



JHARKHAND LEGISLATIVE ASSEMBLY

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

JAHRKHAND 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

Mr. Janardan Pandey, General Secretary,
Jharkhand All India Forward Block

&

Shri Pawan Kumar Choubey

..... Petitioners

Versus

Mr. Bhanu Pratap Shahi, M.L.A.

..... Respondent

JAHRKHAND LEGISLATIVE ASSEMBLY SECRETARIAT, RANCHI

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

झारखण्ड विधान-सभा सचिवालय
अधिसूचना

13 अगस्त, 2009

संख्या-कार्मिक-02/07-2632/वि०स०--एतद् द्वारा सर्वसाधारण की जानकारी के लिए भारतीय संविधान की दसवीं अनुसूची (अनुच्छेद 191(2) के साथ पठित) के तहत श्री भानु प्रताप शाही, संवि०स० के विरुद्ध दल परिवर्तन के आधार पर विधान-सभा की सदस्यता से निरर्हता संबंधी श्री जगदीश पाण्डेय, महामंत्री, अखिल हिन्दू फारवर्ड ब्लॉक, झारखण्ड राज्य कमिटी-73 तथा श्री पवन कुमार चौधरी 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 किरगोर प्रसाद,
प्रभारी सचिव,
झारखण्ड विधान-सभा, राँची।

Before Hon'ble Speaker of the Jharkhand Vidhan Sabha Ranchi

**Mr. Janardan Pandey General Secretary Jharkhand
All India Forward Block and Shri Pawan Kumar Choubey Petitioner**

Versus

Shri Bhanu Pratap Shahi, Respondent

In the matter of application filed by Mr. Janardan Pandey on 27th February 2007 & 5th March 2007 and of Mr. Pawan Kumar Choubey on 8th March 2007 for the disqualification of membership of Shri Bhanu Pratap Shahi under 10th Schedule of the Constitution of India read with Article 191 (2) of the Constitution of India.

Facts : Main points in the pleading.

Mr. Janardan Pandey has filed a petition on 27th February 2007 the main points of the petition are as follows :-

1. Complainant has stated that All India Forward Block has withdrawn its support from Madhu Koda Government and it is intimated properly to his majesty Governor. He has requested for the sitting arrangement of his party M.L. As Mrs. Aparna Sen Gupta and Mr. Bhanu Pratap Shahi in opposition bench. Again, another letter was given by Mr. Bhanu Pratap Shahi to the Hon'ble Speaker on 27th February 2007, Mr. Bhanu Pratap Shahi has requested the Speaker that according to reliable sources Forward Block is making some conspiracy against his membership as he is elected as an independent M.L.A. Hence, he should get some time to furnish the requisite documents before the speaker. So that he can prove himself innocent. A letter was sent by the Secretary of Jharkhand Legislative Assembly vide his letter no. 384 dated 2nd March 2007 to Mr. Bhanu Pratap Shahi regarding the sitting arrangement inside the House and since his explanation within three days. Another letter was sent to Mr. Janardan Pandey, General Secretary of AIFB Jharkhand vide letter no. 385 dated 2nd March 2007 to furnish the reply on the letter of Mr. Bhanu Pratap Shahi within three days. A letter was sent by Mr. Janardan Pandey, General Secretary of AIFB to the Secretary of the Jharkhand Vidhan Sabha on 5th March 2007. The main point of that letter is as follows:-

(i) Mr. Janardan Pandey stated that as Mr. Bhanu Pratap Shahi is saying that he was elected independently from Bhavnathpur constituency it is completely false, it can be verified by the documents issued by the Returning Officer and notification of the Election Commission of India of 2nd March 2005. In all the documents it is shown that Mr. Bhanu Pratap Shahi was elected from 81 Bhavnathpur constituency of Jharkhand Vidhan Sabha on the ticket of All India Forward Block. In addition to that he also mentioned that in the diary of Jharkhand Vidhan Sabha and in the members list of the Jharkhand Vidhan Sabha it is also mentioned that Mrs. Aparna Sen Gupta as the leader of AIFB and another M.L.A. is Mr. Bhanu Pratap Shahi. Hence his claim to be an independent M.L.A. is under the purview of anti defection and hence he should be disqualified from the membership of Jharkhand Vidhan Sabha under anti-defection law of the Constitution of India.

Another petitioner Mr. Pawan Kumar Choubey filed a petition on 8th March 2007. The main points of petition is as follows:-

1. That Mr. Bhanu Pratap Shahi has been elected member of second Jharkhand Vidhan Sabha on 8th February 2005 by the symbol of AIFB from 81 Bhavnathpur Constituency. His result was declared by the Election Commission of India on 27th February 2005. Mr. Shahi was a member of AIFB but recently he has joined as a minister in the Madhu Koda led UPA Government however his party AIFB has withdrawn the support from the Government he still remained a minister against the will of the party under para 2 of the 10th Schedule of the Constitution. The petitioner requested that he should be disqualified on the basis of para 2 (1) (a) of the 10th schedule read with Article 191 (2) of the Constitution of India. In his petition he has mentioned decisions of **Kihoto Holohon Vs Zachillhu of the Supreme Court of India** and in the petition no. 1602 of 2005 of Jharkhand High Court also.

A show-cause notice was furnished by the Speaker vide his letter no. 1112 dated 13th March 2007 to Mr. Bhanu Pratap Shahi to furnish the reply within 15 days that why not action should be taken against him and the petition should be accepted for hearing. Again a letter was sent by the Speaker vide his letter no. 1368 dated 11th May 2007 to Mr. Bhanu Pratap Shahi to provide the letter dated 11th March 2005 as it is mentioned in this reply, whose photo copy is required and it is expected that within a week he should provide his reply otherwise ex-parte decision may be taken. Mr. Bhanu Pratap Shahi, respondent has filed his reply on 16th May 2007 regarding the show-cause notice dated 13th March 2007 and 11th May 2007. The main point of the reply are as follows:-

He stated that I have received a letter dated 13th March 2007 by which I have been show-caused that I should submit my reply regarding the complain made by Mr. Pawan Kumar Choubey who has said that I was elected in the symbol of AIFB and result was declared on February 2005 and I was declared an M.L.A. and as member of AIFB but recently have joined as minister in UPA Government and since the AIFB has withdrawn the support and I am still continuing as minister so I should be disqualified on the basis of provision as said under the 10th schedule of the Constitution regarding the allegations labelled by the petitioners. Further he has stated that he was elected as an independent MLA from Bhavnathpur Constituency and he has extended his support to the UPA who is at present ruling party of the State of Jharkhand. Since Mr. Shahi was the member of the council of ministers in the present Jharkhand government and as his sitting arrangement has been made in the ruling bench.

The respondent Mr. Bhanu Pratap Shahi stated that on 17th January 2005 he has filed nomination form for contesting MLA seat from Bhavnathpur constituency as an independent candidate, the said form was duly accepted by the Returning Officer vide his endorsement date 18th January 2005 and he had opted for three symbols namely: - Tala Chabhi, Chapakal and the Cup Plate. That in the said nomination form it was categorically letter attached along with that he was not a member of any political party and there was no nomination form which could prove that he was allotted the symbol of All India Forward Block and he was the official candidate of that party and thus in the absence of any such documents the claim of All India Forward Block that he has contested from ticket false on the ground. Again Mr. Shahi stated that there after all sanctions required in connections with contesting the election like use of vehicles, canvassing, attending meetings etc. were granted to me as an independent candidate and finally I had been declared successfully in the election but unfortunately when a certificate in form 21(c) was issued to me by the returning officer declaring elected he had

inadvertently shown me as a member of AIFB vide certificate dated 27th February 2005. Again he stated that on coming of to know this facts I immediately vide my representation dated 11th March 2005, protested before the then Hon'ble Speaker Jharkhand Vidhan Sabha and requested him to make necessary correction in form 21 (c) by declaring me elected as an independent MLA on Jharkhand Vidhan Sabha, the said representation is still subjudice before the Hon'ble Speaker. Mr. Shahi stated that now the basis of form 21(c) the Jharkhand state unit of All India Forward Block vide there above record letter dated 27th February 2007 has claimed that I am a member of AIFB which is entirely incorrect and misconceived because the said claim is baseless as from the statement/documents annexed here above. It is apparent that I am an independent MLA and not belonging to the party indulging including All India Forward Block. In para 6 Mr. Shahi stated that my representation dated 11th February 2005 is still pending undecided before the Hon'ble Speaker Jharkhand Vidhan Sabha. So it is my humble request to first decide by above representation dated 11th February 2005 by calling upon the documents from Garhwa because the date when by above representation is decided the things itself will be clear and the confusion of All India Forward Block will be shorted out. In the last he requested that if the case is decided by Hon'ble Speaker on the basis of documents I have got a full faith that you can declare as independent MLA and then no question of disqualification because the case of complainant Mr. Pawan Kumar Choubey is misconceived and his file in the wrong motion since he is not aware that I was never elected a member of All India Forward Block and I was elected as an independent MLA and thus question of disqualification does not arise, in view of what has been stated here in above it is apparent that I am an independent MLA and not a member of AIFB, so I may be declared as independent member and my representation dated 11th February 2005 decided by your good self as soon as possible.

A letter was sent by the Deputy Secretary of Jharkhand Vidhan Sabha vide his letter no. 933 dated 21st May 2007 to DC Garhwa and requested him to furnish the reply within a week. The questions are as follows:-

1. Please furnish the certified copies of nomination papers filed by Mr. Bhanu Pratap Shahi in the constituency no. 81 Bhavnathpur and please intimate us whether he has filed his nomination paper as an independent candidate or of some party candidate. If he has filed his nomination paper as an independent candidate then how can the Returning Officer has declare from the constituency as a party candidate of AIFB.

Again reminder was given by the Deputy Secretary of Jharkhand Vidhan Sabha vide his letter no. 1678 dated 15th June 2007 to furnish the reply within a week. Finally, a letter was sent by the Deputy Commissioner, Garhwa vide his letter no. 780 dated 28th June 2007 to Deputy Secretary, Jharkhand Vidhan Sabha, Ranchi. It is pertinent to state here the main points of the said letter:-

1. It is stated that Mr. Bhanu Pratap Shahi has filed 3 sets of nomination papers on 12th January 2005 and 15th January 2005 for the constituency no. 81 Bhavnathpur constituency bearing nomination no. 214 and 215 respectively before the Returning Officer and copies of three nomination papers were annexed with the letter.
2. A symbol was allotted by All India Forward Block through the form 'A' and 'B' for 81 Bhavnathpur Constituency.
3. It is stated that Mr. Shahi has filed another nomination paper bearing nomination no. 45 on 17th January 2005 as an independent candidate.

4. On 17th January 2005 a proposer, Mr. Vinay Kumar Singh of Mr. Bhanu Pratap Shahi has requested the Returning Officer to allot him a symbol Lion as an election symbol to the nomination filed by Mr. Shahi on 17th January 2005, because All India Forward Block has already allotted the symbol Lion to Mr. Shahi and hence Mr. Shahi should be acknowledged as the official candidate of the All India Forward Block.

5. Mr. Bhanu Pratap Shahi contested the election in the capacity of All India Forward Block candidate in the election of February 2005.

6. It is mentioned that Mr. Shahi was elected as an representative of 81 Bhavnathpur Assembly Constituency in Jharkhand Vidhan Sabha on the symbol of Lion and as the candidate of All India Forward Block.

7. It is mentioned that as Mr. Bhanu Pratap Shahi has filed 3 sets of nomination papers on 12th January 2005 and on 15th January 2005 vide his nomination paper no. 214 and 215 but all the three nomination papers were rejected on the ground that however All India Forward Block is a registered political party but it is not officially recognized in the State of Jharkhand hence the number of proposers should be at least ten. In each of the nomination papers of Mr. Shahi there was only one person as the proposer and on the basis of less number of proposer on the nomination papers all the three nomination papers were rejected. Again at 2.20 PM on 17th January 2005 Mr. Shahi has filed another nomination paper bearing number 45 in the capacity of independent candidate and it was found valid by the Returning Officer. The minutes of the Returning Officer on 28th January 2005 is as follows :-

"Mr. Bhanu Pratap Shahi has filed three separate nomination papers and declaration was given to me that he wants to contest the Assembly Election from Bhavnathpur Constituency on the ticket of All India Forward Block and on the allotted symbol of Lion and for that he had submitted form A and B which was allotted by Mr. Devbrath Vishwas MP and General Secretary of All India Forward Block. In addition to that another nomination paper bearing no. 45 dated 17th January 2005 was also filed by Mr. Bhanu Pratap Shahi as an independent candidate. The proposer of Mr. Bhanu Pratap Shahi namely Mr. Vinay Kumar Singh who is on serial no. 8 had given an application to the Returning Officer and requested that Mr. Bhanu Pratap Shahi should not get free symbol of independent candidate rather according to the allotment of Lion symbol on the basis of form 'A' and 'B'. He should be treated as an official candidate of All India Forward Block and the symbol Lion should be allotted to him; in the hand book of Returning Officer on page no. 57 in Para. 3.1 according to the directions on behalf of Mr. Bhanu Pratap Shahi it was requested to allot a symbol Lion to Mr. Shahi and in the list of free symbols for the independent candidates the symbol Lion was not included. In the hand book of Returning Officers page 60 Para 0.1 in the light of that however Mr. Bhanu Pratap Shahi's nomination paper as an independent candidate was accepted and his three other nomination papers as an All India Forward Block candidate were rejected but the form 'A' and 'B' were included with the nomination papers and on that very ground the proposer Mr. Vinay Kumar Singh of Mr. Bhanu Pratap Shahi has requested on 17th January 2005 to allot All India Forward Block symbol Lion to Mr. Bhanu Pratap Shahi and according to his request the symbol was allotted to Mr. Shahi and he was treated as the official candidate of All India Forward Block.

Again a letter was sent by the Speaker vide his letter no. 1174 dated 30th August 2008 to Mr. Bhanu Pratap Shahi to furnish the reply within 10 days Mr. Bhanu Pratap Shahi vide his letter no. 1255 dated 9th September 2008 has requested to give at least 60 days time to furnish the reply. However, it was not accepted and only 10 days

extended time period were allotted to him by the Speaker vide his letter no. 1285 dated 22nd September 2008. The petitioner Mr. Pawan Kumar Choubey has requested the Speaker on 4th October 2008 that he got some information under RTI Act 2005 and now everything is clear before him and he wants to correct his stand and accordingly he requested the Speaker that previous complain was based on misconception of facts and he was mistaken, hence it should be withdrawn. In addition to that Mr. Bhanu Pratap Shahi has requested the Speaker to furnish the following informations -

I. The original copy of nomination paper submitted by him for 2005 election for 81 Bhavnathpur Assembly Constituency.

II. The letter or document where in he made request for supply of election symbol or by his authorized representative.

III. The details of the locus-standee of Shri Pawan Kumar Choubey to maintain the complain which is the basis of the show-cause notice particularly his right and justification of maintaining complain.

Again he requested that kindly summon the original record with regard to item I and II & provide him opportunity to see of the original records so that he may furnish his explanation accordingly.

Again he stated that as far as the issue of the locus-standee concern it is essential for submitting my explanation as there are certain decorum and precondition only a person competent can agitate the issue as raised by Shri Pawan Kumar Choubey and only the complaint by competent and authorized person can binds the Hon'ble Speaker to undertake an enquiry as to anti-defection law and not at the instance of Medelson Interloper like Mr. Pawan Kumar Choubey who is presumable a stranger and as such no proceeding can be initiated as his stands hence before giving reply, I wish to understand his locus to maintain the complain accordingly I request you to kindly enlighten me on the facts if any and the law of standing in this regard so that I may give my reply touching those issues of locus-standee as well he again stated that last but not the least issue of independence of the institution of Hon'ble Speaker it appears from the contents of the complaint of Mr. Pawan Kumar Choubey that he is backing on the pending date of application in the Jharkhand High Court in this regard I would submit that in parliamentary form of democracy the legislative body occupies independent and supreme position and as such it is immune from the dictate of any other organs including judiciary the recent controversy of the decision of Speaker parliament in the matter of expulsion of A and B is the eye of the and secular on the issue of independence and the exclusive domain of the Hon'ble Speaker and further clinching on the point that the office of Hon'ble Speaker is not under dictate of any functionary including law courts in discharge of its functionary within its realm in the backdrop of the facts and circumstances mentioned above. I would request your honour to kindly provide in the details of the information mentioned above and provide me one week time after providing the aforesaid information so that I may give effective and meaningful reply to the show-cause notice under reference.

Finally a date for hearing was fixed on 10th January 2009 at 11.00 AM in the South Lobby of Vidhan Sabha Campus. In the hearing both the petitioners Mr. Pawan Kumar Choubey and Mr. Janardan Pandey as well as the respondent Mr. Bhanu Pratap Shahi were requested to present before the Court either personally or through there advocates to put their points either verbally or in written.

On 10th January 2009 Mr. Anil Kumar Upadhaya and Mr. Rajesh Kumar counsel were appeared for the respondent Mr. Bhanu Pratap Shahi however the petitioner Mr. Janardan Pandey put his side himself.

The main points of the pleadings were as follows :-

Mr. Anil Kumar Upadhaya Advocate for the respondent Mr. Shahi stated that Sir I am appearing on behalf of the opposite party I am making preliminary objections as to maintainability of the petition because there is a rule framed by Hon'ble Speaker, Mr. Rajesh Kumar advocate for the respondent Mr. Shahi again stated that there are two things first of all I would like to address your honour that on the notice as issued by the Hon'ble Court on 13th March 2007 which was the basis of the present proceeding was initiated by one Mr. Pawan Kumar Choubey. According to the petition of Mr. Pawan Kumar Choubey a show-cause notice was issued by your honour and according to my view that is not maintainable. It is our first objection, hence it is requested that the petition of Mr. Pawan Kumar Choubey is not maintainable and it should be quashed. Regarding this question it was stated by the Speaker that under the 10th schedule it is very much clear that if Speaker can take cognizance on the basis of show-cause suo-moto it can be accepted through the media or anything else I can take cognizance suo-moto and one thing is to be cleared before the Court that the symbol allotted by Forward Block is the Lion and Mr. Shahi had contested that 81- Bhavnathpur Vidhan Sabha Constituency on that symbol and he is saying that he had contested the election as an independent candidate. You can put your side in the light of these things.

Mr. Anil Kumar Upadhaya advocate for the respondent stated that kindly see para-8 of 10th schedule which contemplates provision for framing of rules by the hon'ble Speaker and in terms of that para-8 Bihar Vidhan Sabha has framed rules which was operating up to 2006 rule, which was made effective from 2nd March 2007 please see in section-6 as it is effective from 2nd March 2007. Sir, it is very particular that only a member of the Legislative Assembly can raise issue with regard to defection or disqualification in terms of 10th schedule so Mr. Choubey is not the member of the Legislative Assembly, therefore he has no locus to maintain his petition with regard to defection or disqualification of opposite party. further sub-rule 5,6 and 7 contemplates a definite procedure for filing the petition. Every petition is not maintainable and kindly have a look at sub-rule 5 again in the sub-rule 6 it is mentioned that petitioner should sign on the petition and all the annexure should be verified in accordance with the rule of civil procedure code. Lastly in each and every page petitioner should sign and his sign should be verified in the same procedure only then the petition is maintainable otherwise petition is not maintainable.

So far as Mr. Pawan Kumar Choubey is concerned, my preliminary objection as to maintainability is that he has no locus to maintain and he is not in accordance with sub-rule-5, and if it is not accordance with sub-rule-5 then the petition is not maintainable the law is well settled that if law requires it means it should be done in a particular manner then it has to be done in a manner prescribed any other mode of its performance forbidden by Mr. Singh's requisition, it was said long back in 1945 as a Privy-Council and it seize holds good. So my submission would be that personally the petition is not maintainable because he is not person at least. He has no locus in terms of the rule and once the rule is framed. If the rule framed by the Hon'ble Speaker and the power has to be exercised in the manner prescribed so the petition has to be framed in accordance with the procedure prescribed any departure from the procedure, the petition is not maintainable.

Regarding these points it was said by the Court that you may see it in rule 9 Speaker can issue directions as he requires so. Regarding this rule 9, advocate Mr. Anil Kumar Upadhyaya again objected and he stated that rule 9 will operate only in a situation where rule is silent again he stated that I shall be placing reliance on the Precedent there is already a Precedence I shall be passing on there is the precedent of this line specific order on this issue by the Bihar Vidhan Sabha, there is no more res-integra it has been set. Again it is stated by the Speaker that you may see rule 9 and I have the right on various occasions the hon'ble Court has held that without going into the technicality any petition under the 10th schedule should be considered and Speaker can take cognizance of the petition without going into the technicalities of the law or rules, there are so many cases regarding that.

Again Mr. Anil Kumar Upadhyaya advocate for the respondent stated that kindly see Para 17, 18 and 19 these three paragraphs are on the point that this is the precedent of so far this issue is concern please see it once kindly see in the identical circumstances this issue was raised and it was held that any departure for sub-rule -5 Speaker has rejected all the pleas and he said that and it was said by the Speaker himself that under the 10th schedule I can take cognizance from any source hence I am not interested at all to discuss about that. Please Mr. petitioner you put your side. Again Mr. Anil Kumar Upadhyaya advocate for the respondent pleaded that so far authority of the Hon'ble Speaker is concerned nobody is disputing that the decision of the Hon'ble Speaker is final but when the Speaker is supposed to have frame rule in terms of Para-8 that situation the law requires I am just placing on the reliance. Again Mr. Upadhyaya stated that I am just raising a question of law with your kind information and then I request that your honour may decide the issue preliminary objection has to maintainability because the maintainability is the issue which goes to the rules of detail and if the petition is not maintainable if it is not in accordance with the procedure because the power of the Hon'ble Speaker circumscribe by the hon'ble Speaker itself when the Speaker has refused that the rules has to be followed then it has to be followed and any departure from that rule will render the petition will not maintainable that is my submission and for that I would request your honour to kindly have a look at the decision. It is the Precedence by the Bihar Vidhan Sabha and if there is no other Precedent then I will request that the precedent of Bihar Vidhan Sabha to hold good unless it is ratified or otherwise decided so the precedent is that if the petition is not in accordance with the procedure contemplated under rule-5 within a week that if the petition is not verified in the manner prescribed under rule -6 then that petition is to be rejected and this is the judgement this has been settle and there is no contrary Precedent to my knowledge.

Again Mr. Anil Kumar Upadhyaya advocate for the respondent stated that as the copies provided by the Court to me, please see it, whether it is in terms of Para 2 of 10th schedule or not, regarding this question, Speaker has stated that we have already accepted all the things and it was intimated by you that you have written a letter to the Election Commission to change the notification issued by the Election Commission on 11th March 2005 you know everything better regarding this matter. Again Mr. Anil Kumar Upadhyaya advocate stated that no I don't want to say that thing I know many things but that will not do the photo copy provided by the Jharkhand Vidhan Sabha is that in terms of clause 1 and 2 or Para-2 of 10th schedule that is the question in Para-2 of the 10th schedule what is the requirement and what is the objection whether it is departure from the 10th schedule whether there is some breach. Now, again Speaker asked the respondent that whether you have the copy or not, if you don't possess it then it will be provided by the office to you at an earliest and you may furnish written reply within 7 days.

Again Mr. Anil Kumar Upadhyay learned advocate for respondent stated that Sir I want to conclude my preliminary objections there is resumption against absurdity if the hon'ble Speaker has framed a rule when the rule was framed for the purpose of observance and not for this breach or departure if the hon'ble Speaker has framed rules that the petition has been filed in accordance with the procedure contemplated under the rule then that rule has to be followed otherwise it becomes redundant and there is presumption that no rule is redundant. Ultimately Speaker has said that I have taken it into the cognizance and you please put your side if you have to say anything regarding the petition or the objections and allegations then you put that points I have already taken it into cognizance and hence its technicalities are already discarded. Now Mr. Janardan Pandey the petitioner stated that Sir I want to make it clear that situation that Mr. Bhanu Pratap Shahi has written to you that I have already furnish some documents regarding my independent character as a legislature what document were furnished by him I don't know about that and hence I am unable to make some comments upon that.

Mr. Bhanu Pratap Shahi the respondent has written in a letter to you that he was elected as an independent MLA, his statement is hundred percent wrong you may see the nomination papers filed by Mr. Bhanu Pratap Shahi before the returning officer and the certificate issued by the Returning Officer. In addition to that you may see the notification of election commission of India which was issued on 2nd March 2005 a copy of that notification is also attached with the rejoinder I want to make it clear that Mr. Bhanu Pratap Shahi was elected as a member of All India Forward Block from the constituency no. 81 Bhavnathpur of Jharkhand Vidhan Sabha. In addition to that in the diary of Jharkhand Vidhan Sabha on page no. 30 it is very much clear that from 81 Bhavnathpur Mr. Bhanu Pratap Shahi is the MLA of AIFB and in that diary the party position is also mentioned in which Mrs. Apran Sen Gupta is the leader of AIFB and total number of MLAs of the party is 2. In view of the above facts if Mr. Bhanu Pratap Shahi says that he is an independent MLA then automatically he comes under the purview of anti-defection laws, and hence it is requested that Mr. Bhanu Pratap Shahi should be disqualified from the membership of Jharkhand Vidhan Sabha it is my only submission I have already given in written to you a question was asked by the Speaker that whether Mr. Bhanu Pratap Shahi a party has made campaign in favour of Mr. Shahi or not in Bhavnathpur. Mr. Janardan Pandey the petitioner stated that we have already sent the party flags as well as election materials and All India Forward Block has also campaigned for Mr. Bhanu Pratap Shahi we have already furnished form A and B regarding allotment of symbol, every document is there Speaker asked to Mr. Janardan Pandey that it is well known that he has submitted his nomination in 4 different nomination seats three of them which were associated with Forward Block rejected by the Returning Officer. Mr. Janardan Pandey replied that it is not true again it was stated by the Speaker that whether you know that as he had filed his nomination paper as an independent candidate just after that his representative Mr. Vinay Kumar Singh who was the proposer of Mr. Bhanu Pratap Shahi has given in written to the Returning officer that Mr. Bhanu Pratap Shahi wants to contest the election on the ticket of All India Forward Block itself. Regarding this matter Mr. Janardan Pandey stated that at first he has requested to allot the ticket we have allotted him forward block symbol and already given him form 'A' and 'B' regarding allotment of symbol 'Lion'. Regarding the question of Speaker that your party is registered in Jharkhand whether the symbol 'Lion' will be allotted in each and every constituency to the Forward Block. Again Mr. Janardan Pandey the petitioner stated that

our party All India Forward Block is registered as well as state level recognized party in West Bengal and if his party put his candidate in another state then according to the situation as the election is announced just after the notification of the election it is expected that one should give in written to the election commission of India that we are going to contest on these particular seats and our symbol should be reserved in that constituency and according to that in that list Bhavnathpur was also mentioned.

The Speaker asked Mr. Janardan Pandey that can you provide the letter regarding the allotment of symbol which were given to the election commission of India. Mr. Pandey said that it is not at present available but I will provide it, whether Mr. Shahi was a member of All India Forward Block earlier in Mr. Janardan Pandey stated that yes he is still a member of AIFB however but he is suspended from the party he is suspended member because we have already withdrawn our support on 8 February 2007 from Madhu Koda led government and we have intimated to you vide my letter dated 27th February 2007 you can see it, which is very much clear that I have already written you that seat should be allotted for our member in the opposition bench and it was duly intimated to his Excellency Governor also, it was requested that Mrs. Aparna Sen Gupta an MLA of AIFB from Nirsia and Mr. Bhanu Pratap Shahi an MLA from Bhavnathpur constituency may be allotted seats in the opposition bench regarding the issue of whip Mr. Janardan Pandey stated that whip was already issued by the party and I can read out which is as follows :-

It was written by the party leader Mrs. Aparna Sen Gupta on 2nd March 2007 that that was written to you that according to the decision of the state committee of All India Forward Block I am directed to inform you that our two MLAs should be allotted seat in the opposition bench.

It was asked by the Speaker to Mr. Janardan Pandey would you want to give some more submission then he denied on that. Again Mr. Anil Kumar Upadhaya learned counsel for the respondent stated that my submission would be that he will be relying on those documents which will be supplying within 7 days unless a document is supplied making of my submission will be pre-matured but notwithstanding with facts that these documents are relevant. of course the Hon'ble Speaker has rightly pointed out that where is that document and within 7 days you have rightly directed him to submit so if they produce those documents then it will effective arguments on my part to make my submission so far as the contents of the objection which he has read out, it is only with reference to the facts that there was intimation that they have taken decision to sit in opposition. There is no reference that any point of time they have issued whip either vote or abstain for voting and that was defined no. 1,2 all that he is raising the issue that Mr. Shahi has joined the ministry therefore he has incurred disqualification at the highest I can understand this is the submission of Mr. Pandey my submissions for your kind consideration will that 10th schedule in the first only the situation under paragraph 1 and 2 and in no other situation it is only with regard to breach of the whip issued by the party president my friend has not enclosed the whip whether that whip was issued and it was actually served calling upon me to do for abstain from voting in the manner prescribed under the rule. So unless that document is placed the whole submission to set premature we can maintain that submission only he can produce that document that this is the whip which was issued and served upon Mr. Shahi and he has defied that so far as question for joining ministry is concerned your honour is well aware that Article 164 of the Constitution is clear that for joining Cabinet is not required that one should be the member of either the House. A person who is not member may be member of the cabinet so question whether I belongs to this party or that party is immaterial for the purpose of joining cabinet and that cannot be a ground for my defection or disqualification.

Disqualification is precisely contemplated under 10th schedule and joining ministry is not a ground contemplated under 10th schedule so that ground cannot be maintained for the purpose of disqualification. Mr. Janardan Pandey the petitioner objected upon this argument and he said my lord in this case also it is hundred percent valid we have supported Mr. Madhu Koda led government from outside and it was our whip that you may not be a member of the Council of Minister our party was supporting from outside to the Government and if somebody goes inside the government he takes oath as a minister then automatically it is the violation of the whip. Again Mr. Janardan Pandey made a submission that party is a Constitutional Organization and being a general secretary of the party I have the right to give ticket to someone and a person who has empowered by the party to give the ticket. He has the right to issue a whip and to issue a letter, issue a direction that his party member will sit in the house in which side whether in the treasury bench or in the opposition bench and all these decisions were taken by the whole party not by a single person and it can be decided by a single person only when he is independent MLA then please it is my question that whether Mr. Shahi is independent or not.

Regarding this question Mr. Anil Kumar Upadhyay learned counsel for the respondent again stated that I will request you to don't interrupt me so long I am making my submission I am making submission on the question of law can we have a look at 10th schedule. 10th schedule talks about the disqualification on the ground of the defection. Second Paragraph is very particular that on what circumstances defection is affected and disqualification will follow only on these circumstances I may be indisciplined you may take any disciplinary action but taking disciplinary action is no ground for taking action under 10th schedule and any act outside the House is not amenable under 10th schedule it has been set by the Hon'ble Supreme Court I am referring the judgment of Hon'ble Supreme Court reported in 1993 in Holohan case it was set by the Constitution bench 5 judge have held that the issue with regard to outside the proceeding it may be disciplinary action or decision of the party the general secretary may be very competent to take any decision but his decision will not bind hon'ble Speaker and 10th schedule is confined to only house proceeding and not the proceeding which is outside the house so his decision with regard to supporting the government outside or joining the government is one issue it has nothing to do with the defection in terms of clause 2 of the 10th schedule and further before making the submission I would like to invite the reference I has just pass on the decision of Hon'ble Speaker on 10th schedule by Bihar Vidhan Sabha dated 14th September 1998. With reference to Article 164 of the Constitution that it is no ground of disqualification in terms of 10th Schedule so my joining cabinet is no disqualification in terms of the Precedent and apart from that the Constitution bench Judgment in Holohan case that any issue outside the house cannot be a ground for disqualification in terms of 10th Schedule and further I would like to request that here is a case where the objection is filed not by me by the M.L.A in terms of rule 6 only M.L.A can maintain and my friend who is the General Secretary of the Party can not maintain because the rule is very clear so other than M.L.A

Mr. Anil Kumar Upadhyaya learned counsel for the respondent made submission that question of my adequate opportunity will arise only I am told that these are the charges and if charges are supported by the document. My explanation without furnishing those materials would be a premature submission. So, I would humbly request that the petition is not maintainable, it is premature and in the absence of the particulars in support of his

case. The petition is not maintainable I would request if my friend imposes those document and supply the petition which he has filed then in that situation I would request from the Hon'ble Speaker that I should be given an opportunity to revert those document to explain it otherwise with reference to the document which he will placing in course of time that is all my submission.

Again Mr. Janaradan Pandey, the petitioner stated that my lord it cannot be for any action inside the house, party cannot make interference from outside my lord I want to say that our party leader has requested you that our two members will sit in the opposition bench it is completely the matter of inside the house and we have not given any direction from outside our learned advocate has told that I want to make a submission that our legislative party leader Mrs. Aprana Sen Gupta has requested you that we have withdrawn the support of government and in this situation please allot seats in the opposition bench for our party members. My lord I want to ask only a question that what the role of party leader is. Whether a colleague should act according to the direction of his party leader or not whether it is a decision taken by the party leader is of outside or inside a question was asked by the Speaker whether the whip was issued by the party or not and the next question is that Mr. Shahi is a member of AIFB or as an independent MLA and again it was mentioned by the Speaker that in the whole case the learned counsel for the respondent was keeping his argument upon the maintainability of the case never he put a point regarding merit of the case I want to go to the merit of the case regarding this question Mr. Anil Kumar Upadhaya learned counsel for the respondent stated that once his exhausting stands should come forward every documents should be placed before the Court then I will make exhaustive submission regarding that, Speaker has given a direction to the office to he send related documents to the petitioner within 7 days.

Mr. Anil Kumar Upadhaya learned counsel for the respondent stated that the petitioner is relying on the whip that document is not before you primarily his objection is with regards to the violation of the whip and that whip is not before me unless that document is filed I must know that what a the whip where as the breach and whether that whip has been served upon me or not that is the flashed issue. Again Mr. Janardan Pandey, petitioner stated that my lord, when I have written to you that our member will sit in the opposition bench again there are contrary to that direction to remain as a minister is prima-facie a case of the violation of the directions and that's all.

Again a rejoinder was filed by Mr. Anil Kumar Upadhaya learned counsel for the respondent on the same date that is on 10th January 2009 in written and the main points of the written arguments are as follows:-

1. According to Jharkhand Legislative Assembly members (disqualification on the ground of defection) rule 2006 as per Para 6(2) only MLAs can file the petition and hence these two application filed by Mr. Pawan Kumar Choubey and Mr. Janaradan Pandey should be quashed as Mr. Janardan Pandey was also not a competent authority because he is not MLA.

2. He quoted the sub-rule 5, 6 and 7 of rules 6 in which it is mentioned here that all the documents should be signed and verified as per CPC rules and in this case neither Mr. Pawan Kumar Choubey nor Mr. Janardan Pandey has filed the petition in accordance with the rules. So far whip is concerned during the hearing it was asked by the chair to supply the copy of the whip but it was not supplied by the petitioner and it is also mentioned that when the basis of the allegation is whip, then there should be some documentary proof regarding delivery of whip to the person concerned.

3. Again he stated that the petition filed by Mr. Pandey is not verified as per CPC hence there is no cause to give explanation.

4. Again he quoted the sub-rule 5, 6, 7 of rule 6 regarding acceptance of the petition if a petition is filed in contrary to the rules then it cannot be taken into the cognizance because it is complete violation of rule. According to rule 9, I want to say that Speaker can give any direction and he has the right to issue any direction. I want to mention here that this right is for the compliance of the rule not for non-compliance of rule and hence I want to say that the petition filed by Mr. Choubey and by Mr. Pandey were not according to the rule and hence it should be quashed. Regarding violation of whip the petitioner cannot furnish the documentary proof before the Court hence it cannot be taken into the consideration as respondent has said that the basis of petition is issue of whip and hence there should be a valid documentary proof and to whom it was delivered and in the absence of that, petition should not be taken into cognizance.

Again it was stated by Mr. Pandey that party has taken a decision that his members should sit in the Opposition Bench but I have to make a submission here that the respondent Mr. Shahi was a member of council of ministers hence he should sit in the treasury bench because his seat was fixed there.

On 13th January 2009 Mr. Devbrath Vishwas Ex. MP and General Secretary of All India Forward Block has sent a letter to the Speaker regarding the allotment of symbol Lion to All India Forward Block against his letter dated 12th January 2005.

The Election Commission of India has sent a letter to the Chief Electoral Officers of Bihar, Jharkhand and Haryana vide his letter dated 15th January 2005 in which he had given permission to All India Forward Block to use the symbol of Lion for his candidates and a direction was given to the General Secretary All India Forward Block that the party and the candidate must comply with each of the provisions of Para. 13 and 13(A) of the Election Symbols reservation and allotment order 1968 further relevant forms 'A' and 'B' in respect of the candidate on the party intends to set up as its candidates in the above mentioned constituency must be delivered direct to the Chief Electoral Officer and the Returning Officers concern within the time prescribed in Para 13 of the symbol of. Here it is pertinent to mention that in Jharkhand All India Forward Block has requested to allot the symbol Lion in the Constituencies of Ganday, Giridh, Bhavnathpur, Ghatshila, Jamshedpur east, Jamshedpur west, Echagrah, silli, Sindri, Nirsa and Baghmara. On the basis that the All India Forward Block is a recognized state party in the state of West Bengal the candidate set up by AIFB in the states other than West Bengal are entitled to have the right for the allotment of Lion symbol in pursuance of Para 10 of the Election symbol order 1960(e). Required documents were sent by the Speaker to the respondent Mr. Bhanu Pratap Shahi vide letter no. 107 dated 24th January 2009 and ultimately a reply was filed by Mr. Anil Kumar Upadhyay. Rejoinder was filed by Mr. Anil Kumar Upadhyay learned counsel for the respondent Mr. Bhanu Pratap Shahi on 26th January 2009 that is after the date of year. The main points of the rejoinder are as follows:-

He stated that during the hearing it was requested by the respondent to Mr. Janardan Pandey to send a copy of whip So that reply a can be given in time but unfortunately till date I could not receive the copy of whip which was issued by the All India Forward Block to Mr. Shahi. Neither I have received the copy nor any documentary proof regarding delivery of the copy. We have not any documentary evidence that All India Forward Block has issued whip and it was violated by Mr. Shahi. Which comes under the purview of 10th Schedule of the Constitution of India. In the light of above facts, it is very much clear that All India Forward Block has not issued any whip and hence Mr. Shahi has not violated whip because it was not issued by party. Hence the subject of disqualification of Mr. Shahi is not considerable, it should be quashed now in accordance with Jharkhand Legislative Assembly members (disqualification on the ground of defection) Rule 2006.

On the basis of that rule the respondent stated that petition should be accepted on the basis of Rule 6. But Mr. Janardan Pandey is not a member of the house and hence it is not in accordance with the rule of law, Jharkhand Rule 2006. Hence the petition should not be considered for the disposal of the case. Again respondent stated that none of the documentary proof is attached along with the petition, Whereas it should be necessary in the lack of the documentary evidence the petition filed by Mr. Pandey should not be considered. In a Rule 2006 sub-rule 6 and 7 says that annexure should be verified in accordance with the CPC and it is not valid on that ground hence the petition should be quashed. Ultimately the respondent stated that Mr. Shahi does not fall under the purview of 10th schedule due to following situations: - under the 10th schedule it is necessary to switch over from the another political party or a member should violate the whip either by voting or abstaining. It is to be mentioned here that in Para-2 of 10th schedule there is an explanation that political party means a member who was set up by that political party here it is to be noted that there is no definition as such in the Constitution for the political party. In RP Act 1951 section 2(1) says that political party will be that party which should be registered before the Election Commission of India under section 29(A) and so far the question of registration or recognition of All India Forward Block it is neither recognized party nor registered under section 29(A) of RP Act in the state of Jharkhand and hence he will be an independent MLA in the state of Jharkhand. Respondent stated that it should be mentioned here that according to the RP Act 1951 under section 33 only one proposer is required for the nomination of a member of political party otherwise 10 propos should be require for the nomination of member and in this case his nomination cannot be treated as of a political party because All India Forward Block is neither recognized nor registered in the state of Jharkhand a copy of the nomination paper which were rejected by the Returning Officer is enclosed along with the rejoinder.

Again he stated that according to RP act 1951 under section 36(4) a nomination paper can be rejected only on the basis of substantive defects in the paper and the Returning Officers of Bhavnathpur has rejected the nomination paper of Mr. Shahi on the basis, that Mr. Shahi was not the candidate of All India Forward Block because only one propos has signed along with in the nomination paper of Mr. Shahi which is valid in the case of a candidate of registered recognized political party and hence the nomination was rejected on that basis that Mr. Shahi was not a member of the political party. The nomination paper filed by Mr. Shahi in the capacity of independent MLA accepted after scrutiny of the Returning Officer and if any candidate who has filed his nomination as an independent then he should be treated as independent only and will remain independent MLA and hence practically Mr. Shahi is an independent MLA. Again it is stated that All India Forward Block is neither recognized nor registered party and Mr. Shahi has not filed his nomination paper as a candidate of All India Forward Block rather he has filed his nomination as an independent candidate then where is the question of disqualification of Mr. Shahi on the basis of 10th schedule because in the light of law All India Forward Block is neither recognized nor registered political party in the state of Jharkhand and hence anti-defection law cannot be applied in the Sate of Jharkhand for AIFB. Mr. Shahi is not violated any whip of All India Forward Block and it is also not mentioned in the petition. Again he stated that on 10th January 2009 during the hearing Mr. Pawan Kumar Choubey the petitioner is absent during the hearing and in addition to that Mr. Pandey as well as Mr. Choubey both petitioners are not the members of the Jharkhand Vidhan Sabha hence they are not bonafide candidates for filling the petition ultimately he has requested that on the basis of the hearing and this rejoinder the petition filed by Mr. Janardan Pandey should be rejected.

Before reaching the conclusion it is pertinent to state here that about the provisions of 52nd amendments, concept of 10th schedule, section 29(A) of RP 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 :-

1. The evil of political defections 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 and assurance was given in the address by the president to the Parliament that the government intended to introduce in the current session of Parliament anti-defection bill the bill amend for outline defection and fulfilling the above assurance the purpose of enacting the Constitution 52nd amendment that is in corporation of the 10th schedule and other amendments was not only stabilize the legally elected government and to prevent the political immorality but also to make them effective if the provisions are laid down, the main purpose should be defeated. It was reported in the AIR 1987 P&H 263 FB Prakash Singh Badal vs. Union of India case.

2. Again the object is to curb an evil of political defection motivated by lure of offices or other similar constitutions which endanger the foundations of our democracy (Kihoto Hollohon vs. Zachillhu AIR 1993 Supreme Court 412).

3. G.V. Mavalankar who was most distinguishing occupant of that high offices in parliamentary democracy of office. the Speaker is held in very high esteem 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 elected Speaker he is expected to the above politics in other words he belongs to all the members or 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 matter because as a human being he has his drawbacks and shortcomings, however everybody knows that he will intentionally not do injustice or show partiality, such a person is only respect by all.

4. The Speaker or the 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 Hollohon vs. Zachillhu 1992 supplementary to SCC 651).

5. Pandit Nehru referring 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 a particular way the Speaker becomes the symbol of the nation freedom and liberty therefore it is right that Speaker should be at an honoured position, free position and should be occupied always by a man of outstanding ability and impartiality."

6. Before coming to the conclusion it is necessary to mention here Para 2(1) a and 2(1) b of the 10th schedule. Para 2 states as follows: - Disqualification on ground of defection:-

1. Subject to the provision Paragraph 4 and 5 member of a house belonging to any political party shall be disqualified or being a member of the house.

(a) If he has voluntarily given up his membership of such political party or
(b) If he vote or abstain from voting in such house contrary to any direction issued by the political party to which he

belongs or by any person or authority authorized by it in this behalf without obtaining in either case the prior permission of such political party person or authority and such voting or abstention has not been condoned by such political party person or authority within 15 days from the date of such voting or abstention.

On Various occasions, the Supreme Court has held before taking decision under 10th schedule, definition of political party should be considered political party means registered political party, for example in the case of *Kuldip Nair vs. Union of India* reported in 2006 (7SCC 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 especially when dealing with the members of the house of parliament and a legislative assemblies or councils the validity of the 10th schedule was challenged on various ground inter-alia that a political party is not a democratic entity and 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 its member who have been elected on a party ticket and according to decisions made by the party and not against it.

In another judgment of *Kanhiya Lal Umar vs. R.K. Trivedi and others* in 1985 (4) Supreme Court cases 628 in Para 10 it was held as follows:-

1. There is the essence of our system and facilitates the setting of Government by the majority although till recently the Constitution had not specially refer to the existence of political party by the amendments made to it by the Constitution, 52nd amendment at 1985 there is now a clear recognition of the political parties by the Constitution the 10th schedule to the Constitution which is headed by the above amending act acknowledges the existence of the political party and set out the circumstances when a member of parliament or of the state legislature would be deemed to have defected from his political party and if there by disqualifying or being a member of the house concern. Hence, it is difficult to say that 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.

2. It is very much clear that concept of political party was recognized by the Constitution for the first time in the 10th schedule thus file interpreting the definition of political party as included in the 10th schedule one has to keep in mind the intention of the legislature in this context reference may be made to the judgments of the Hon'ble Supreme Court reported in 2006(7) SCC (1) vide paragraph no. 382,385,451,452and 462 which deals with the concept of the political party as well as its interpretation in the context of 10th schedule in the same case in paragraph-3 attitude of Hon'ble Supreme Court has categorically mentioned that a concept of political party was recognized by the Constitution of 10th schedule.

3. That in another case reported in 2004(2) SCC 759 the Hon'ble Supreme Court vide paragraph no. 11 and 12 while determining the question as to which the candidate has to said to have set up by the political party has refer to the definition of political party as used under section 29(A) of the RP act 1951.

4. That is another judgment reported in 1985 (4) SCC 6 28 the Hon'ble Supreme Court vide Para 10 has given emphasis on the system of political party in our democratic set up the hon'ble Supreme Court while interpreting the definition of political party has referred to the definition of the same under section 29(A) of the RP act 1951 thus from the above decision it is evident that the term political party has used in the 10th schedule has to

be given the same meaning as it has been defined under the representation of peoples act 1951 under section 29(A).

The whole matter was seen on the canvass of Para-6 (1) of the 10th schedule which is as follows:-

Decision on question as to disqualification on ground of defection :

If any question arises as to whether member of the house has become a 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 the 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. This case is based upon the concept of registration of political party under section 29(A) of RP act 1985.

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 political parties- (1) Any association or body of individual citizen 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 names of its president, secretary, treasurer and other officer 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 or members in either House of Parliament or of any State Legislature; if so, the number of such member or members.

(5) The application under sub section (1) shall be accompanied by a copy if the memorandum or rules and regulations of the association or body, by whatever name called and memorandum or 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 Commission may call for such other particulars as it may deem fit form 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 shall be registered as 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.

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 the People 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 the authorized representative of the party before the Commission on 15/09/2008. In respect of said application has registered the Jharkhand Janadhikar Manch as a political party under section 29(A) of the Representation of the People Act, 1951 with effect from 15/09/2008.

Hence it is very much clear that a party should be said to be political party only when it is registered before the Election Commission of India.

Before coming to the conclusion it is pertinent to state some more judgments of Supreme Court. The Supreme Court has held in the case of G. Vishwanathan vs. hon'ble Speaker Tamil Nadu that even if a member is expelled does not cease to be a member of the party that has set him up as candidate for election but if from the party he voluntarily joins another party he subjects himself to his disqualification.

In the same case the Supreme Court has since held that in view of the explanation to Para 2(1) of the 10th schedule expelled member continues to remain a member of the political party that had set him up as a candidate at course.

In the matter of **Ravi S. Naik vs. Union of India AIR 1994 SC 15/58 para-2 1994 supplementary (2) SCC 641** the Supreme Court had further held that the expression voluntarily given up his membership in Para-2(1)(a) does not hold the same meaning as of resignation it implies a wider connotation a membership of a political party can be given up voluntarily by any number without even tendering a resignation to that party an inference about his voluntarily giving up of membership can be drawn from the conduct of that.

Again in the case of G. Vishwanathan vs. hon'ble Speaker Tamil Nadu (supra) it was held by the hon'ble Supreme Court in view of the explanation of Para 2(1)(a) of the 10th schedule it was held that even if the member is thrown out or expelled from the party he will not cease to be member of the political party that has set him up as a candidate for

the election for the purpose of 10th schedule it was further held that when a member is thrown out or expelled from the party which has set him up as a candidate and got elected joins another party it would amount to voluntarily giving him up membership of the political party which has set him as a candidate for election as such member the act of voluntarily giving up membership of the political party may be expressed or implied. The Apex Court further held that the deemed fiction must be given full effect for otherwise the expelled member would escape the rigour of law which was intended to curb the evil of defections which has polluted our democratic polity.

The entire case is based upon the following questions:-

1. Whether Mr. Shahi was elected as an independent MLA or the official candidate of AIFB?
2. What is the existence of AIFB in the state of Jharkhand?
3. If he was the member of AIFB then on the basis of unrecognized registered party
4. Whether his case comes under the purview of 10th schedule or not?
5. If after getting a symbol of AIFB can a member be treated as an independent candidate?

Keeping in mind all the aspects of facts of both sides especially the letter given by the DC Garhwa it is the established fact that Mr. Bhanu Pratap Shahi has filed three nomination papers as an official candidate of All India Forward Block and he has annexed form 'A' and 'B' duly signed by party authority which was issued by Mr. Devbrath Vishwas and all the three nomination papers were rejected by the Returning Officer on the basis that All India Forward Block is however it is a registered recognized party in the state of West Bengal but it is not recognized in the state of Jharkhand. Hence at least 10 proposers should sign on the nomination paper of a person. In this case in each of the nomination papers only one proposer had signed in the nomination paper and on the basis of that ground the nomination papers were rejected. It does not mean that All India Forward Block was not treated as a registered political party in the state of Jharkhand. According to the letter of DC Garhwa it is very much clear that the 4 nomination paper which was filed on 17th January 2005 and it was duly signed by 10 proposer was accepted and proposed no. 8 Mr. Vinay Kumar Singh has requested the Returning Officer that as Mr. Bhanu Pratap Shahi is the official candidate of All India Forward Block and he got the symbol for that party and his nomination papers were rejected during the scrutiny so this nomination paper which is accepted as the independent candidate can be treated as the official candidate of All India Forward Block.

Hence we come to the conclusion that this act can be done on the basis of the request of the proposer Mr. Vinay Kumar Singh and Mr. Bhanu Pratap Shahi was elected on the ticket of All India Forward Block using the symbol of 'Lion', which was reserved for the All India Forward Block as it is not in the list of free symbols which can be allotted to the independent candidates.

Regarding the existence of All India Forward Block in the state of Jharkhand, it is clear that it is unrecognized party but keeping in mind the various judgments of Supreme Court of India it is very much clear that any candidate set up by that party also cannot be free from the obligations of that party and hence this case will fall under the purview of the 10th schedule of the Constitution of India read with Article 191(2) of the Constitution.

Mr. Devbrath Vishwas MP and General Secretary of All India Forward Block has requested to the Election Commission India on 12th January 2005 regarding the allotment of symbol of Lion for Gandey, Giridih, Bhavnathpur, Ghatshila, Jamshedpur east, Jamshedpur west, Echagrah, silli, Sindri, Nirsa and Baghmara constituency it is very much clear that bearing constituency no. 81 is also in the list of Mr. Devbrath vishwas and regarding this letter Mr. K.F. Gilfred, Secretary of Election Commission of India has sent a letter to the Chief Electoral Officer of Bihar, Jharkhand and Haryana on 15th January 2005 and he has allowed to use the symbol of Lion in the specified constituencies and it is very much clear that Bhavnathpur is also one at present.

Again after the declaration of result, form 21 'C', 'E' and 'D' as well as form 22 were issued by the Returning Officer of Bhavnathpur and in all the forms it is mentioned that Mr. Bhanu Pratap Shahi was the Official Candidate of All India Forward Block and finally Election Commission of India had notified vide notification no. 308 dated 2nd March 2005. A list of all the 81 members elected for the second Jharkhand Legislative Assembly and in the last of that it is mentioned that from 81 Bhavnathpur constituency Mr. Bhanu Pratap Shahi was elected member and he was affiliated with All India Forward Block.

ORDER

Therefore the Petition is disposed of as follows:-

1. The request made by the petitioner in the application is allowable and allowed with respect to respondent at this point of time.
2. Under the 10th schedule of Constitution of India and the **Jharkhand Legislative Assembly member's (disqualification on the ground of defection)** rules 2006 it is decided that Shri Bhanu Pratap Shahi incurred disqualification for being a member of Jharkhand Vidhan Sabha and has ceased to be the member of Jharkhand Vidhan Sabha with effect from the date of this order.
3. The case is closed.
4. Copies of this order be forwarded to the petitioners and the respondent at an earliest.

Sd/-
(Alamgir Alam)
Speaker Jharkhand Vidhan Sabha

Jharkhand Vidhan Sabha Secretariat

Ranchi
Dated the 13th August, 2009