



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

JHARKHAND LEGISLATIVE ASSEMBLY

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

Mr. N.E.Horo, Ex. M.L.A.

President Jharkhand Party

..... Petitioner

Versus

Mr. Anosh Ekka, M.L.A.

..... Respondent

JHARKHAND LEGISLATIVE ASSEMBLY SECRETARIAT, RANCHI

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

झारखण्ड विधान-सभा सचिवालय

अधिसूचना

13 अगस्त, 2009

संख्या-कार्मिक-02/06-2640/वि०स०--एतद् द्वारा सर्वसाधारण की जानकारी के लिए भारतीय संविधान की दसवीं अनुसूची (अनुच्छेद 191(2) के साथ पठित) के तहत श्री एनोस एक्का, सं०वि०स० के विरुद्ध दल परिवर्तन के आधार पर विधान-सभा की सदस्यता से निरहता संबंधी श्री एन०ई० होरे, अध्यक्ष झारखण्ड पार्टी 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, राँची।

BEFORE HON'BLE SPEAKER, JHARKHAND LEGISLATIVE ASSEMBLY, RANCHI

Mr. N.E. Horo, Ex. M.L.A., President Jharkhand Party Petitioner
Vs.
Mr. Anosh Ekka, M.L.A. Respondent

In the matter of an application filed by Mr. N.E. Horo on 9th March, 2005 for disqualification of Membership of Shri Anosh Ekka under 10th Schedule of the Constitution of India.

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

Mr. N.E. Horo, President, Jharkhand Party has filed a petition before Hon'ble Speaker on 9th March, 2005 and stated that Mr. Anosh Ekka was elected to the Jharkhand Legislative Assembly on the ticket of Jharkhand Party and has been authorized under the resolution of the party to support UPA Government headed by Shri Sibusoren in vote of confidence in Jharkhand Assembly and to support in favour of UPA candidate for the post of Speaker.

3. The resolution dated 01.03.2005 of the Jharkhand Party has been duly communicated to him and he has been duly instructed to follow the mandate of the Jharkhand party in the words and spirit.

4. Petitioner stated that it has been learnt through media, press and other reliable sources that Shri Anosh Ekka is voluntarily acting against the mandate of the resolution and whip already issued. The party has come to a definite conclusion that he has made himself liable for disqualification as he is acting in utter violation of the mandate of the Jharkhand party. Again he stated that his willful and voluntarily misconduct and defiance has already made him disqualified in accordance with the provisions of the 10th Schedule of the Constitution of India.

5. The petition was taken in cognizance by the pro-tem Speaker and the show cause notice was issued vide letter no. 117 dated 10.03.2005 to furnish the reply before 4.00 P.M. on the same date that why not his Membership should be terminated from Jharkhand Legislative Assembly.

6. Again a counter affidavit was filed by the petitioner Mr. N.E. Horo. The main points of the petition was that the petitioner has filed a petition before the Speaker on 9th March, 2005. The said petition was on the basis of conduct of Shri Anosh Ekka which was reflected by his behaviour by totally ailing towards NDA by being paraded in support of NDA before His Excellency the Governor.

7. Petitioner has also filed various newspaper cuttings showing the happenings of various events.

8. Petitioner stated that the Jharkhand party had categorically taken a decision to support secular party of UPA and the said decision was communicated to His Excellency, the Governor, and the Hon'ble Speaker of the Jharkhand Legislative Assembly but even, thereafter, Anosh Ekka has become Minister in NDA Government and voted for the confidence in favour of NDA.

9. Again it is stated in the petition that knowing fully well that he was elected on the ticket of Jharkhand party and there was nothing to support NDA Government. He has acted contrary to the direction of the Jharkhand party which is a political party within the meaning of 10th Schedule. The moment Shri Anosh Ekka acted in support of NDA he incurred disqualified and he could not be made Minister in the Jharkhand Government contrary to the provisions of Act 164(1)(b) of the Constitution of India.

10. Again he stated that allowing Shri Anos Ekka to continue as a Member of Jharkhand Legislative Assembly and/or Minister of the Jharkhand Government is contrary to the express mandate of the Constitution of India.

11. A show cause notice was given to the respondent Mr. Anosh Ekka vide letter no. 1310 dated 06.07.2005 to file the written reply along with the documents within 15 days that why not the petition be accepted for consideration.

12. A letter was given by Mr. Anosh Ekka to the Hon'ble Speaker of Jharkhand Legislative Assembly on 2nd August, 2005 and he requested that he could not receive the petition in time and, hence, he is unable to file the rejoinder in time. Hence, he has requested to extend the time period for at least two months so that he may reply the facts of the show cause in his rejoinder.

13. Some other M.L. As M/s. Udai Shankar Singh, Sudhir Mahto, Thomas Soren, Prakash Ram, P.K. Balmuchu and other also intervened into the matter and requested for disqualification of Mr. Anosh Ekka and all these petitions were also sent to the respondent on 06.07.2005 and reminder was given vide letter no. 4373 dated 11.08.2005 to furnish the reply within seven days. Regarding this matter respondent Mr. Anosh Ekka has requested to permit 60 days time so that he may furnish the reply.

14. Again a letter was given by the Hon'ble Speaker vide his letter no. 1745 dated 29.08.2005 to furnish the reply on or before 15th September, 2005 otherwise ex-parte decision will be taken.

15. Respondent Mr. Anos Ekka has filed his counter affidavit on 15.09.2005. The main points of the counter affidavit is as follows :

- (i) That he has contested election from the 71 Kolebera Assembly constituency as a candidate of Jharkhand Party, a registered unrecognized political party and was declared elected vide order of the Returning Officer dated 27.02.2005.
- (ii) Respondent stated that a letter was alleged to have been written by Mr. N.E. Horo to His Excellency, the Governor of Jharkhand dated 01.03.2005 stating that they could be with the UPA alliance. The direction was, however, not issued to him and can not in any circumstances can be said to be a whip issued upon him as such.
- (iii) Again he categorically denied having received any whip issued on 01.03.2005 and would earnestly request he Hon'ble Speaker to supply a copy of the same to him and/or any other document that might have been filed against the respondent.
- (iv) Respondent stated that it is not out of place to mention that Mr. N.E. Horo, thereafter, wrote another letter to His Excellency, the Governor of Jharkhand on 02.03.2005 that he was withdrawing the earlier letter written by him.
- (v) Again he stated that a meeting of the Jharkhand Party was convened under Shri Lal Ramvijay Nath Sahdeo by its active Member and the representatives of the District Committee and they had taken the decision which is as follows :
 - (a) There was strong condemnation of the autocratic style of the functioning of the Party President N.E. Horo.

- (b) The conduct of the Party President against Shri Anosh Ekka the elected legislator was condemned.
 - (c) All the active Members of the officials of all Block Committees of Kolebera Assembly constituency decided that Shri Anosh Ekka should support the NDA which decision was taken by Central Working Committee as it would be beneficial to have stable Government and for the development of the area.
 - (d) Mr. N.E. Horo was in the clutches of the Congress Party and was working against the interest of the party.
 - (e) All officials of the Jharkhand party of Gumla and Simdega would seek explanation from Mr. N.E. Horo and if he would not agree to the same appropriate action would be taken against Mr. N.E. Horo on the following day.
- (vi) Again it was stated that on 7th March, 2005 on the resolution of Working Committee of the Jharkhand Party the working President also being the President of disciplinary Committee suspended Mr. N.E. Horo, the President of the Party for his anti party activity and Shri Lal Ran Vijay Nath Sahdeo was elected as a President of the Party. Regarding this matter, a letter dated 09.03.2005 was sent to the Election Commission of India and the newly formed Committee has decided to support the NDA Government on the floor of the House at the trial of the strength and for the voting of the Speaker of the House. He has submitted a list of 22 Members of the Jharkhand Committee as on 27th February, 2005 in which Mr. N.E. Horo was the President and another list of 13 Members in which Mr. Lal Ran Vijay Nath Sahdeo was the President.
- (vii) It was stated that in fact 90 percent of the party Members were along with Mr. Anosh Ekka which would be apparent from the resolution taken at the various District Level Committees and ultimately on 29th March, 2005, a conference was held in Town Hall, Ranchi and Mr. Anos Ekka was elected as the President of the Jharkhand Party. A list of 21 Members including the President Mr. Anos Ekka is also mentioned in the rejoinder.
- (viii) Again it is stated that an illegal biennial conference was also held by Mr. N.E. Horo, the suspended President of Jharkhand Party on 31.03.2005 and 01.04.2005. They elected Mr. N.E. Horo as the President and 29 other Members as office bearers and Members. It was mentioned in the rejoinder that 10 Members have already supported Mr. Anosh Ekka whose name is in the list of Mr. N.E. Horo which is contrary to the affidavit filed by them.
- (ix) Ultimately he stated that since N.E. Horo has already ceased to be the President of Jharkhand Party w.e.f. 07.03.2005 and has also been suspended from the party on the same date he could thus not have issued any whip upon him as Mr. Anos Ekka took up as Members of the Legislative Assembly on 10.03.2005 i.e. much after the suspension of Mr. N.E. Horo as his removal as President.

16. A letter was sent to the petitioner Mr. N.E. Horo to furnish the reply on the counter affidavit filed by the respondent Mr. Anosh Ekka within 15 days vide letter no. 5428 dated 28.09.2005.

17. Again Mr. N.E. Horo has requested the Hon'ble Speaker vide his letter no. 51 dated 13.10.2005 to extend some time to file the reply.

18. Mr. N.E. Horo has filed his reply on 25th October, 2005 and he refuted the charges of the opposite party Mr. Anosh Ekka and he stated that the statements therein are completely false and incorrect and that the direction of the Central Working Committee of Jharkhand Party to support UPA was duly communicated to the opposite party and the opposite party was fully aware about the decision of the Central Working Committee of Jharkhand Party.

19. One thing was very important that it was stated in the rejoinder that the letter dated 2nd March, 2005 whereby the earlier letter dated 1st March, 2005 was withdrawn and obtained under threat and coercion. It is relevant to point out here that Mr. N.E. Horo was summoned by the Governor to confront with both the letter and Mr. N.E. Horo clearly intimated that the letter dated 2nd March, 2005 was obtained under duress and he has no authority to issue such letter since he is bound by the resolution contained in the decision of the Central Working dated 1st March, 2005.

20. It is pertinent to mention here that Mr. N.E. Horo has sent a letter to His Excellency, the Governor of Jharkhand vide reference no. 6 dated 02.03.2005 intimated that the letter dated 02.03.2005 withdrawing earlier letter of support of UPA is not correct and his signature on the same was obtained under duress. It was also mentioned that his party continues unconditional support to UPA as informed earlier.

21. A date of hearing was fixed on 28th January, 2006 at 11.30 a.m. in which petitioner and respondent were requested to represent before the Court either personally or through their Advocates and put their sides verbally as well as in writing vide letter no. 435 dated 25.01.2006.

22. Again on the request of Shri N.E. Horo the petitioner date of hearing was shifted for 15th February, 2006 and Mr. S.B. Gadodia, Advocate appeared for the petitioner whereas Mr. Murlidhar was the learned counsel for the respondent. The main points of the pleadings were as follows :

- (i) Mr. Gadodia, Advocate for the petitioner stated that it is admitted fact that Mr. Anosh Ekka was elected as a member of Jharkhand Party which is unrecognized registered political party and there is no distinction of unrecognized and recognized political party for the purpose of 10th Schedule of the Constitution of India.

23. Again he stated that no specific symbol was reserved for Jharkhand Party he has applied for a symbol it is a registered political party and therefore the definition of a political party under the 10th Schedule clearly covered Jharkhand Party.

24. Again he stated that at this place paragraph 2 for a moment subject to the paragraph 4 and 5 a member of the House belonging to any political party shall be disqualified for being a member of a House if he has voluntarily given up the membership of such political party or he votes or abstains from voting of such House contrary to any direction issued by the political party to which he belongs or by a person or authority authorized by it. In this behalf when obtaining in either case the prior permission of such political party, person or authority and such voting and abstention has not been condoned by such political party, person or authority within 15 days from the date of such voting or abstention. Mr. Gadodia pleaded that Mr. Anosh Ekka has incurred disqualification under para 2(1)(a) that he has voluntarily given up membership of the political party that means he has voluntarily given up the membership of Jharkhand Party and the second ground which is also available is 2(1)(b). Where he has voted in the House on 15.03.2005 in favour of the NDA alliance whereas the direction issued by the Jharkhand Party to vote in favour of UPA alliance. Mr. Murlidhar, advocate for the respondent stated that the judgement should be based upon the original papers and not only on photo state copies because there are several disputed facts so one will have to settle on production of original document before the court. The document sought to be realized that is one second of these issues evidence would have been to be led are so many disputed facts that they can not be properly addressed mutual in conscious and contradictions can not be amicably resolved or satisfactorily resolved under some kind of evidences led for examination of parties. Hence Mr. Murlidhar has requested to direct both parties that if there are original document of which photo copy have been produced before the court just to satisfy the authenticity of these documents. The petitioner has accused the respondent for fabricating the document respondent also disputes the veracity and authenticity

of the photo copies produced by the petitioner. Hence, it is necessary to produce original documents. Ultimately, a ruling was given by then Speaker that the original should be submitted and will kept it in his custody and both of the parties have a look on their papers for this, the original should be submitted by both the sides and accordingly the next date of hearing will be fixed.

25. Again a rejoinder was produced by Anosh Ekka i.e. the respondent on 29.05.2006. The main point of the rejoinder is as follows :

- (i) It was stated that till date the petitioner has not produced the original of the alleged documents whose photo copy have been annexed to the petition as well as the rejoinder on account of the failure of the petitioner to produce the original of the documents. The genuineness of which could not be established. The opposite party reserves the right to inspect of such original document and further affidavit before the Hon'ble Speaker.
- (ii) The opposite party (Respondent) is submitting the copy of the required documents which is available with him it was stated that since the Jharkhand Party never passed a resolution dated 01.03.2005. There is no question of the opposite party contrary to the alleged whip issued on 01.03.2005 which is stated earlier is a fabricated document.

Again a date of hearing was fixed on 29.05.2006 Mr. Sumit Gadodia, learned counsel was appeared for the petitioner whereas Mr. Kaushik Poddar, learned counsel appeared for the respondent and stated that we have filed all the original documents. He has filed the proceeding register of the Jharkhand Party Central Working Committee from 7th March, 2005 onwards along with proceedings of the Jharkhand Party (Women Committee) and the original paper of affidavit of the members of the Central Working Committee. During the hearing a question arises whether Mr. N.E. Horo was competent to issue the whip or not whether it is supported by the majority of members of Central Working Committee or that was his personal opinion.

26. Mr. Gadodia stated that the necessity of the affidavit arose when they say that they have removed Shri N.E. Horo from the Central Working Committee when they started parallel registered right to the Register. The signature of those attending the meeting were put in the register. Respondent admits that till 06.03.2005 Shri N.E. Horo was the President of Jharkhand Party and he says that Mr. N.E. Horo was still the president.

27. Again Mr. Gadodia stated that the affidavit by Mr. Soma Uraon who was the Central Working Committee member is swearing in affidavit, treat this affidavit is truth, or treat this to be a truth as a post facto approval now what he states in affidavit that I the deponent of the present affidavit due fully support the position of Central Working Committee of Jharkhand Party taken on 1st March, 2005 to support the UPA Government. In all respect and also fully endorsed the decision of the Central Working Committee dated 5th March, 2005 whereby and where under decision was taken to suspend the following three members of Jharkhand Party.

28. During the hearing after the pleadings of both side it was held by the court that the entire matter can be resolved only on the basis of the original documents that is proceedings of the meetings as well as affidavit of members.

29. Again Mr. Sameer Uraon, MLA has intervened into the matter on 4th September 2006 and requested for passing final order of disqualification of Mr. Anosh Ekka. A date of hearing was fixed on 11.09.2006 at 11.30 a.m and petitioner as well as respondents were requested to appear before the court.

30. Again on the request of Mr. Anosh Ekka a date of hearing was fixed on 13.09.2006 Mr. S.B. Gadodia, Senior Advocate appeared for the petitioner, and Mr. R.K. Jain, Senior Advocate for the respondent and Mr. D.N. Gobardhan, Senior Advocate for the intervener.

31. Mr. D.N. Gobardhan, Counsel for the Intervener stated that we would like to say one thing which would show that Mr. Anosh Ekka has disqualified. A whip was issued because Jharkhand Party has said that they would be with UPA that the honour already had the document which was given to his Excellency, the Hon'ble Governor on 2nd March those documents are already on record. A President had given a letter writing said that they would support the UPA and they are not supporting NDA. The whip was already issued when the voting takes place Mr. Anosh Ekka joins hands with the NDA he does not support the whip. He does not vote for UPA. The record shows that he voted for NDA now why his action by the fact that he voted for the NDA and defy the whip, he did not vote for UPA would he be disqualified that is a short question for the Hon'ble Speaker to decide. Mr. Gobardhan stated that Mr. N.E. Horo says clearly that the letter which was written under duress at that time. In fact we reiterate Mr. Horo the President continues in his letter that I wish to "clearly state that my party continues its unconditional support to UPA has informed earlier one" So it could not be more clear even then this he walks out.

32. A letter was sent by Mr. Sameer Oraon M.L.A. who was the intervener in this case to the Speaker on 28th August 2008. It was stated in the letter that Mr. Anosh Ekka willfully deliberately disobeys the directions and whip of Jharkhand Party. To support Shri Sibusoren ministry in the vote of confidence motion. Shri Anosh Ekka hence became disqualified under 10th Schedule of the Constitution of India. A complaint was made by the applicant before the Hon'ble Speaker and was heard in length on 11th September 2006 and lastly 12th September 2006. There after a matter has remained pending before the Hon'ble Speaker.

33. The 10th Schedule of the Constitution providing for this disqualification on the ground of defection. He specifically added with the intention of ensuring the purity of the democratic structure that elected people can not switch over defy party whip with the intention of self promotion and make a mockery of democracy and that the constitutional purity of administration is part of the basic structure of the constitutions and must be upheld at all cost disqualified members can not be permitted to exercise in right a voting on the floor of the House for decide faith of the people of State. They are not allowed participating in the proceedings of the House including vote of confidence/vote of no confidence. Such people do not have any right to represent any constituency, in such proceeding and ultimately Mr. Sameer Oraon intervener has requested the Speaker to take action upon the respondent at an earliest, under the scheme of the constitution.

34. A letter was sent to Mr. Anosh Ekka vide letter no. 1178 dated 30th August 2008 to furnish the rejoinder as well as reply within 10 days and another letter was sent to Mr. Anosh Ekka vide letter no. 1185 dated 30th August, 2008 to make a counter affidavit upon the application of Mr. Sameer Oraon M.L.A. within 10 days.

35. Mr. Anosh Ekka the respondent has filed a counter affidavit on 9th September, 2008. The main points are as follows:

- (A) The Election Commission of India on application made by the General Secretary of the Jharkhand Party dated 9th March, 2005 and subsequently 13th and seeking information about the list of office bearers of the Jharkhand Party which application was taken on record by the Election Commission of India on 26th May, 2008 issue a letter dated 3rd September, 2008. The subject which was Jharkhand Party a registered unrecognized political party forward the certified copy of the office bearers of the Jharkhand Party. Which clearly mentioned that I am the president of the Jharkhand Party.

- (B) Mr. Anosh Ekka is the president of the Jharkhand Party. Mr. Anosh Ekka again requested that the instant reply along with the written submission filed by him earlier as also the various evidence with all the document which are already on the record are not being repeated for the sake of ambiguity and in the circumstances Mr. Anosh Ekka has requested to accept the instant show cause and dismiss the petition filed against him for being disqualified as a member of the Jharkhand Legislative Assembly under the provisions of 10th Schedule of the Constitution of India.

On 28th October 2008 a hearing was held in the Vidhan Sabha Mr. Indrajeet Shina appeared for the petitioner Mr. N.E Horo while Mr. Dilip Jerath and Kaushik Poddar appeared for the respondent and Mr. Samir Oraon presented himself as an intervener.

36. The main points raised during the hearing was as follows :-

Mr. Dilip Jerath, Advocate for the respondent stated that during the last hearing on 29th May 2006 petitioner and respondent were given a facility to see the original documents of Opposite Parties in addition to that the decision of issuance of whip by the party president should also be presented that in which circumstances the whip was issued by N.E Horo whether it was supported by the decision of party or it was suo-moto decision of Mr. N.E. Horo. On the basis of the facts the crux of their petition filed against the respondent under Schedule 10 for disqualification as a member of hon'ble August Assembly. Even after the passing of this order till the matter was heard on the last occasion by Hon'ble predecessor, they have been unable to produce this document so before we can proceed any further they have to establish their case. So that their case stands on their own by so this document which has already been ordered, has to be produce because we are disputing that it was not a whip by Jharkhand Party as such rather it was an individual decision and the nine persons who have alleged to have sign on the application filed for disqualification before the protem Speaker out of them at least six have filed affidavit stating that no we have not participated in the meeting by virtue of which this whip has been issued, taking all these points into consideration your honor the predecessor had passed this order so before we start on the merit of the case he would request the learned counsel of the petitioner first so that we can address to this issue first so that one can proceed there after .

37. Mr. Inderjit Sinha learned counsel for the petitioner stated that from the basic crux of the matter it is clear that some two three dates are relevant i.e. 1st March 2005. A letter was sent to the Governor in pursuant of parties decision that Jharkhand Party be supporting the UPA. 2nd March 2005 Mr. N.E Horo writes a letter to the Governor withdrawing his earlier letter .

Again on 2nd March, 2005 Mr. N.E. Horo writes a letter that look here to his Excellency the Governor that the earlier letter of his withdrawal was taken under duress so he is withdrawing it. Now in the meantime on 10th when the other sides takes oath in the office on 14th and he supports the Government. In the meantime there are two three documents like this they say he was suspended from party that Mr. N.E. Horo was suspended from party's presidentship and therefore he had not right and everything now in course of arguments they have been taken this point that on 1st March 2005 the party original documents may produce . Now we have enclosed the Photo Copy.

38. They have given reply to this notice and the petitioner has filed it and he will only show from their own pleadings which they cannot denied before the Hon'ble Speaker as well as in the High Court in which the Counter Affidavit filed that they were not disputing this. This is a development which was taken place by misplacement of some mischievous persons of the document. Therefore the original document as on date that we have not being able to obtain and

that we have said in our reply and will also prove the party's whip of 1st March 2005 was there, from their own pleading so that from the basis of the case and that is the only issue to be decided here by the Hon'ble Speaker that whether on 1st March 2005 there was a whip to support the UPA or not because pursuant to that there was no document annexed by the other side, also showing that there was parties meeting or a whip issued to him by in a properly constituted forum by the party to support the NDA, because they have also not been able to show, he can show the document that they had admitted, 1st March 2005 whip. He will take the first reply to the show-cause the first very reply to the show-cause to this notice who appear to defend himself.

39. Again Mr. Inderjit Sinha stated that Mr. N.E. Horo wrote to the Governor saying that this letter was obtained under duress this fact he need not to prove and after 2/3/05 his Excellency the Governor has summoned him whether you will support UPA or to withdraw the support of UPA in response to that notice Mr. N.E. Horo wrote another letter making clear as his stand that this letter was obtained under duress so only facts which requires to be prove that, whether 2nd March, 2005 letter withdrawing by his support parties support purported party support UPA was under duress or not has been admitted by him.

40. Mr. Inderjit Sinha stated that the fact he has to prove that the whip of the 1st March 2005 was not of N.E. Horo alone rather it was supported by the Central Working Committee of the party. Mr. Dilip Jerath learned counsel for the respondent has been stated that at first the opponent party says that he had never denied the letter of 1st March 2005 i.e. is the first which is absolutely incorrect as borne from the record if he would not have denied there would have been no question of these proceedings if the very first affidavit has seen so. Mr. Jerath stated that so far as the originals are concerned which was even called for by this hon'ble forum. The hon'ble Speaker had asked for it they had not in a position to produce and so far as the 1st March 2005 whip is concerned they have conceded that they are not able to produce the original documents. They have not denied the fact that out of the nine signatories to that resolution six of them have come up and even filed affidavit for this august Assembly stating that no they have not supported that 1st March whip rather that sort of whip is not correct and the original they are saying that they are not in a position to produce. Now we come straight away he is force to his reply. The first reply of Mr. Jerath was as one letter that he has referred to of 7th March 2005 letter which has been referred by my learned friend he has referred to just three lines he has not referred to the letter as a whole is that he has given a letter on 1st March, again he has withdrawn on 2nd March respondent says that it is the categorical stand of the respondent that he could not get the letter of 1st March.

41. Again Mr. Jerath stated that he is trying to say about it anti party activities also because his learned friend in the same way has also said that he has not been disqualified he could not be disqualified because though he will read out the Constitution which he has read out also of the party it says that for anti party activity a member can be disqualified and that there are no distinction between president and the member or Secretary.

42. Again Mr. Dilip Jerath stated that Mr. Anosh Ekka has contested that election on the ticket of Jharkhand party against at that time the Congress and RJD that was the clear manifesto that was what they have even in the election campaigning that was the main ground he has contested against UPA candidates and without taking into confidence of Central Working Committee members Mr. N.E.Horo has issued a whip suo-moto and he has said that in that decision 9 members of Central Working Committee has given their consent.

43. 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 i.e. 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 Holohan vs. Zachelu 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 do not 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 Holohan 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 honored position free position and should be occupied always by a man of outstanding ability and impartiality.

44. 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 of Paragraphs 4 and 5, a 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 votes or abstains 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.

45. Keeping in mind all the aspect of facts of petitioner, intervener and the respondent I am of the opinion that the entire matter is based upon the actual position that is upon the documents as well as on the act of the respondent Mr. Anosh Ekka.

46. I have gone through the papers supplied by Mr. Anosh Ekka. After observation of the documents produced by the respondent Mr. Anos Ekka it was found that the proceedings register was prepared on 7th March, 2005. In the meeting of Working Committee some important decision were taken. Total number of members present in the meeting was 56, out of 56, some of the signatures are manipulated. Again a meeting has held on 20.03.2005, in which 64 persons were present. In the biennial conference of 29.03.2005, Proceeding register shows that 730 members were present in the meeting, but only 45, signature were available. The most important is that even the signature of Mr. Anosh Ekka on serial on. 125 was also false & fabricated and it does not tallied with the signature available on Affidavit or on other rejoinders.

In the last of proceeding Mr. Anosh Ekka has signed as the President of Jharkhand Party and that signature is also false and fabricated. Some other meetings proceeding were also mentioned. In the meeting of 21.06.2005 a list of 15 members is mentioned, but no decision was taken and nobody signed on the proceeding in the capacity of president, there is a similar position in Jharkhand Party's (Women Cell).

In the meeting of 5.8.2005, Serial no. 10 to 14 were signed by the same person, one thing is more important that Reshmi Devi signed on two places in a sequence and both signature differs a lot. In the last of 86, most of the signatures were false and fabricated. Again a unsigned resolution of 23.4.2006, is also mentioned.

Hence it is clear that the proceeding register was prepared in the hurry in some other date and is complete false and fabricated. There is the similar position of affidavit also in some of the affidavits also some of the persons made an affidavit in favour of Mr. Anosh Ekka and the same was in the favour of Mr. N.E. Horo in some previous dated Affidavit.

47. Hence I am of the opinion that the entire proceeding register as well as the documents which were produced by Mr. Anosh Ekka the respondent were fabricated, false and manipulated and any decision cannot be given in favour of a person who has produced false and fabricated documents on the other hand it is a established fact that whenever Mr. Anos Ekka got an opportunity to get in the ministerial birth in Jharkhand Legislative Assembly, in Jharkhand Government. He never fails the fist example is in the March, 2005 he took oath in the NDA Government contrary to the decision of party.

48. Again in September 2006 he switched over to Madhu Koda led UPA government and he get ministerial birth also ultimately he resigned from Madhu Koda led Government and took oath as a minister in Sibū Soren led UPA Government in all the occasion he has violated the norms of 10th Schedule contrary to the direction of party, violated the whip.

49. It cannot be establish by the respondent that the decision of Mr. N.E. Horo was his suo-moto decision and was not supported by Central Working Committee members however it is very much clear that in the present situation the faction under the presidentship of Mr. N.E. Horo is almost in minority where as the faction under the leadership of Mr. Anosh Ekka in majority but one cannot decide upon the matter which is in present situation. The petition was filed on 9th March 2005 and on that date everything was not in favour of Mr. Anosh Ekka and hence it is clear that he stood disqualification from the membership of Jharkhand Legislative Assembly.

Order

Therefore the petition is disposed of as follows:-

1. The request made by the petitioner in the application is allowable and is allowed with respect to the respondent at this point of time.
2. Under the 10th Schedule of the Constitution of India and the Jharkhand Legislative Assembly members (disqualification on the ground of defection rules 2006) it is decided that Mr. Anos Ekka has incurred disqualification for being a member of Jharkhand Legislative Assembly and has ceased to be a member of Jharkhand Vidhan Sabha with effect from the date of this order.
3. The case is closed.
4. 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