind consideration that if the activities otherwise for the other benefits of itself that will go to inaugurate and to calculate his conduct and conduct is otherwise that to be member of UGDP. Further I am concluding with one paragraph the evil of political defection, why this law come in our constitution, how so many decision of our country that certain even can a man change himself from A to B, C to D for his personal benefit, Mr. Sumit Gadodia learned counsel for the respondent stated that this an interesting submission and interesting arguments by saying that conduct of Sri Bandhu Tirkey has been shown before this Court by arguing that he has led the political party without referring to any of the News Paper cuttings and without referring to any of the documents by saying it orally now just to proceed in the argument I had said about the definition of the political party what is the definition of political party in Act and I have to argue upon that I will retreat upon the facts which was stated by the learned counsel for the petitioner interestingly he has stated 2,3,4 matters and it was seriously objectionable and he has posed his serious objection upon our reply on behalf of that Dr. Divakar Minz does not know the definition of a political party. Now this reply and what has been stated that whatever the arguments he has shown the conduct by Shri Bandhu Tirkey by showing that he has left his own party i.e. of UGDP and joined another party that is Jharkhand Janadhikar Party and after that he has contested election none of the News Paper cuttings he has referred here, and in the course of argument he says that news paper cuttings shows that he wanted to gain sympathy which shows his conduct the first word he has used is the News Paper cutting wanted to show that he want to gain sympathy again he wanted to say that Bandhu Tirkey in no more in existence very well allied he is no more in UGDP.

22. Again Mr. Sumit Gadodia learned counsel for the respondent says that conduct of which can be organized by placing his sympathy he stated that learned counsel for the petitioner says that in the News Papers his conduct is such that is to gain the sympathy.

23. Third point is very much important he utilized Jharkhand Janadhikar Party in different manner for sympathy he is repeatedly saying that to gain sympathy by arguing in that case of defection under 10th schedule why this come what is the significance of sympathy under the 10th schedule who is Mr. Divakar Minz who is the complainant before your lordship he is one of the candidate of Mr. Bandhu Tirki in election in the February 2005 from the ticket political party or BJP and what is the conduct and what is the News Paper cuttings again Mr. Sumit Gadodia stated that so far the question of 10th schedule is concerned on the ground of sympathy whether my client is gaining sympathy please see the News Paper cuttings which is annexed along with the petition what is in the News Paper cuttings. The first News Paper Cutting "आदिवासी मूलवासी कब तक करोगे बदरल" Bandhu Tirkey. He is fighting for the cause of tribals and indigenous in the second news paper cutting it is mentioned that "पेसा कानून से छेड़छाड़ बदरल नहीं करोगे आदिवासी" खुद तिरकी again in the

third news paper "बामपंथियों को मनाने पहले सातखन बंधु ने भी खले खोरे" "मुह बंद करो नहीं तो सीधा कर देंगे" for the benefit of tribals he is making such statements which has annexed now in the fourth paper cutting which is some more important and it is the news paper clipping before the election. In this news paper clipping it is mentioned that "संयुक्त बदेगा खान खगेगा या दिवाकर समकेगा" this is the small article written in a paper cutting in Prabhat Kabhar out of the three candidate who were fighting the election from Mandar Constituency and in this News it is mentioned that Bandhu Tirkey has done a lot of work in last four years and hence there is a fair chance to be he is doing work for the tribals he was one of the candidate fights in the election in the fifth News paper it is mentioned that "स्वामीयता और 90 प्रतिशत आरक्षण सबसे बड़ा मुद्दा" खु लिक्की । before the election he made a portfolio he made a election manifesto that "स्वामीयता और आरक्षण मेरा सबसे बड़ा मुद्दा" Mr. Gadodia stated that my lord can all any of these thing suggest a defection under 10th schedule it cannot again Mr. Gadodia stated that my lord a political party a member who is a person who has been elected as a representative of the people he has his own agenda Mr. Bandhu Tirkey is an adiwasi tribal leader if he wants to promote the tribal where can he said to have a defection none of the News Paper cuttings were placed by him because the entire News Paper cuttings there is no whisper and in all the News Paper cutting the issues co-related with the welfare of tribal . In a News Paper cutting which is annexed along with the petition that after he was elected as the member of UGDP he is member of UGDP Bandhu Tirkey as he has said in the News Paper this is also annexed along with the petition this what respect to the conduct which he wanted to show with the News Paper cutting second objection I have now in the petition.

- 23 (a) This is the registration of Jharkhand Janadhikar Party, which was supplied under the right to information Act. Jharkhand janadhikar Party has filed an application before the election commission of India for registration on 24th July, 2006 and he got registration and that party Jharkhand Janadhikar Party got registered on 15th September, 2008. At that time there were 118 members here is a list of 118 members and all the 118 members at submitted their affidavit along with the application before the Election Commission of India. But the opponent party the petitioner says that Jharkhand Janadhikar Party is a registered political party since 2004 or and Mr. Bandhu Tirkey is doing something for to gain the sympathy of tribals and his trying to shift the political party. It is my submission that U.G.D.P. which is my political party has two M.L. As. in Jharkhand. One is Mrs. Joba Manjhi and another is Mr. Bandhu Tirkey and Mr. Nazam Ansari is the president of U.G.D.P. Whether U.G.D.P. has sent any letter to Mr. Tirkey either through their president or through the Joba Manjhi that Mr. Bandhu Tirkey left U.G.D.P. whether at any occasion in assembly regarding sitting arrangement, regarding the conduct have you seen any occasion that any petition was filed against him that he is against the norms of U.G.D.P. in which petition as it is describe is oblique and malafide purpose just to gain cheap popularity and this is the petition. Again Mr. Sumit Gadodia stated that in Indian democracy. The Indian democracy rest, on the concept of the political party and the concept of political party has been interpreted by the Supreme Court as defined under the R.P. Act section-29(a). Again Mr. Sumit Gadodia advocate for the respondent stated that the news paper cuttings annexed with the petition is neither authenticated nor verified just he has annexed some news paper cuttings. Regarding news paper cuttings there are several Judgments in supreme Court in Hon'ble Supreme Court one of the Judgments of Supreme Court is in 2004 is that SCC- 227 which says newspaper cuttings by it, itself do not constituted any evidence and necessary proof at to be given by the person alleging and on rely upon the news paper cuttings about its authenticity and the veracity. I would have under stood if he has odd for the reporter to at published that Newspaper article he would have examined them. He would have stated that on oath far less he has not even stated the veracity of the news paper even on his oath under such circumstances he said news paper cuttings have no

evidential value and far less than news paper cutting is nothing can suggest that I have joined that the Jharkhand Janadhikar Party. Jharkhand Janadhikar Party has been registered on 15th September, 2008. I have just given the document of the election commission of India to show that it has been registered on 15th September 2008. One more judgment of the Supreme Court where concept of political party is didn't you is that in the judgment of Kuldip Nair in 2006(7) SCC(1) It may at paragraph 382, 385, 451, 452 and 462 the Supreme Court has emphasized the importance of political party in the Indian democracy. One line I just read it, it can not be forgotten that the existence of political party is an essential feature of our parliamentary democracy and that it can be a matter of concern for parliament if it find that elected member were is shorting to cross voting under the grave of conscience voting floating, party discipline in the name of secrecy of voting. This should weaken the party discipline over the arrant legislature. Political parties are the Sun-Quan-Non of parliamentary democracy in our country and the protection of party discipline can be introduce as an essential feature of the purity of election in the case of indirect election after mentioning political party at paragraph-452 again it says parliamentary democracy and multi party system are inherent part of the basic structure of the Indian constitution. It is the political party that set up candidate to an election was to pre dominantly elected as the member of state legislature. The context in which the general election are held My Lord! This word set up by political party. The definition of political party in constitution he said the political party has not been defined. But the constitution says, it says that who can be treated to the member of Political party and who can be treated to be an independent candidate and political party where it will be a political party when he is deemed to be set up from the political party. When a member is said to be a member of political party when he is deem to be set up from the political party that means on his ticket he has been given the nomination paper and he has been elected on that ticket and if this is correct then independent would be a person who has not a set up by a political party. This is only for the shape of the argument and I have to say that Jharkhand registered party either it be a registered or unregistered it does not matter but unregistered party can not be treated as a political party.

24.

Mr. Sumit Gadodia, learned counsel for the respondent stated that here is a question before the court today there are 81 elected members in Jharkhand Legislative Assembly. If a party like Jharkhand Janadhikar Party, which is an unregistered political party. Here is a question before the Hon'ble Court. If in Jharkhand Legislative Assembly in all the 81 Assemblies segments the party like Jharkhand Janadhikar Party which is unregistered political party put his candidates in all the 81 Assembly segments and after the election all the 81 members could being the election than whether all the 81 members will be the members of Jharkhand Janadhikar Party or otherwise they will be treated as independent members because when they fault the election that was not the registered political party and they could not any preferential symbol and in the nomination paper they could not declare about the political party because Jharkhand Janadhikar Party is unregistered political party and that case he has been set up an declared elected as a political party member if that been the situation of the returning officer shall give the certificate has being elected as an independent member and not being elected as a member set up by any political party and it is very much simple distinction that in our constitution there is the distinction between registered and unregistered. The question can be Terminated here the word set up by a political party in the constitution means the same otherwise any person that could be no concept of independent members. There would be no concept of any independent member and the second clause which is there in the constitution of India should be deleted. There would be no independent member every member would be either set up by a political party or if his version is believed set up by an association calling itself to be a political party then such type of amendment is necessary in the constitution and if this argument is excepted this is all I have to submit My Lord!

25. Again Mr. Sumit Gadodia stated that without any affidavit now he also has the right to initiate appropriate proceeding in accordance with law. If there is some affidavit than there should be verification which is filling an affidavit. Mr. Gopal Krishna Sinha learned counsel for the petitioner stated that the contention of his that the annexure of news paper is not supported with the affidavit for that said I seek permission that I want to filed written argument and that written argument I will give my affidavit also by saying that the rely of Bandhu Tirkey was on the basis of this news paper cutting, so I am ready to file affidavit. I am ready to file verification by saying and by proving the conduct of Mr. Tirkey. So the question is before this Hon'ble Court that the earlier occasion the liberty was given to file written argument. This time also I play that I may be given a liberty file written argument and I will suggest myself by giving affidavit and verification in support of my document.
26. A written submission on behalf of Mr. Bandhu Tirkey was given by Mr. Sumit Gadodia, Advocate on 24th January, 2009. The main points of the written submission are as follows:-
During the Jharkhand legislative assembly Election held in 2005 Mr. Bandhu Tirkey was elected from 66, Mandar constituency on the ticket of UGDP and after elected as a Member of the Legislative Assembly on the ticket of the said political party he has joined Jharkhand Janadhikar Party the therefore, he has voluntarily given up his political party. This is an allegation leveled by the petitioner Dr. Diwakar Minz.
27. Again it is stated in the rejoinder that the petitioner stated that Jharkhand Janadhikar Party was registered as political party with Election Commission of India in the year 2004. In this context it is humbly stated that Jharkhand Janadhikar Party/ Jharkhand Janadhikar Manch has been registered with the Election Commission of India only on 15th September, 2008. A copy of the letter issued by the Election Commission of India dated 17th September, 2008 showing registration of Jharkhand Janadhikar Manch is annexed here with for ready reference.
28. Again it is stated in the instant petition filed by Dr. Diwakar Minz in the year 2007 i.e. on 18th May, 2007 that on the date Jharkhand Janadhikar Party/ Manch was not even registered as a political party. Even otherwise it is most humbly submitted that even after of the Jharkhand Janadhikar Party was registered as political party the answering opposite party has not joined the said political party nor he has voluntarily given up the Membership of the political party, namely, UDGP from which he was elected. In the instant petition the petitioner has only relied upon certain newspaper cutting and he has not produced any evidence whatsoever to demonstrate that the answering opposite party has voluntarily given up his Membership of the political party, namely, UDGP.
29. Again it is stated that it is relevant to note here that in Jharkhand Legislative Assembly Election was held in the year 2005. Two members belonging to UDGP has been elected as a member of Jharkhand Legislative Assembly namely, Smt. Joba Manjhi and Sri Bandhi Tirkey. In the context it is most humbly submitted that no complaint has been made by the political party or by other legislature alleging disqualification. Even in the Legislative Assembly the opposite party and other elected legislature, namely, Smt. Joba Manjhi are performing their functions as per directives of the political party, namely, UDGP. Finally it is stated that the term political party has been defined under Section 29(a) of the R.P. Act according to which a political party must be registered with the Election Commission of India. In this context it is reiterated that Jharkhand Janadhikar Party/ Manch has been registered with the Election Commission of India on 15th September, 2008 where as the instant petition filed by Dr. Diwakar Minz is of the year 2007. On this ground along the instant petition filed by Dr. Diwakar Minz is liable to be dismissed.

30. Before reaching the conclusion it is pertinent to state here about provisions of 52nd Amendment, concept of 10th schedule, Section 29(a) of R.P. Act, position of the Speaker role of the Speaker etc. Which were established on various occasions either by the Hon'ble Supreme Court, Hon'ble High Court or by several eminent Parliamentarians.

The main object of the 10th schedule is as follows:

"The evil of political definitions has been a matter of national concern if it is not combated which is likely to undermine the very foundation of our democracy and the principles. With this object as assurance was given in the address by the President to the Parliament that the Government intended to introduce in the current session of Parliament as anti defection bill. The bill is mint for outline defection and fulfilling the above assurance."

31. The purpose for enacting the constitution (52nd Amendment) that is incorporation of the 10th schedule and other amendments was not only to stabilize the legally elected government and to prevent that political immorality but also to make them effective if the provisions are laid down the main purpose would be defeated (Prakash Singh Badal v/s Unjon of India, A.I.R. 1987 P&H 263 FB).
32. The object is to curve as evil of political defections motivated by lure of offices or other similar constitutions which endanger the foundations of our democracy (Kihoto Hollohan Vs. Zachillu AIR 1993 Supreme Court 412)
33. G.V. Mavalankar who was most distinguishing occupant of that high office says "In Parliamentary democracy the office of the Speaker is held in very high office and respect. There are many reasons for this. Some of them are purely historical and some are inherent in the concept of Parliamentary democracy and the powers and duties of the Speaker. Once a person is all the members of belongs to none. He holds the scale of justice irrespective of party or person though any one expect that he will do absolute justice in all matters because as a human being he has his own drawbacks and shortcomings. However, everybody knows that he will intentionally do not injustice or so partiality such a person is only respect by all."
34. The Speaker/Chairman holds a pivotal position in the scheme of the Parliamentary democracy and a guardian of the right and privileges of the House. It would indeed be unfair to the high tradition of that great office to say that the investiture in it of determinative jurisdiction under the 10th schedule would be vitiated for violation of a basic feature of democracy (Kihoto Hollohan Vs. Zachillu 1992 supplementary (2)SCC 651).
35. Pandit Nehru referring to the office of the Speaker stated "the Speaker represents the House. He represents the dignity of the House. The freedom of the House and because the House represents the nation in the particular way the Speaker becomes the symbol of the nations freedom and liberty. Therefore, it is right that should be an honored position of free position and should be occupied always by a man of outstanding ability and impartiality.

36. Before coming to the conclusion it is necessary to mention here para-2(2) of 10th Schedule.
 "An elected Member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a Member of the House if he joins any political party after such election".

37. The whole matter was seen on the canvas of para-6(i) of the 10th Schedule, Which is as follows:

Decision on question as to disqualification on ground of defection : (i) If any question arises as to whether a member of a house has become subject to disqualification under this schedule the question shall be referred for the decision of the Chairman or as the case may be. The Speaker of such House and his decision shall be final.

Provided that where the question, which has arisen, is as to whether the Chairman or the Speaker of a House has become subject to such disqualification the question shall be referred for the decision of such member of the House as the House may elect. In this behalf his decision shall be final.

38. The entire case is based upon the concept of political party. Whether 10th Schedule should be applicable for the case of registered political party or it may be applicable for unregistered political party also. Before reaching the decision it is important to state here the provisions of Section 29(a) of R.P. Act 1951.

29-A. Registration with the Election Commission of Associations and bodies as a political parties- (1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.

(2) Every such application shall be made-

(a) If the association or body is in existence at the commencement of the Representation of the People (Amendment) Act 1988 (1 of 1989), within sixty days next following such commencement.

(b) If the association or body is found after such commencement, within thirty days next following the date of its formation.

(3) Every application under sub section (1) shall be signed by the Chief Executive Officer of the association or body (whether such Chief Executive Officer is known as Secretary or by any other designation) and presented to the Secretary to the commission or sent to such Secretary by registered post.

(4) Every such application shall contain the following particulars, namely:-

(a) The name of the association or body;

(b) The state in which its head office is situate;

(c) The address to which letters and other communications meant for it should be sent.

(d) The name of its President, Secretary, Treasurer and other office bearers.

(e) The numerical strength of its members, and if there are categories of its members, the numerical strength in each category.

(f) Whether it has any local units, if so, at what levels;

(g) Whether it is represented by any member of members in either House of Parliament or of any State Legislature, if so, the number of such member or members.

(5) The applications under sub section (1) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called and such memorandum and rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.

(6) The commissions may call for such other particulars as it may deem fit from the association or body.

(7) After considering all the particulars as aforesaid in its position and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purpose of this Part, or not so to register it; and the Commission shall communicate its decision to the association or body;

Provided that no association or body has been registered as a political party under this sub section unless the memorandum or rules and regulations of such association or body conform to the provisions of sub section (5).

(8) The decision of the Commission shall be final.

(9) After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office bearers, address or in any other material matters shall be communicated to the Commission without delay.

39. Regarding registration of political party a letter from the Election Commission of India may be mentioned here. In letter no. 56/136/2006/J.S.III dated 17th September, 2008 the subject is as follows:

Jharkhand Janadhikar Manch "can make registration under section 29(a) of the Representation of Peoples Act 1951 as a political party regarding the exact wording of the letter which is as follows:

Sir, I am directed to state that the Election Commission of India after having considered your application dated 03/08/2006 for registration of Jharkhand Janadhikar Manch as a political party and the documents produced in support of the statements/averments made/ content in the said application and the submissions made by authorized representative of the party before the Commission on 15/09/2008. In respect of the said application it has registered the Jharkhand Janadhikar Manch as a political party under section 29(a) of the Representation of the Peoples Act 1951 with effect from 15/09/2008. Hence it is very much clear that a party should be set to be political party only when it is registered before the Election Commission of India.

40. Keeping in mind all the aspects of the facts of both sides. I am of the opinion that the concept of political parties is very much clear that for the purpose of 10th schedule. It should be registered political party because 10th Schedule came into existence on 1st March, 1985 and Section 29A of R.P. Act 1951 was enacted of 1989. It can be treated as the two terminologies like fundamental right and the directive principles. However, a directive principle is not mandatory but it is applicable in the Constitution. M.L.A. are guided by the R.P. Act can be treated as Gita, Kuran, Bible and Guru Granth Sahib for the legislatures as well as Parliamentarians. Hence it is evident that people's representative should follow the guidelines of R.P. Act 1951. Hence the provisions of

Representation of Peoples Act 1951 should be automatically applicable on the conduct of MLAs. On various occasions the Supreme Court has held that before taking decision under 10th Schedule political party means registered political party should be considered. For example in the case of *Kuldip Nayar Vs. Union of India* reported in 2006 (7) SCC 1 in paragraph 382 it is mentioned that the 10th Schedule of the Constitution recognizes the importance of the political parties in our democratic set up specially when dealing with Members of the House of Parliament and the Legislative Assemblies or Councils. The validity of the 10th Schedule was challenged on various grounds, inter alia, that a political party is not a democratic entity and the imposition of whips on Members of Parliament was not in accordance with the constitutional scheme. Rejecting this argument, this court held that it was open for Parliament to provide that it Members who have been elected on a party ticket act according to the decisions made by the party and not against it.

41. In my opinion only a registered political party can provide a party symbol or party ticket to anyone to contest for the seat of MLA or MP. Hence this case is applicable only for the registered political parties.

42. In another judgement *Kanhaiya Lal Omar Vs. R.K.Trivedi and others* 1985 (4) Supreme Court Cases 628 in para 10 it was held as follows:

"This is the essence of our system and it facilitates the setting up of a Government by the majority although till recently the Constitution had not expressly referred to the existence of political parties, by the amendments made to it by the Constitution (52nd Amendment) Act 1985." There is now a clear recognition of the political parties by the Constitution. The 10th Schedule to the Constitution which is added by the above amending Act acknowledges the existence of political parties and sets out the circumstances when a Member of Parliament or of the State Legislature would be deemed to have defected from his political party and would thereby disqualify for being a Member of the House concerned. Hence it is difficult to say that the reference to recognition registration etc. of political parties by the symbols order is unauthorized and against the political system adopted by our country. A concept of political party was also discussed in the case of *Ramphal Kundu Vs. Kamal Sharma* in 2004 (2) Supreme Court Cases 759.

43. However, newspaper clippings were not certified by the petitioner. Several judgements of Supreme Court and High Court can be seen. In the case of *Ramchandra Murari Lal Bhattad and others Vs. State of Maharashtra and others* 2007 (2) Supreme Court Cases 588 in para 16 it was held that the news items appearing in the Economic Times is not of much a significance. No affidavit has been affirmed as regards the correctness or otherwise of the said news item. Another judgement was passed in the case of *Borgaram Duri Vs. Premodhar Bora and others* reported as 2004 (2) Supreme Court cases 227. In paragraph nos. 12, 13 and 14 it was held that spreading of hatred on communal basis is an offence. The appellant herein did not lodge any First Information Report. No contemporaneous documentary evidence has been brought on record to show that the first respondent had spread hatred towards the member of another community or caste. The contents of the news item whereupon Mr. Sanyal relied having not been proved by examining the report. The same could not have been exhibited legally on the statement of witnesses that the report had been published in the newspaper. It was therefore, inadmissible in evidence.

44. Even otherwise in the manner alleged curbed practice has taken place does not inspire confidence; normally a candidate would not commit an offence in the presence of another candidate. It is also wholly unlikely that such statements would be made openly even if it had been done it is expected that independent witnesses would come forward to testify the veracity thereof.
45. Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled.
46. Hence it is evident that petitioner Dr. Diwakar Minz had relied upon the newspaper clippings which has not legal significance in view of the Court and even it was not produced any newspaper news item which can be treated as the valid ground for disqualification of Mr. Bandhu Tirkey because in the all the newspaper cuttings the subject matter was regarding the welfare of chek Tribals and indigenous. That matter comes under the purview of 10th Schedule. In addition to that Jharkhand Janadhikar Manch was not a registered political party on the date of filing the petition. It could get registered with the Election Commission of India only on 15th September, 2008. Then according to R.P. Act it cannot be treated as Jharkhand Janadhikar Party or Jharkhand) Janadhikar Manch as a political party on the date of filing the application i.e. on May, 2007. Hence, the Court is of the view that the petition is completely based on frivolous aspect and newspaper cuttings. Petitioners were failed to provide any substantial evidence. On the other hand respondent refuted the allegations one by one by keeping valid evidences.

ORDER

47. Therefore, the petition is disposed of as follows:-

- (i) The petition is dismissed.
- (ii) The respondent is not subject to disqualification.
- (iii) The case is closed.
- (iv) Other necessary steps may be taken in terms of the law and the Rules.

Ranchi, dated the 13th August, 2009

Sd/-
(Alamgir Alam)
Speaker
Jharkhand Vidhan Sabha