



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. Samual Paul Karketta

&

Sri Arjun Munda, the then M.L.A. leader

of Bhartiya Janata Party, Legislative Party Petitioners

in Jharkhand Vidhan Sabha (At present M.P.Lok Sabha)

Versus

Mr. Manohar Kumar Tekriwal

..... Respondent

JAHRKHAND LEGISLATIVE ASSEMBLY SECRETARIAT, RANCHI

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

झारखण्ड विधान-सभा सचिवालय

अधिसूचना

13 अगस्त, 2009

संख्या-कार्मिक-06/07-2642/वि०स०--एतद् द्वारा सर्वसाधारण की जानकारी के लिए भारतीय संविधान की दसवीं अनुसूची (अनुच्छेद 191(2) के साथ पठित) के तहत श्री मनोहर कुमार टेकरीवाल, सं०वि०स० के विरुद्ध दल परिवर्तन के आधार पर विधान-सभा को सदस्यता से निरहता संबंधी श्री सैमुएल पॉल केरकेट्टा, बी०-III-558 धुर्वा, राँची तथा श्री अर्जुन मुण्डा, पूर्व सं०वि०स० द्वारा दायर याचिकाओं 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 Honourable Speaker, Jharkhand Vidhan Sabha Ranchi.

Mr. Samuel Paul Karketta

&

**Sri Arjun Munda, the then M.L.A. leader of
Bhartiya Janta Party, Legislative Party
In Jharkhand Vidhan Sabha, (At present M.P. Lok Sabha)**

Petitioner

Versus,

Mr. Manohar Kumar Tekriwal,

Respondent

In the matter of application filed by Samuel Paul Karketta on 1st March, 2007 for the disqualification of membership of Sri Manohar Kumar Tekriwal under 10th Schedule of the constitution of India read with article 191(2) of the constitution of India and in the matter of the petition filed by Sri Arjun Munda, Ex. M.L.A. leader of Bhartiya Janta Party, Legislative Party in Jharkhand Vidhan Sabha, Ranchi on 26-08-08 for the disqualification of Sri Manohar Kumar Tekriwal, M.L.A. under provision of 10th Schedule read with article 191 of the constitution of India.

2. Facts: Main points in the pleadings

Mr. Samuel Paul Karketta resident of B/3- 558, Dhurwa, Ranchi i.e. an outsider filed petition before Hon'ble Speaker on 1st March, 2007. He filed an application and prayed in session of an appropriate action for disqualification of Sri Manohar Kumar Tekriwal, M.L.A. from the membership of Jharkhand Vidhan Sabha. It was stated in the petition that Sri Manohar Kumar Tekriwal was elected as a member of BJP from Godda constituency bearing constituency no. 17 later he joined another political party Jharkhand Vikas Morcha (Democratic). His act of joining Jharkhand Vikas Morcha (Democratic) falls under the provision of 2(1)(a) of the Constitution of India in support of the allegations. A copy of the judgement delivered by the Hon'ble Supreme Court in the case of Ravi S. Nayak and others reported in 1994 (Supplementary) SCC 641 is annexed. In that case Hon'ble Supreme Court held that even for the absence of formal resignation from the membership of a party to which the member belongs an inference can drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs further it was stated that Sri Manohar Kumar Tekriwal although has been elected member of Jharkhand Legislative Assembly on the ticket of BJP, which is a political party he as by his action utterance and the conduct made himself disqualified from the membership of Jharkhand Legislative Assembly as he has voluntarily given up his membership from a political party namely BJP and has been associated himself with another party namely Jharkhand Vikas Morcha (Democratic) party. In this context various newspaper cuttings were annexed along with the application. The petition was taken in cognizance by the Speaker and the show cause notice was issued vide letter no. 1254 dated 05/04/07 to Sri Manohar Kumar Tekriwal, M.L.A. to furnish the reply along with the documents within 15 days as to why not this petition is accepted for hearing?

3. Respondent Mr. Manohar Kumar Tekriwal, M.L.A. had requested for extension of time to file the reply on 16th April, 2007, which was accepted by the Speaker and directed to file the reply before 10th June, 2007. The reply was filed by the respondent on 8th June, 2007. The main points of the reply were to dismiss the petition filed by Samuel Paul Karketta as not admissible and not maintainable under the rules.

(4) In this context Mr. Manohar Kumar Tekriwal, the respondent has categorically stated and submitted that the answering opposite party was elected as member of Jharkhand

Legislative Assembly from Godda Constituency on the ticket of Bhartiya Janata Party & he is still the member of Bhartiya Janata Party and he has not voluntarily given up the membership of his political party. The allegation of the petitioner that the answering opposite party has joined another political party, namely Jharkhand Vikas Morcha (Democratic) is absolutely unfounded and baseless. Further it is relevant to state that the petitioner in his application has made on vague allegation against the answering opposite party and even the alleged newspaper cuttings annexed by the petitioner himself does not demonstrate and/or prove that the answering opposite party has joined another political party whatsoever.

- (5) Respondent Mr. Manohar Kumar Tekriwal has categorically denied the allegation made by the petitioner Mr. Samual Paul Karketta parawise. The main points of the reply/counter affidavit is as follows. That it is most humbly stated and submitted that the Hon'ble Speaker in his exercise of powers under 10th schedule of the constitution of India acts as tribunal and the order passed by the Hon'ble Speaker are judicial in nature. Under the circumstances it is most humbly stated and submitted that the application filed by the petitioner should be rejected at the outset as does not even prima facie demonstrate that the answering opposite party has violated in a provision of 10th schedule of the constitution of India. Again he stated that it is relevant to state that at this stage that the answering opposite party regularly paying his contribution, which is required to be paid as a member of B.J.P. and sum of rupees 1100/- (Rs. One thousand & one hundred) is being paid by the answering opposite party every month to the B.J.P. which is being regularly accepted by the political party namely B.J.P. in that view of the matter also it is most humbly stated and submitted that vague and baseless allegation of the applicant that the answering opposite party has voluntarily given up membership of his political party is completely false & incorrect. Again the respondent stated that the petitioner in his petition has only made vague allegations against the answering opposite party and various newspaper cuttings annexed by the petitioner can not in any manner be treated as an evidence against the opposite party. He further stated that is relevant to state here that none of the conduct of the answering opposite party would demonstrate that he has voluntarily given up membership of his political party and hence the application filed by the applicant namely Samual Paul Karketta is liable to be dismissed in limine.

- (6) Parawise he has refuted the claims of the petitioner's allegation and he said the allegation are completely false and incorrect and hence denied in para 4 and 5 of the petition in the reply are matter of record. However it is most humbly stated and submitted that the judgement of the Hon'ble Supreme Court in the case of Ravi S. Nayak is not applicable in the instant case as the answering opposite party has neither formally resigned from his political party nor he by his utterance or by his conduct has voluntarily given up the membership of his political party. Ultimately he has requested to dismiss the petition.

Again a letter was sent to the respondent Mr. Manohar Kumar Tekriwal by the Speaker vide his letter No-1173 dated 13th Aug. 2008 to furnish the reply within 10 days.

(7)

Mr. Arjun Munda, Leader of Bhartiya Janata Party has filed a petition on 25th Aug. 2008. The application was filed under para 6 of the 10th schedule of the constitution of India and **Jharkhand Legislative Assembly member (Disqualification on the ground of defection) rules, 2006** for disqualification of Sri Manohar Kumar Tekriwal of Jharkhand Legislative Assembly under the provisions of 10th schedule read with article 191 of the constitution of India. The main points of the petition were however, similar to the allegations made by Mr. Samuel Paul Karketta. But in this petition some different points are also mentioned, according to the present scenario. **The main points of the petition of Mr. Arjun Munda are as follows:**

Mr. Manohar Kumar Tekriwal belonging from Bhartiya Janata Party has stood disqualified under para 2(1) (a) of the aforesaid schedule as he has voluntarily given up the membership of his original political party i.e. B.J.P. The facts are as follows:

It is stated that on 17th Aug. 2008, J.M.M. a state registered political party having 17 members in the house withdraw its support from the U.P.A Government led by Sri Madhu Koda the Hon'ble Chief Minister. After giving a letter of withdrawal of support to the His Majesty Governor of the State. That the fact of the withdrawing support by Jharkhand Mukti Morcha from U.P.A. Government was widely circulated throughout, by Print Media and Electronic Media both. It is stated in the petition that on 18th August, 2008, the leader of Jharkhand Vikash Morcha, Sri Babu Lal Marandi, Ex Chief Minister of Jharkhand State has met the His Majesty Governor of the State with a delegation of his party members and has submitted a memorandum for imposing president rule in the state. On 21st August, 2008 Mr. Manohar Kumar Tekriwal and Sri Bishnu Pd. Bhaiya stated that they are with Sibu Soren and Sri Soren is sure to be elected as the Chief Minister. The newspaper clippings of Hindustan, Prabhat Khabar and Dainik Jagran of 21st August, 2008 is being attached with the application and is duly counter signed and attested by the petitioner. In the petition it is stated that Sri Manohar Kumar Tekriwal declared that he will vote for Guru Ji when time comes and his declaration/proclamation is published in Hindustan on 21st Aug. 2008 and again on 24th Aug. 2008. Sri Tekriwal declared that he fully supporting with Guru Ji. The newspapers like Hindustan, Prabhat Khabar and Dainik Jagran on 21st and 24th Aug is being annexed with the application. It is further stated by the petitioner that the statement made by Mr. Manohar Kumar Tekriwal was published both in the print media and electronic media. The clippings of print media publications of Hindustan, Prabhat Khabar and Dainik Jagran are being annexed with the petition. Again it was stated and submitted that Sri Manohar Kumar Tekriwal has also subjected himself to disqualification & he stood disqualified on 21st Aug. 2008. As he had also joined hands with Sri Bishnu Pd. Bhaiya and has made proclamation and declaration that he will vote for Sibu Soren for electing him as Chief Minister and he is fully in support of Guru Ji and thereby he has voluntarily left his original political party i.e. B.J.P.

Petitioner again stated that in the meantime the members of the Legislative Assembly are being influenced by the J.M.M., R.J.D. and other allies of U.P.A. for horse trading and cross voting etc., to form a Government headed by Sibu Soren. Again it is stated that he believe and affirmed that there are sufficient & valid grounds for disqualification on the ground of defection from the Legislative Assembly, Sri Manohar Kumar Tekriwal, M.L.A. under the 10th schedule. Further it was stated that there are every chances of cross voting and taking part of the disqualified members of the

Legislative Assembly in the process of forming the future Government headed by Sibn Soren popularly known as Guru Ji. In addition to that a judgement of **Rajendra Singh Rana Vs. Swami Pd. Maurya** was mentioned and on the basis of that judgement it is stated that approaching Governor in defiance of cabinet decision of Government or tender of original political party amounts to an action within schedule 10 para 2 (1) (a) of the constitution of India. Under the facts and circumstances of this case it is therefore prayed by the petitioner Mr. Arjun Munda that your honour may be kindly be pleased to disqualify Sri Manohar Kumar Tekriwal in terms of Para 2 (1) (a) of 10th schedule read with article 191 of the constitution of India and/or pending final hearing of the matter, both the members aforesaid be restrained from participation from any of the proceeding of assembly. The parts such a order/other direction/directions as your honour may deemed fit under the circumstances.

- (8) The Show-cause notice was issued by the Speaker to the respondent Mr. Manohar Kumar Tekriwal vide his letter no. 1144, dated-27th Aug. 2008 to furnish his reply upto 5 P.M. of 28th August, 2008. The respondent Mr. Manohar Kumar Tekriwal had requested the Speaker, vide his letter dated-28th Aug. 2008 that the time provided by him is unreasonably short and it is not possible to furnish the reply within the stipulated time period. Hence he has requested to extend the time for at least 30 days. So, that he may file the reply properly.

- (9) Speaker has not accepted the request of respondent Mr. Manohar Kumar Tekriwal and delivered an interim order on 28th Aug. 2008. It is pertinent to mention here the interim order "word by word". Again it was notified by the notification no-2110, dated, 28th Aug. 2008. The interim order is as follows:

अन्तरिम आदेश

दिनांक 25.08.08 को श्री अर्जुन मुण्डा, सांसद नेता प्रतिपक्ष सह नेता भारतीय जनता पार्टी विधायक दल, झारखण्ड विधान-सभा द्वारा मुझे आवेदन दिया गया।

आवेदन में श्री मनोहर कुमार टेकरीवाल, सांसद तथा श्री विष्णु प्रसाद मैया, सांसद द्वारा प्रमाणित दिनांक 21.08.08 तथा 24.08.08 को विभिन्न समाचार-पत्रों में दिए गए कथित वक्तव्य एवं प्रकाशित फोटोग्राफ आदि के आधार पर कहा गया है कि सदन में प्रस्तुत होनेवाले विश्वासमत के दौरान होनेवाले मत विभाजन में उनके द्वारा क्रॉस वोटिंग करने की पूर्ण संभावना है। इसके आधार पर संबंधित माननीय सदस्यों को झारखण्ड विधान-सभा की सदस्यता से निरहता करने अथवा कार्यवाही पूर्ण होने तक सभा की कार्यवाही में भाग लेने से वंचित रखने का अनुरोध किया गया है।

झारखण्ड विधान-सभा सदस्य (दल परिवर्तन के आधार पर निरहता) नियम, 2008 की कण्डिका 7 (3) (ख) में विधायक दल के नेता की लिखित टिप्पणी का प्रावधान है।

आवेदन में उल्लिखित तथ्यों के आलोक में अपना पक्ष प्रस्तुत करने हेतु श्री मनोहर कुमार टेकरीवाल, सांसद तथा श्री विष्णु प्रसाद मैया, सांसद को दिनांक 28.08.08 को 5.00 बजे अपराह्न तक का समय दिया गया था, परन्तु निर्धारित समय सीमा के अन्दर उनके द्वारा दिये गये उत्तर में बाकि में उठाये गये कण्डिकाओं का बिन्दुवार उत्तर न देते हुए कम से कम 30 दिनों के अतिरिक्त समय की माँग की गई है। अतएव उपलब्ध साक्ष्य, संविधान की दसवीं अनुसूची, अनुच्छेद 191(2) तथा झारखण्ड विधान-सभा सदस्य (दल परिवर्तन के आधार पर निरहता) नियम, 2008 आदि के आधार पर ऐसा महसूस किया जाता है कि अंतिम रूप से निर्णय पर पहुँचने के पूर्व वादी एवं प्रतिवादी को अपना पक्ष रखने के लिए पर्याप्त अवसर दिया जाए। लेकिन प्रथम दृष्टया क्रॉस वोटिंग की प्रबल आशंका को निर्मूल करने के उद्देश्य से तथा दसवीं अनुसूची की भूल मानना के मद्देनजर तत्काल दिनांक 29.08.08 को सदन में प्रस्तुत किए जानेवाले विश्वासमत के दौरान होनेवाले मतदान से श्री मनोहर कुमार टेकरीवाल, सांसद तथा श्री विष्णु प्रसाद मैया, सांसद को वंचित (विरत) किया जाता है। सभा की कार्यवाही में भाग लेने की इजाजत दी जाती है। साथ ही संबंधित माननीय सदस्यों को अपना पक्ष प्रस्तुत करने हेतु 10 (दस) दिनों का समय दिया जाता है।

इस अंतरिम आदेश की प्रति सभी संबंधित पक्षी/व्यक्तियों का आज ही दे दी जाए।

- (10) Again a letter was sent by the Speaker to the respondent Mr. Manohar Kumar Tekriwal vide his letter no-1173, which is dated 28th Aug. 2008 to furnish the reply within 10 days. Mr. Manohar Kumar Tekriwal, the respondent has filed his reply on 10th Sep. 2008 and he has requested to reject the petition filed by Mr. Arjun Munda. The main points of the reply as well as the counter affidavit is as follows:

Mr. Manohar Kumar Tekriwal the respondent has replied Para wise on 9th Sep. 2008. He has requested to the Speaker that the petition should be dismissed on account of the answers given by him parawise. Regarding para 1 to 6 he stated that it is true for Para 7 to 9 said I do not know personally about this fact and regarding Para 10 the respondent stated that it is not related to him again for Para 11 the respondent stated that as it is alleged that it is related to me is completely false and frivolous.

- (11) Mr. Sibu Soren has not taken me to Delhi. I had gone to Delhi on 21st Aug. 2008 for personal reasons, for personal work. Incidentally Mr. Sibu Soren was also in that aeroplane and only a courtesy meeting was held between us. The news reported in the print media is away from the facts. Regarding Para 12 the respondent said that it is also false. I have never said that I am along with Mr. Sibu Soren, however I said that it was my opinion that in present scenario Mr. Sibu Soren may become Chief Minister of Jharkhand. It is only a political opinion in contrary to that the news published in the newspaper was completely frivolous and false. Regarding Para 13, it is also false. My political party B.J.P. has suspended me for a long time. It is completely wrong and my political career affected for this reason. I have requested my party authorities several times from several forum to take decision at an earliest but till date the situation is as it is. In this regard I said that if my political party expels me in that case I shall vote in favour of Mr. Sibu Soren. It is evident that as long as I am a member of B.J.P. I will not do the same. The news published in newspapers is also of the same type, in contrary to this if anything is published than that is false. Regarding Para 16 the respondent stated, I had never joined hands with Mr. Bishnu Pd. Bhैया and I had never announced that to make Sibu Soren Chief Minister I will vote in favour of him it is wrong on the ground of facts as well as legally that these allegations are baseless and just presumed out of facts and to make myself disqualified from the membership of Jharkhand Legislative Assembly from the date of 21st Aug. 2008, It is completely wrong. Regarding Para 17 stated that it is true, regarding Para 18 he stated that I do not know personally about that, regarding Para 19 again he stated that I do not know regarding that matter. In the reply of Para 20 it is stated that it is wrong on the basis of facts as well as legally, regarding Para 21 the respondent use to say that on the basis of baseless allegations without giving him opportunity to put his side, he was deprived from the voting right and hence he is not in a position to say anything about that, regarding Para 22 the respondent use to say that so far the question of disposal of the case, I am agree with the petitioner but so far the disqualification of the membership, the matter of the disqualification of the membership it is completely baseless and I have already replied earlier. Regarding Para 23 and 24 a Judgement of Mr. Jay Narayan Pd. Nishad was mentioned. It is not related to me because I had never resigned from my original political party i.e. I have not resigned from the political party B.J.P.

- (12) On the basis of above show-cause the respondent Mr. Manohar Kumar Tekriwal stated that the entire allegations are baseless, away from the facts and legal validities, hence the petition should be dismissed at once. He further requested that the petition made by Mr. Arjun Murida should be dismissed. On the basis of above facts it was requested by the respondent Mr. Manohar Kumar Tekriwal that the petition filed by Mr. Arjun Munda should be rejected and imposition made upon him from debarring from the voting right should be dismissed and in this situation please deliver an order which should be lawful and just.

- (13) The date of hearing was fixed on 18th Nov. 2008 at 11.00 a.m. the petitioners and the respondent were requested to present either physically or through their advocate their side either written or verbally.
- (14) On 18th November, 2008 the date of hearing was fixed by the Speaker Mr. Ajit Kumar learned counsel appeared before the court for the petitioner. Mr. Ajit Kumar stated that on the basis of the newspaper reports and photographs the court was of the prima facie view that those newspaper reports can be basis of proceeding under schedule 10. I have to say further, only different pointing the matter of other person's and this person is that news reports are same in the previous two news items in the case of Mr. Pradeep Yadav of the case of Mr. Bishnu Pd. Bhaiya there was not specific denial but in the matter Mr. Manohar Kumar Tekriwal he denied from the facts that the newspaper reports are not correct they are frivolous and false. I want to put the statement only that newspaper reports are same. I do not want to repeat it again only those news papers reports say that they try to, they attempted to and they in fact joined hands with other party and other leader and they openly criticized the B.J.P. and the party men of B.J.P. openly which came in the newspaper. In the case of G. Vishwnathan, the Hon'ble Supreme Court held that Schedule 10 implies in the case of a particular political party's agenda, if a person wins upon a ticket of a particular political party then it is expected from him that he will do the work for the party before the public upon which agenda he came in the parliament or assembly, his loyalty should be continued, if he changes his loyalty after winning the election and he does the works against the agenda or party. He delivered the statements against the party manifesto then from his conduct, inference can be drawn that his loyalty is along with another party that it may be opposite party and in this situation the provision of schedule 10 implies upon that in 2(1) (a) it is clearly written that if he voluntarily resigns from his original party he can be disqualified. Another aspect of his statement is that regarding clippings of the newspapers Mr. Bishnu Pd. Bhaiya has not categorically denied, however the same news was published for Bishnu Pd. Bhaiya as well as for Mr. Manohar Kumar Tekriwal. But our respondent Mr. Manohar Kumar Tekriwal is denying with the news. What is the meaning of his denial just to repeat that "when time comes, I will Vote for Guru Ji," Tekriwal and there are several news which says that his affinity is along with J.M.M. that is along with Guru Ji. He is completely in favour of Guru Ji. What is the meaning of denial of any newspaper clipping from any media? What is the basis of denial is schedule 10? What will be useful and what will be important for the case? It will be important that, only in that case when there is some specific denial/specific contradiction should be published in the newspaper, in the same newspaper or at least a letter should be written to the newspaper authority that to defame my image you are publishing such type of news, which is wrong. It is the normal proceeding of newspaper, it is the process of denial of newspaper clippings. My lord, if any news is published in the newspaper, It can not be ignored if it is ignored the proper and legal message which spread among the public until and unless the contradiction is not published in the newspaper. Mr. Ajit Kumar, Learned Counsel for the petitioner again stated that Mr. Manohar Kumar Tekriwal, respondent never attended meetings of legislative party. His whole conduct is continuously against his loyalty to the party, as he openly said and this is known to all.
- (15) He quoted the cases of Rajendra Singh Rana, Ravi S. Nayak and some other cases of Supreme Court like Jagjit Singh. It was held by the Hon'ble Supreme Court that inspite of everything it all depends upon the discretion of the speaker. The things which have been known to you as leader of the organization and as the speaker of the house. He stated that photographs are also published in the newspaper along with Guru Ji. In reply of the petitioners plea Mr. Nitin Kumar Pasari learned counsel for the respondent Mr. Manohar Kumar Tekriwal stated that if he has voluntarily given up his membership of such political party. My learned

friend does not have reply to this. He possibly could not have because I have not given my resignation. The annexure which my learned friend has referred to Jay Narayan Nishad case I have gone through that the distinguishing factor is first is voluntarily given up. If this is situation that I have voluntarily given up membership or otherwise my conduct is such that I use to pay membership fee regularly I can not go suo-motto and does not contribute fee as a member please allow me to entertain the meeting of this is not a case. They have never given me any invitation to attend the party meeting from that time. I have been suspended in the year 2006, thereafter I have not been given a single invitation to attend the party meeting. If this is the allegation upon me that I do not use to attend the political meetings of the party that is absolutely wrong. Let him produce a document which will suggest that they given me an invitation and I have not come that is not the case. My learned friend before to the interim order which was passed by my Lord this order was passed on 28th Aug. 2008 prior to my time period which was submitted by me duly accepted by this office part in that, that order was passed and that order was based not only as prima facie. On the basis of an allegation which has been made I was not heard and that point of time so it can not be set, it can not be put into the mouth of law that my lord has understood the nature of the case and prima facie allegation are made and thereafter only this interim order was passed regarding me that is not the case. If I was heard at that time then the evidence given by the opponents could be distinguished and only then it can be understood but that is not the case. That order was passed without hearing my exparte on the basis of my petition that words can not be put in the mouth of my Lord and just next which my learned friend has said about the newspaper and photographs that my client; photo is pasted along with the photographs of Guru Ji. Two separate pictures had been pasted, two separate pictures whatsoever newspaper cutting he has annexed. Two separate pictures have been annexed to this. I am going to anywhere, if somebody meetmes, it is the courtesy meeting, they have raised the question with regard the Pradeep Yadav and Bishnu Pd. Bhaiya. They have said that partially the newspaper reports are correct. I have said that newspaper reports are not correct it can not be relied upon at least in my case. I have the judgement in hands which can bilaterally and unilaterally case that newspaper reports can not be as authentic evidence. The judgment which my learned friend has referred to what to with regard to Ravi S. Nayak the evidence was electronic media that is the television. In electronic media there was a interview. In interview he had said that said something which was humiliation to the conduct. He had referred to Jagjeet Singh matter now I will just read out the application evidence that may be relied upon by the speaker. Speaker relying on his personal knowledge of his mental to identify, identify relevant video clippings. It is not print clippings, it is video clippings we are paid for the interpretation of law so, partially he can not read it. If you have to read it, read it for toto. In addition to that the learned counsel for the respondent stated that Sri Jay Narayan Prasad Nishad being disqualified from the member of Rajya Sabha under Para 2(1)(a) of the 10th schedule of the constitution of India. It was interalia contended in the petition that Sri Nishad was a member of Rajya Sabha from the B.J.P. had subjected himself to the disqualification under the 10th schedule vide his letter dated 18th October, 2005 address to the Bihar State President of B.J.P. He resigned from the primarily membership of his party and just voluntarily relinquished the membership of the party. I am in a much better footing. How can be you equal him with Jay Narayan Nishad. He had submitted his resignation. He further stated that, that is not this court is to adjudicate. If I have done anything against article 191(2) nothing beyond that if my conduct is such which can suggest that I am liable for disqualification. They have only paper clippings nothing else. The news published in the newspaper is the ground of the petition, no other evidence is attached. Again he stated that the very important factor which has to be seen in the absence of the formal resignation. Inference may be drawn that he had voluntarily given up if from the party he belongs if the conduct tell the governor that the members

supported our party to come in the council. I have not done something like that if they have any proof of that, that I have formed any party detaching from my original party of otherwise I have supported any more. I am in support of any other party. I am campaigning for that things should have been that. I have paid my membership fee until the first application was filed obviously. Mr. Nitin Kumar Pasari learned counsel for respondent again stated that on 21st August, 2008 said Tekriwal travel with Sibin Soren it is not the case that I can not afford to fly in the aircraft. Is it the case Mr. Sibin Soren purchased my ticket I had gone along with him. He has met to me in the airport and I have gone again he stated that let them prove that I have something like that. If B.J.P. expel me then I will vote for Sibin that is the word is the dismissal. Again learned advocate for the respondent stated that where is the necessity. If my learned friend thinks that there is a necessity for making where are the looses let him produce that. You have segregate whatever distinguished the newspaper reports in order to maintain your conduct let him show that.

16. If my learned friend is able to so that so what the paper which says is it says or there is any provision of the law which can suggest that I have to give in writing to the newspaper that why have written something like this when I have not said if there is any such provision I have no excuse. I will be out of the Court, interpretation can be thousands like my learned friend gave the interpretation Mr. Jagjeet Singh. The matter of discretion but here is the basis of video clippings, anything publish in newspaper how can it be fabricated. I think my learned friend has a lot of experience. What I said and what he said he can interpret it very well so these are my submission and the interim order which has been passed once again kindly see on the very next day. I have submitted my time petition which was duly received on 27th Aug. 2008. I was given the copy of the show-cause notice that you submit your reply 28th Aug. 2008 within 5.00 'o' clock. Before time I get this time petition that it is not about possible for me to draft my reply, parawise reply and I submit that please give me a months of time if I contradict it that all the reports better for me. That I am not with them I have not said anything with their wishes. Speaker has asked a question from the learned advocate of respondent that one thing is publishing daily you are saying in the newspaper that your client supporting Mr. Sibin Soren he is going to support Mr. Sibin Soren than in that case I think so he should contradict in the newspaper. If he remains silent then what is meaning of it, if something is published against me in the newspaper and I remain silent and what is the meaning of this. Mr. N.K. Pasari Learned Counsel for the respondent stated that but at the same time for the purpose of disqualifying the provision which has been enumerated in the constitution that has also to be taken into consideration again speaker asked that things are correct. But I want to know only a thing when some news is published in the newspaper repeatedly against my position then what is meaning of remain silent. Mr. N.K. Pasari stated that one day reporting in different newspapers rest are Bishnu Pd. Bhaiya, Pradeep Yadav they have themselves suggest only one days newspaper clipping that also. I am seeing that is not my words it is not continuous that today I spoke this statement after two days, three days, four days, again different days, in a single day, there are different type of statements in different newspapers, Mr. Ajit Kumar learned counsel for the petitioner stated that I want to read only four lines of judgment of Rajya Sabha regarding Mr. Jay Narayan Nishad in the page no-14. A copy of judgement is attached My Lord, he has already asked to my learned friend that if it is incorrect then why not your denial or contradiction was published what is the meaning of that and this judgement is related to that matter. In page no-14 in Para-13 it is written that the committee feels that the onus of disproving the allegation labelled in the petition lies on Sri Nishad. This is the vital point. Again Mr. Ajit Kumar stated that the committee feels that he onus of disproving the allegation labelled in the petition lies on Mr. Nishad. The committee constrained of that while Mr. Nishad had not indicated any coercion in sending his resignation letter except that he was given under agitated mental condition and he also could not disprove the media report suggesting in the absence of any categorical rebuttal that he was

willingly allowing his name to be used for campaigning from another political party immediately after tendering his resignation. Again Mr. Ajit Kumar stated that have you given any rebuttal? Whether any contradiction was published have you given any contradiction to the press? Have you given any letter to the press?

17. The allegation was that he has joined another party. The main thing is that he has not taken primary membership of the party, he has not submitted any form, he has not followed any procedure and by being this how can join the another political party because in the case of Jagjit Singh there was a matter of independent member who has joined another political party in that matter a newspaper clipping and personal basis of Hon'ble Speaker was eminent and upon that knowledge decision was taken. The Court has held that it is not necessary to file a form to submit the membership amount if his conduct is such that inference can be drawn that he is going to join another political party in that case Hon'ble Speaker can take action absolutely and it is justified, hence the court held that disqualification on joining a political party, inference of such member joining a political party really been drawn situation distinguishes from giving of outside support by independent member it is the case of independent member. The case is not whether the independent member has fulfilled the formality for joining a political party such as have been file up membership form or having paid the membership fee, whether the member has given up his independent character on which he was elected by the electorate this has to be returned on appreciation of material on record and conduct of the member by the speaker no hard and fast rule should laid down when the answer is dependent on the facts of his case substance and a spirit of a anti defection provision are guiding matters. Again Mr. Ajit Kumar learned counsel for the petitioner stated that there are three points in the argument. First point is that rest two members have not denied about the newspaper reports, however the respondent Mr. Manohar Kumar Tekriwals name is also mentioned in that news then how can it be frivolous or false. The next question is that he has never contradicted he has not given even a notice to the newspaper that this report is wrong and frivolous. Mr. N.K. Pasari learned counsel for the respondent repeatedly stated that in the newspaper headline, it is mentioned that if B.J.P. terminates my membership then in that event he shall be voting for Sibn Soren. You read that part only, so far evidence is concerned, the newspaper report if my learned friend is able to suggest one judgement of the Supreme Court or any High Court which can suggest that the newspaper report can be taken as evidence in all the judgement which says that only video clipping can be taken to be evidence. Again Speaker questioned about that what is the judgement of G Vishwanathan case in the Supreme Court and please tell something about that case and in the light of that case, but the respondent could not reply. Again Mr. Ajit Kumar learned counsel for the petitioner stated that there is five relevant judgements Jagjeet Singh case, G Viswanath case, Ravi S. Nayak case, Rajendra Singh Rana case and Mahachandra Pd. Singh case in all the five cases I can say on the basis of gist of the cases that in Supreme Court is some judgement in Supreme Court upon schedule 10 in all the five judgements my learned friend says that upon newspaper clippings nobody can be relied upon it then why not Supreme Court has ruled out the newspapers, if it is correct then I am out. Mr. N.K. Pasari learned counsel for the respondent again stated that my learned friend is so advisable that so far as that I should file the case of defamation upon the newspapers. As far as coming with Sibn Soren is concerned I have just taken an instruction that my client has not come with Sibn Soren further, he has come in different flight.

- (18) Finally Mr. Ajit Kumar, learned counsel for the petitioner stated that My Lord, conduct can be decided in a day even in a hour. In the matter of Rajya Sabha, the court has held that his conduct as on that day. Today, he says that though I have already met to Mr. Arjun Munda then his conduct cannot be ratified because as the petition was filed on 28th August 2008. What was the conduct on that day an proceeding should be continued on the conduct on that day. Everybody knows that today Mr. Manohar Kumar Tekriwal is not along with the Guru Ji even then it is not the case and he cannot be exempted from the allegation that what was the conduct that day. He has voluntarily given up his party, he has violated the norms and agenda of the party that is the material thing and decision should be taken upon that matter, that is what My Lord, I have to say, that's all
- (19) Again the written reply was filed by Mr. N.K. Pasari, learned counsel for the respondent Mr. Manohar Kumar Tekriwal on 2nd December 2008. The main points of the reply are as follows: It is mentioned in the letter that the allegations labelled as against Mr. Manohar Kumar Tekriwal is that his action utterance and conduct are such which made his liable for disqualification from the membership of Jharkhand Legislative Assembly in support of the allegation labelled against Tekriwal that applicant Mr. Arjun Munda has annexed various newspaper reports as well as, one of the proceeding report of Rajya Sabha in the matter of Sri Jay Narayan Nishad. The counsel for petitioner Sri Arjun Munda has heavily relied upon the newspaper publications and photographs appended there to and have also relied upon the proceeding report of the committee of the Rajya Sabha in the matter of Sri Jay Narayan Nishad. The other argument advanced by the counsel for the petitioner is that if Sri Manohar Kumar Tekriwal is not attached to Jharkhand Mukti Morcha then as against the newspaper publication, why more rebuttal against the newspaper publications where published clarifying and denying the same. Again it was also stated that, however on the basis of application filed by Mr. Arjun Munda the voting right of Sri. Tekriwal was withdrawn and he was debarred from the voting in the assembly election, the opposite party deal with the allegation made him one by one. Regarding the attendance in party meetings it is mentioned that it is submitted that the membership of the opposite party has been suspended for almost the period of two years, however, until and unless the opposite party is invited in the party meeting, the opposite party suo-motto cannot grow and attend the same meeting in as much as the opposite party is under suspension, show cause was ever issued to the opposite party for the so called is corporated allegations of the misconduct and in action against the party Regarding the rebuttal not made in the newspaper he stated learned counsel for the respondent stated in reply as in the newspaper it was printed. The headlines of the newspaper is that 'अगर भाजपा मुझे मर्खास्त कर देती है तो मैं सिबू सोरेन को अपना वोट दूंगा।' It means if B.J.P. terminates my membership then in that event I shall be voting for Sibbu Soren. From the aforesaid language which has been quoted in the newspaper it will be prima facie evidence that the opposite party had made it clear that if at all his party members and his political party dismisses him from the membership of the said political party then in that event only he shall be voting in favour of Sri Sibbu Soren which prima facie means that he is still with the political party B.J.P. and the entire process could depend upon the action of the members of the political party, he is attached too. Regarding the judgement of KUSUMLATA Vs. UNION OF INDIA learned counsel for the respondent stated in the letter as it is equally well settled that burden of proving that a member has made himself liable from disqualification is on the person who claims the proof of such claim has to be supported by materials which constitute evidence at this juncture reference may be made to Kusumlata Case. Again quoting the judgement of UNION OF INDIA Vs. RANBIR SINGH RATHOR. It is mentioned that the court inter-alia held newspaper report are not to be considered as an evidence, the authenticity of the newspaper reports are not established by the writ petitioners, moreover the photocopies of the newspapers

clippings submitted are also unsigned photocopies of newspaper reports and in view of rule 6(7) of JHARKHAND VIDHAN SABHA MEMBERS (DISQUALIFICATION ON GROUND OF DEFECTION) rules 2006 can not be relied upon, rules 6-7-4 provides that every annexure to the petition shall be signed by the petitioner and verified in the same manner, putting the judgment of Ravi S. Nayak case, it is mentioned that in that case the term conduct was taken to effort to individual acts of the two members of the Goa Legislative Assembly belonging to M.G.P. which unequivocally demonstrated that they have voluntarily given up the membership of their party. Again the respondent mentioned the case of JAGJIT SINGH VS. STATE OF HARIYANA AND OTHERS the court held that Hon'ble Speaker can rely upon his personal knowledge to reach a conclusion whether a legislature stand disqualify under 10th schedule of the constitution of India. The said submission is devoid of any merit as the said proposition was laid down on the different factual background and in the different context. In the instant case there is no material on record to establish the content of the newspaper reports nor any supporting evidence corroborating the allegation have been doubt forward by the petitioner herein, thus it is submitted that the ratio of case of Jagjit Singh has no applicability to the facts of this case therefore in view of the facts and circumstances it is respectfully paid and submitted that the aforesaid petition is devoid of any merit and are solely based on services and conjunctures are less supported by any admissible evidence and thus are liable to the rejected.

- (20) Mr. N.K.Pasari Learned counsel for the respondent Mr. Manohar Kumar Tekriwal annexed some judgements of Hon'ble Supreme Court of India in the case of **UNION OF VS. RANBIR SINGH RATHOR**. The court has held that authenticity of evidence of news paper reports are not established. Again it is stated that news paper reports are not to be considered as evidence, the authenticity of the news paper reports was not established by the writ petitioner even otherwise this could not had been done in the petition as disputed question of facts are apparently in check warn. In addition to that in the case of **KUSUM LATA VS. UNION OF INDIA** Supreme Court of India has held that petition are based on news paper reports without any attempt to verify their authenticity as observe by this court in several cases news paper reports do not constitute evidence a petition based on unconfirmed news reports without verifying their authenticity should normally be entertained as noted above such petitions do not provide any basis for verifying their correctness of statements made and information given in the petition. It could be desirable for the courts to filter out the frivolous petition and dismiss them with cost as aforesaid so that a message goes in the right direction that petition filed/voting do not have the approval of the courts.

- (21) Before reaching the conclusion it is pertinent to state here about the provision, of 52nd amendment, concept of 10th Schedule, position of the Speaker, role of the Speaker and important thing here is that whether the news paper clippings can be recorded as evidence or not, these are established on various occasions either by Hon'ble Supreme Court, Hon'ble High Court or by several eminent parliamentarians. The main object of the 10th Schedule is as follows :

- (22) The evil of political defections has been a matter of national concern. If it is not combated which is likely to underline 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 the Parliament and anti defection bill. The bill is mean for outline defection and fulfilling the above assurance. The purpose for enacting the constitution 52nd amendment that is incorporation of the 10th Schedule and other amendments was not only to establish to legally elected Govt. and to prevent the political immorality but also to make them effective. If the provisions are laid down the main purpose will be defeated quoted

from **PRAKASH SINGH BADAL Vs. UNION OF INDIA A.I.R. 1987 PAND H 263 AT B.** The object is to curb the evil of the political defection, motivated by because of offices other similar constitution, which endanger the foundation of our democracy **KIHOTO HOLHON Vs. ZECHULHU A.I.R. 1993 Supreme Court 412.** G.V. MAVALANKAR who was the most distinguishing occupant of that high office says in Parliamentary democracy in the office of the Speaker is held in very high office and respect, there are many reasons for this some of them are purely, historical and some are inherent in the Parliamentary democracy and the powers and duties of the Speaker. Once a person is elected Speaker he is expected to be above parties above politics in other words he belongs to all the members or belongs to none he hold the scale of justice in the expecting of party person though anyone expect that he will do absolute justice in all matters because as a human being he has his draw backs shortcoming, however, everybody knows that he will intentionally not do injustice or show partiality such a person only a respect wise. The Speaker/Chairman holds a pivotal position in the scheme of the Parliamentary democracy and a guardian of the right and privileges of the House, it would indeed be unfair to the high tradition of that grade office to say that investiture in it of determination jurisdiction under the 10th Schedule would be vitiated for violation of a basis feature of democracy **Kihoto Holhon Vs. Zechulhu 1992 supplementary (2) SCC 651.**

- (23) Pandit Nehru reference to the office of the Speaker stated the Speaker represents the House. He represents the dignity of the House, the freedom of the House and because the House represents the nation in a particular way. The Speaker becomes the symbol of the nation's 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.

- (24) It is necessary to mention here Para 2(1) (a) of 10th Schedule of the constitution, disqualification on grounds on defection subject to the provisions of paragraph (4)(5) a member of House belonging to any political party shall be disqualified or being a member of the House belonging to any political party shall be disqualified for being a member of the House, he has voluntarily given up his membership of such political party.

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 grounds on defection.

If any question arises as to whether a member of a House has become subject to disqualification under this Schedule the question shall be referred from the decision of the Chairman or as the case may be the Speaker of the 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.

- (25) It is pertinent to state here about the role of the parliamentarian or the legislature. In **Kuldip Nayar Vs. Union of India.** Hon'ble Supreme Court of India has held that it was opened for Parliament to provide that its member who has been elected on a party ticket act according to the decision made by the party and not against it. Again regarding loyalty it is held by the Supreme Court of India, Loyalty to parties is the norm being based on shared believes a divided parties it looked on the suspicion by the electorate it is natural for members to accept the opinion of their leaders and spokesman on the wide variety of matters on which House members have no specific knowledge.

Generally members will accept majority decisions in the party even when they disagree. It is understandable therefore that a member who rejects the party whip even on a single occasion will attract attention and more criticism than sympathy to abstain from voting will required by party to vote is to suggest a degree of unreliability to vote against party his disloyalty to join with other abstention or voting with the other side smacks of conspiracy.

- (26) Where it is a very important question before the court is that whether newspaper clippings can be treated as an evidence or not. There are several judgements in the Supreme Court of India, some of the judgments are noted here in the case of Ramchandra Murary Lal Vattat and Vs. State of Maharashtra Hon'ble Supreme Court has held that the news items appearing in the Economic Times is not of much significance. No affidavit has been affirm as regards the correctness or otherwise of the said news item. Another judgment was passed in the case of Durga Ram Duri Vs. Pragnodhar Vora.

- (27) It is pertinent to mention here that the court has held that no contemporaneous documentary evidence has been brought on record to show that. The first respondent has spread hearted to odds members of another community or cast, the context of the news item where upon Mr. Sanyal relied having not will proved by examine the reporter the same could not have been exhibited legally on the statement of the witness that the report had been published in the newspaper. It was therefore inadmissible evidence. Again in the case of Kamal Islam Vs. K.K. Kanta Hon'ble Supreme Court has held that newspaper reports by themselves are not evidence of the contents ~~there on~~ Those reports are only here say evidence these have to be proved and the manner of proving a newspaper report.

Regarding news paper clippings it is very much clear that in this case there are two petitions one is Mr. Samuel Paul Karketta and another is Mr. Arjun Munda, Mr. Samuel Paul Karketta has attached a number of newspaper clippings but that are not certified or attested according as per rules CPC or according to the rules of Jharkhand Legislative Assembly (Member disqualification on the basis of defection) rule 2006 as per para (6) and (7).

- (28) Hence according to the judgments of Hon'ble Supreme Court it has not legal significance. It does not have legal evidence and legal values but in the case of Mr. Arjun Munda Vs Mr. Manohar kumar Tekriwal. The entire documents are attested and certify as per rules of CPC and according to the rules of Jharkhand Legislative Assembly, (Member disqualification on the ground of defection) rule 2006. Hence as per the judgement of Hon'ble Supreme Court it can be said that it is properly certified and it could not be rejected on the basis of only are saying that it is only newspaper clippings. In addition to that I want to put here the case of Mr. Jay Narayan Nishad, who was disqualified from the membership of Rajya Sabha. The main point was, he has not made any rebuttal in the newspaper or he has not made any contradiction regarding the news items. The main points of Sri Jay Narayan Nishad case it as follows:

- (29) A confidential report was given by the committee of privilege to the Rajya Sabha and upon that basis membership of Mr. Jay Narayan pd. Nishad was terminated. The main points of the report is as follows:

Appearing in the newspaper showing is the name of Mr. Nishad and suggesting that the would campaign for R.J.D. in the assembly elections. Sri Nishad stated that is was reported but he did not go anywhere for campaigning on being specifically asked whether he had issued any rebuttal to the R.J.D. or the newspapers publishing in his name with the campaign

advertisement of R.J.D. Sri, Nishad replied that since he was not going anywhere there was no need for rebuttal. On being questioned, Mr. Nishad further stated that he had written to concerned newspapers to the effect that his name and statement appearing therein were wrongly quoted.

- (30) "When committee desired a copy of those letters written by him to the newspaper. Sri Nishad could not produce them and stated that he would have to such for the same. He however, further admitted that none of his statements rebutting the impugned news advertisement were published in the newspaper. In the report it is stated that the petitioner has further relied on the alleged anti party activities of Sri Nishad on the basis of his statements appearing in the media and other news reports besides the above Sri Nishad has referring to sub rule (1)(a) of rule (3) of the rules also states that no information pertaining to change in the strength of B.J.P. legislature party where in Rajya Sabha or in the information required to be furnished in the form (1) in respect of all the members of legislature party to the chairman Rajya Sabha was given by the leader of B.J.P. in Rajya Sabha. In the report it is mentioned that the committee more ever feels that the fact of not sending the information about his suspension to the chairman, Rajya Sabha does not materially in change the position in his favour particularly when he has voluntarily given up the membership. The committee feels that the onus of disproving the allegation labelled in the petition lies on Mr. Nishad and he also could not disprove the media reports suggesting in the absence of any categorical rebuttal that he was willingly allowing his name to be used for campaigning for another political party immediately after tendering his resignation and upon this basis the committee is therefore of the opinion that in pursuance of Para 2(1)(a) of the 10th schedule to the constitution Sri Jay Narayan Pd. Nishad has been incurred disqualification for being a member of Rajya Sabha. It is very much clear before the court that these judgment says that if newspaper reports are properly certified, It is attested and proper affidavit is enclosed according to the judgement of the Jagjit Singh case then it is completely upon the discretion of the Speaker that he should check the validity of news. He should check the correctness of the news and I feel that in all these cases news clippings are correct and hence it can be treated as authentic evidence before the court and action can be taken on this basis.
- (31) It is pertinent to state here that Mr. Manohar Kumar Tekriwal the respondent had accepted very important news. If B.J.P. terminates my membership then in that event I shall be voting for Sibu Soren. It is very much clear that If B.J.P. expels me the question arises that why he think so that B.J.P. will expel him or B.J.P. will dismiss him if B.J.P. will terminate him. It means he is not loyal with the party according to his act he is afraid that he might be dismiss-ed, he might be terminated and hence he has given a statement like that and it is well accepted by the respondent, hence it is 100% proved that he has shown his disloyalty to his party B.J.P.
- (32) The major point was raised by the respondent Mr. Manohar Kumar Tekriwal that he has contributed Rupees one thousands and one hundred per month as a membership fee to the B.J.P. and for that reason he is loyal with his party. He is still an honest member of the B.J.P. and he remains the member of the party. Regarding this matter there is an important judgement of Mr. Jay Narayan Pd. Nishad case of Rajya Sabha. The privilege committee has found that although the party had deducted Rupees one thousands and two hundred per month as subscription fee from the bank account of Sri Jay Narayan Pd. Nishad until 10th December 2005. But regarding that matter the committee is of the opinion that it is a routine exercise done in the mechanical manner by the party's office bearers. The committee would like to take a similar view in the case of deduction of subscription fee from the bank account of Sri Nishad which continue to deducted until 10th December 2005 the committee is therefore of the opinion that all these acts on the part of the office bearers of B.J.P. do not necessarily suggest that they were treating Sri Nishad as a member of the legislative party of the B.J.P. in a Orrisa check.

The entire case is based upon the following questions:-

- (1) Whether Mr. Tekriwal has voluntarily given up his membership of B.J.P.?
- (2) Whether he gave the statement before the print media or not?
- (3) Whether he has participated in meetings or other campaigning programmes of J.V.M or not?
- (4) Whether he was loyal with other party or not?

- (33) Keeping in mind all the aspects of facts of both sides I am of the opinion that Mr. Manohar Kumar Tekriwal the respondent was not loyal with his original party i.e. B.J.P. whenever he got the opportunity he betrayed from the party, his action is contrary to the party's manifesto and in the case of Ravi S. Nayak. The Hon'ble Supreme Court has hold that 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 member without even tendering a resignation to that party an inference about his voluntarily giving up membership can be drawn from the conduct of that member. In addition to that in the case of G. Vishwanathan Hon'ble Supreme Court has held that discussing the matter in detail the speaker constitute para 2(1), 2(2) and explanation a to sub para 1 of para 2 of the 10th Schedule and held that if a person is set up as a candidate for a election by a political party and gets elected he must be deemed always to belong to the same party from which he was elected and if he joins another political party it would amount to voluntarily giving up his membership of such political party and will become subject to disqualification under sub para (1)(a).

- (34) As it is proved that Mr. Manohar Kumar Tekriwal has violated the provisions of constitution under the 10th schedule read with article 191(2) of the constitution. The Court is of the view that petitioners have produced valid and substantial evidences and the respondent could not be capable to satisfy the Court by keeping valid evidences.

Order :

Therefore the petition is disposed of as follows:

1. The request made by the petitioners 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. Manohar Kumar Tekriwal has incurred disqualification for being a member of the Jharkhand Legislative Assembly and has ceased to be a member of Jharkhand Vidhan Sabha w.e.f. 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.