



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)

झारखण्ड विधान-सभा सचिवालय
अधिसूचना

13 अगस्त, 2009

संख्या-कार्मिक-04/07-2644/वि०स०--एतद् द्वारा सर्वसाधारण की जानकारी के लिए भारतीय संविधान की दसवीं अनुसूची (अनुच्छेद 191(2) के साथ पठित) के तहत श्रीमती कुन्ती देवी, सं०वि०स० के विरुद्ध दल परिवर्तन के आधार पर विधान-सभा की सदस्यता से निरहता संबंधी श्री सैमुएल पॉल कोरकेट्टा, बी०-3-558 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 (संसल्लन)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. Samuel Paul Kerketta and

Sri Arjun Munda, the then M.L.A., Leader of Bharatiya

Janata Party Legislative Party in Jharkhand Vidhan Sabha Petitioners

(At present Member of Lok Sabha)

Vs.

Smt. Kunti Devi

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Respondent.

In the matter of an application filed by Mr. Samuel Paul Kerketta on 1st March, 2007 for the disqualification of Membership of Smt. Kunti Devi under 10th Schedule of the Constitution of India read with Article 191 (2) of the Constitution of India and in the matter of petition filed by Shri Arjun Munda, M.L.A., leader of Bharatiya Janata Party, Jharkhand Vidhan Sabha on 26th August, 2008 for the disqualification of Smt. Kunti Devi, 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 Kerketta resident of B/III-558, Dhurwa, Ranchi, i.e. an outsider, filed a petition before Hon'ble Speaker on 1st March, 2007. He filed an application and prayed initiation of an appropriate action for disqualification of Smt. Kunti Devi, M.L.A. from the Membership of Jharkhand Vidhan Sabha. It was stated in the petition that Smt. Kunti Devi was elected as a Member of B.J.P. from Jharia constituency bearing constituency no. 41. Later she joined another political party, Jharkhand Vikas Morcha (Democratic). Her act of joining Jharkhand Vikas Morcha (D) falls under the provisions of 2(1)(a) of the Constitution of India. In support of the allegations, a copy of judgment delivered by the Hon'ble Supreme Court in the case of Ravi S. Nayak and others reported in 1994 (Suppl.) 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 be 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 Smt. Kunti Devi although has been elected Member of Jharkhand Legislative Assembly on the ticket of BJP which is a political party she as by her action utterance and the conduct made herself disqualified from the Membership of Jharkhand Legislative Assembly as she has voluntarily given up her Membership from a political party, namely, BJP and has been associated herself with another party, namely, Jharkhand Vikas Morcha (Democratic) Party. In this context various newspaper cuttings were annexed along with the application.

3. This petition was taken in cognizance by the Speaker and the show cause notice was issued vide letter no. 1256 dated 05.04.2007 to Smt. Kunti Devi, M.L.A. to furnish the reply along with the documents within 15 days as to why not this petition is accepted for hearing.

4. Respondent Smt. Kunti Devi has requested the Hon'ble Speaker on 19.04.2007 that till date she could not receive the notice. However, it was intimated by newspaper. Hence, please serve

the notice at an earliest so that she could file reply in time. Again a letter was given to the Hon'ble Speaker by respondent Smt. Kunti Devi on 29th May, 2007 to extend the time limit for at least 30 days to submit counter affidavit on account of ill health. Finally a reply was filed by the respondent on 8th June, 2007.

5. The main points of the reply were to dismiss the petition filed by Mr. Samuel Paul Kerketta as being not admissible and not maintainable under the Rules.

6. Since the prayer was for rejection of application on ground of prima-facie inadmissible under the Rules no answer or comments has been made on the points raised by the applicants in his petition.

7. The fresh show cause notice issued by the Hon'ble Speaker vide letter no. 1714 dated 10.07.2007 to file the reply up to 23rd July, 2007 otherwise one sided decision could be taken. It was mentioned in the letter that, however, there is no legal validity of the letter of respondent on the basis of several orders passed by the Hon'ble Court. However, the points raised by the petitioner was taken into cognizance of the Speaker and it should be also taken as suo motto case.

8. Again the letter was sent to Mr. Arjun Munda, leader of BJP Legislative Party in Jharkhand Vidhan Sabha, Ranchi to furnish his views/opinion on or before 23.07.2007.

9. Respondent Smt. Kunti Devi has requested to extend the time limit to file the reply on 29.07.2007 for at least 15 days on account of ill health and it was accepted by the Hon'ble Speaker.

10. Smt. Kunti Devi has filed her reply on 6th August, 2007. The main points of her submission were as follows :-

The petition is ab-initio flawed and prima-facie inadmissible under the disqualification under Rule 6 (1) of the Jharkhand Legislative Assembly disqualification on ground of Defection Rules 2006. Under this Rule Hon'ble Speaker can take suo-motto notice of a Member becoming subject to disqualification on ground of defection.

In any case, in the present case, the requirement of Rule of 6 (1) are not made at all in such as :

- (i) The petition has not made by the Member of Jharkhand Legislative Assembly.
- (ii) Speaker did not take any suo-motto notice of the alleged defection. Even now what the respondent is required to respond to is a complaint by a private person with no locus standi in the matter. Suo-motto notice by definition means notice taken by an authority on its own i.e. without anyone else bringing it to its notice.
- (iii) In favour of the above mentioned submission a part of the judgment of Punjab and Haryana Court is mentioned which is as follows :

" The purpose of requirement of a reference obviously is that even when a question as to the disqualification of a Member arises, the Speaker is debarred from taking suo-motto cognizance and he would be seized of the matters only when the question is referred to him by any interested person. The Speaker has not been clothed with a suo-motto power for the obvious reason that he is supposed to be non party man and has been interested with the jurisdiction to act judicially and decide the dispute between the conflicting groups."

11. Respondent as replied para wise claims that she has not given up Membership of the BJP. She continues to be a Member of BJP and has not joined, as alleged, Jharkhand Vikas Morcha (Democratic) Party or any other political party. In reply of para 5, she sought a judgment of Hon'ble Supreme Court which was reported as 1994 Suppl. (2) SCC 641. It was mentioned that going to the Governor, accompanying the leader of a rival party to stake claim to form an alternative government against their party MGP. The fact of going to the Governor in the said company has not been denied by the two Members at any stage.

12. Not controverting a clear statement made before the Speaker to the effect that the two Members had given up the Membership of their party MGP. and had said so openly. The two Members were physically present and had every opportunity to deny to the points made in the statement but they did not do so.

13. The submission of the respondent is that in the present case, on the other hand, nothing of the kind happened and the petitioner has not pointed out any act on the part of the respondent which could constitute such conduct. Also he has not produced any direct or documentary evidence to support his vague allegation that the respondent had given up the Membership of his party. In reply to para 6, it is categorically reiterated that the respondent has not voluntarily or otherwise given up the Membership of her party BJP or joined any other party. She has never violated any party directive or disobeyed any whip. Her party is a democratic party which allows freedom of speech and dissent. The respondent has not indulge in any conduct which can be deemed to having given up her party Membership.

14. Respondent also stated that what has been produced by the petitioner as annexures are the unsigned photocopy of some newspaper clippings which is at variance with the Rule 6 (1) of the Jharkhand Vidhan Sabha Members (Defection) Rules 2006. Rule 7 (2) states that if the petition does not comply with the requirements of Rules 6, the Speaker shall dismiss the petition.

15. She also cited that as observation by the Court in several cases newspaper reports do not construe evidence. A newspaper report cannot be taken as evidence. In addition to that she claims that she is regularly paying her contribution which is required to be paid as a Member of BJP. A sum of Rs. 1100/- (Rupees eleven hundred) per month is being paid by the answering respondent every month to the BJP which is being regularly accepted by the political party, namely, BJP. Hence, she has prayed that the petition be dismissed forthwith in the interest of protecting the honour of the House and its Members against frivolous and unsubstantiated vague allegations from unauthorized obscure outside quarters.

16. A petition was filed on 26th August, 2008 by Shri Arjun Munda, M.L.A. who is the leader of Bharatiya Janata Party. An application was filed under para 6 of the 10th Schedule of the Constitution of India and Jharkhand Legislative Assembly Members (Disqualification on the ground of defection) Rules, 2006 for disqualification of said Member from the Membership under the provisions of 10th Schedule read with Article 191 of the Constitution of India.

17. Most of the charges leveled by Shri Arjun Munda was the same as the charges leveled by the 1st petitioner Mr. Samuel Paul Kerketta. It is pertinent to mention that such petition was filed in accordance with para 6 of the 10th Schedule of the Constitution of India. He has filed an application along with an affidavit and annexures which are duly counter signed and newspaper clippings are also counter signed by the petitioner. The main point of the petition is as follows :

"Smt. Kunti Devi is the Member of BJP Legislative Party and she was elected in the last Assembly election which was held in February, 2005 and she has been sitting on the Opposition Bench with other Members of BJP."

18. Smt. Kunti Devi worked actively against BJP in the bye-election of Parliamentary constituency of Koderma, Palamau and Jamshedpur and Assembly constituency of Simaria. In support of this several newspaper clippings are duly attached. Smt. Kunti Devi is actively participating in various programme, meetings, yatras, rallies of Jharkhand Vikas Morcha led by Shri Babu Lal Marandi throughout the State. The news published in Hindustan, Dainik Jagran is annexed with the application. Smt. Kunti Devi was suspended for anti party activities and show caused by the BJP but she has not submitted her explanation to the party till 26.08.2008. State Secretary Mr. Ganesh Mishra has sent a show cause notice vide his letter no. 1159/06 dated 17.10.2006. It was mentioned that there is urgent necessity under the circumstances to decide the question that the aforesaid Member has subjected herself to disqualification on the ground of defection and has already stood disqualified on the day she has voluntarily given up the Membership of her political party on the basis of R.S.Rana and others Vs. Swami Pd. Maurya case. It is mentioned that approaching Governor in defiance of Cabinet decision of the Government or tender an original party amounts action within 10th Schedule para 2 (1)(a) of the Constitution.

19. An example was given of the case of Mr. Jai Narain Prasad Nishad who has been disqualified from the Membership of Rajya Sabha on the ground of defection.

20. Under the facts and circumstances it was prayed that Smt. Kunti Devi should be disqualified in terms of para 2(1)(a) of the 10th Schedule read with Article 191 of the Constitution of India.

21. The petition was sent to Smt. Kunti Devi, the respondent vide letter no. 1147 dated 27th August, 2008 by the Hon'ble Speaker to file her reply on or before 28th August, 2008 up to 5.00 P.M. Again Smt. Kunti Devi has sought extension of time for at least two months vide her letter dated 28.08.2008 to file the reply. Extension of 10 days to file the reply was permitted. But again respondent Smt. Kunti Devi requested for extension of time to file the reply vide her letters dated 09.09.2008, 12.09.2008 and 04.10.2008. Ultimately she filed the reply vide her letter no. 2/8/411 dated 31.10.2008. The main points of the counter affidavit is as follows :

- (i) That is stated that the respondent has not joined any other political party and there is no material on record to suggest that the action and submission of the answering respondent brought her within the meaning of voluntarily given up the political party.
- (ii) That with reference to the allegations made in the complaint filed by Shri Arjun Munda, it is submitted that the clippings referred to with regard to the local newspaper are not applicable to the case of the respondent. The respondent has never given any statement in any newspaper or otherwise showing her disregard, disrespect, disinterest in the affairs of the BJP party rather she was all along with a Member of the BJP and still the Member and follower of BJP and follows the guidance and direction of BJP to the full extent it requires.
- (iii) It is submitted that the respondent has not set up or has not become against the thought and agenda of BJP rather she is a hardcore BJP follower.
- (iv) It is further submitted that the joining of Shri Pradeep Yadav and Shri Ravindra Kumar Rai, M.L.As. with another political party or following any ideology of any political party cannot bind the respondent in any way. As stated above that this respondent is a hardcore BJP Member and follower and any allegation against the respondent contrary to same is denied herewith.

- (v) It is submitted that the respondent has never campaigned against BJP as alleged. The news, if any, published in the local daily such as Dainik Jagran, Hindustan, Prabhat Khabar and Hindustan Times are not correct. If anything published against the activity of this respondent is not correct.
- (vi) She has neither participated in Jharkhand Vikas Morcha nor the information supplied to the public by daily newspaper as mentioned in the complaint petition.
- (vii) Respondent Smt. Kunti Devi again submitted that she has never been influenced by any political party as alleged.
- (viii) It is further submitted that the judgment reported in SCC 2007 (4), 270 has no application so far as the case of present respondent is concerned nor the allegation made against her is correct. It is further stated that the case referred to in the complaint petition has no application in the matter of the present respondent and as such the citations of such cases are irrelevant so far as the case of this respondent is concerned.
- (ix) Respondent submitted that she has never willfully abandon or given up attendance in any meeting called by BJP office as alleged.
- (x) It is submitted that due to temporary ailment of this respondent if she could not attend any meeting called by BJP office such absence cannot be construed to be abandonment or given up of attending the meeting. This respondent has sufficient medical evidence to show the period she was suffering from ailment (copies of medical prescription were duly enclosed).
- (xi) Again the respondent submitted that since she is a hardcore BJP Member and is working for BJP throughout any step taken in an administrative capacity by the office of the BJP with regard of Bank account as she was informed through the notice vide reference No. AGM ३३३/सा/१५/८३ dated 29.08.2008 is quite illegal, arbitrary and is liable to be cancelled.
- (xii) That in view of the above stated facts and circumstances, the respondent has requested the Speaker to dismiss the petition filed by Shri Arjun Munda dated 26.08.2008.

22. Petitioner Shri Arjun Munda vide his letter no. 88 dated 18.11.2008 requested the Speaker to fix the date for hearing of Smt. Kunti Devi as soon as possible and he has requested to allow Mr. C.P.Singh, M.L.A. who is the Chief Whip of BJP in Jharkhand Legislative Assembly as a witness during the hearing.

23. The date for hearing the case was fixed on 3rd December, 2008 and Mr. C.P.Singh, M.L.A. was allowed to represent in the hearing as a witness.

24. Mr. M.K.Laik, senior learned counsel for the respondent has requested the Speaker to grant some more time during the course of hearing and in writing also he has filed a time petition. The next date of hearing was fixed on 4th September, 2008 at 10.30 A.M.

The main points of pleading from the hearing is as follows :

- (1) Mr. Ajit Kumar, learned counsel for Shri Arjun Munda, petitioner stated that Smt. Kunti Devi campaigned actively against BJP and worked against in bye-election of Koderma, Palamau and Jamshedpur Parliamentary constituency and Simaria Assembly constituency. By her action it is crystal clear that she has voluntarily left the Membership of her original political party BJP and stood disqualified in terms of para 2 (1) of the 10th Schedule of the Constitution of India.

- (2) During the hearing he read the gist of the show cause notice which was issued by the party on 17.10.2006 and it was stated that show cause letter was under reply. Again learned counsel for the petitioner stated that during the Rajya Sabha election the respondent has supported Mr. Parimal Nathwani who was not supported by BJP. Mr. J.P.N. Singh was the official candidate of BJP. There was a direction by the BJP that all Members should cast their 1st preference vote of Shri J.P.N. Singh and they should not cast any 2nd preference vote to any Member. The respondent has defied the direction of the BJP, the party on whose tickets she has been elected. She has voted 1st preference vote to Mr. Parimal Nathwani and 2nd preference vote to BJP official candidate Mr. J.P.N. Singh and she has admitted the fact also. He also stated that in today's newspaper it is published that suspended MLA of BJP Smt. Kunti Devi has blamed the party authorities and stated that as she was displeased with the organization of BJP, hence she casted her 1st preference vote in favour of Mr. Parimal Nathwani during Lok Sabha election. Same news, exactly same words have been repeatedly I was reading from Dainik Jagran. Another news, same words have been published in the daily Hindustan today. Again she has abstained during the voting of No Confidence Motion of present Governor. It is true that she has intimated you about her absence but in clause 2 (b) it is clearly mentioned that the Member votes or abstains from voting in such House contrary to any direction issued by the political party to which she belongs or by any person or authority authorized by it unless 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 an authority within 15 days from the date of such voting or abstention. According to this provision she should get condonation from the party authorities within 15 days but she could not do the same. Her conduct is very much clear and she falls under 2 (1)(a). She could not reply about the paragraph no. 9 and as per law her refusal from the reply is her admission on the point so we can say that paragraph no. 9 will said to be a confirmed evidence because there is no denial from their side.

25. Mr. C.P. Singh MLA and Chief whip of BJP Legislative Party was interrogated by Mr. Ajit Kumar, Learned Counsel for Petitioner and Mr. M.K. Laik, Senior learned Counsel for the Respondent. The main point of interrogation was as follows:

26. Mr. C.P. Singh stated that during the last Rajya Sabha Election Mr. J.P.N. Singh was the authorized candidate of BJP and it was decided by the party that the first preference vote should be casted in favour of Mr. Singh and nobody should have to cast second preference vote. But Mrs. Kunti Devi has casted first preference vote to Mr. Parimal Nathwani which is clear cut violation of the party direction. In addition to that Mr. C.P. Singh stated that on 29th August, 2008 during the confidence motion of Mr. Sibu Soren Government he had issued a whip to represent in the House and vote against the confidence motion but she had abstained from the voting and she could not get condonation from the party regarding this abstention. Mr. Singh again stated that since the formation of Jharkhand Vikas Morcha Mrs. Kunti Devi had never participated in any of the meeting of the Bharatiya Janata Party Legislative Party. However, in each and every occasion I had intimated her properly but she never bothered to participate in the meeting. In addition to that she had never participated in any of the party meeting in Dhanbad District neither she had participated any activity of the party nor any of the official programme of the party.

27. A show cause notice was also issued by Mr. Ganesh Mishra, Secretary of our party on 17.10.2006 but even today she could not replied.

28. A question was asked by the Speaker that whether a party can issue a whip to vote in favour of a particular candidate during the Rajya Sabha Election then Mr. Ajit Kumar, Advocate for the Petitioner stated that whip can not be issued for casting a vote for Rajya Sabha election but direction was given to the members of the concerned party in Para 2(b). It is mentioned that disqualification on ground of defection "if he votes or abstains from voting in such house contrary to any direction, it can be any direction even verbal direction." Mr. Ajit Kumar, Advocate for the Petitioner interrogated the witness Mr. C.P.Singh. He relied on the written complaint. He stated that most of the allegations are not mentioned in the petition regarding paragraph 9. He has asked to the witness that a petitioner has written that Sri Pradeep Yadav, Sri Ravindra Kumar Rai, Smt. Kunti Devi campaigned actively against BJP candidate and what against to the bye election head for Koderma, Palamu, Jamshedpur Parliamentary Constituencies and Simaria Assembly Constituency. Can you exhibit any document before the Hon'ble Speaker that Smt. Kunti Devi has campaigned against BJP? Can you show me any particular document? Mr. C.P.Singh was unable to reply regarding this question. Again Mr. M.K.Laik, Senior Advocate for Respondent stated that because long time is going by direct question of the documents which you have filed along with the complaint petition though it does not contains a single words against Kunti Devi. Mr. M.K.Laik, Senior Advocate for Respondent stated that this is the fundamental principle so my friend should aware of Supreme Court Judgement exactly the same circumstances was held in the Supreme Court in casting vote in Rajya Sabha Poll, it is the personal matter, that is the personal matter, that is no offence, that is not disqualification within the orbit of 10th Schedule of any of the provisions of the law. Mr. Singh would you kindly press any evidence before this Hon'ble Court except in this paper cutting which has come today in the morning. Any documentary evidence that any objection was given from the side of your Hawkins to Mr. Singh that you are debarred or action should be taken against you because you have done this and then that have you produced such documents before this court.

29. Mr. C.P.Singh reply that no, when on 17th October, 2006 our Pradesh Secretary Mr. Ganesh Mishra has sent a letter to Mrs. Kunti Devi to reply the show cause notice within 7 days but she could not replied then how can it be expected that

30. Regarding abstention from the voting during confidence motion of Sibu Soren Government Mr. M.K.Laik, Senior Advocate for the Respondent stated that Mrs. Kunti Devi was not fit on the date just a few days before that day she had undergone a very big operation and she has intimated Mr. Saryu Rai MLA, Mr. Raghuwar Das MLA, and Mr. Raj Kumar P.A to the leader of the opposition Mr. Arjun Munda that she is not feel well and she is going.

31. While she came to the House, she comes to serious illness and she had pity condition and after advise of senior persons like Raghuwar Das, Saryu Rai, she had to leave because her physical ailment and it was convey to the P.A of Mr. Arjun Munda.

32. Mr. C.P.Singh stated that everybody knows the fact, not only print media but also before the electronic media which was telecast in several channels, printed in several newspapers "yes she has voted for Nathwani".

33. Mr. Ajit Kumar, Advocate for the Petitioner stated that the matter before the Speaker under the 10th Schedule should not be seen in the canvass of legality in the Mahachandra Prasad case it is well settled that "there is no provision in the 10th Schedule to the effect that until a petition

which is signed and verified in the manner laid down in CPC that verification of pleading is made to the Chairman or the Speaker of the House. He will not get jurisdiction to give a decision as to whether a Member of the House has become subject to disqualification under the 10th Schedule".

34. He stated that it is completely on the discretion of the Speaker. No CPC is mandatory. It is not mandatory under the 10th Schedule. Under 10th Schedule technicality of civil proceeding is not necessary only facts are important. To Code Volume 8SCC page no.747 in paragraph 16 Supreme Court held that technicality is not necessary. In the case of Rana Ravi. S. Nayak Supreme Court repeatedly held that Speaker can take a decision on its own discretion, on its own knowledge I have provided only the instances against Mr. Ajit Kumar stated that she should get condonation from the abstention in the House during the voting in confidence motion within 15 days. She has violated 2(1)(a) by her conduct and 2(1)(b) by her abstention these are the instances.

35. Again a written statement was provided by the respondent Mrs. Kunti Devi vide her letter no. 2/8/435 on 12/12/2008. She has requested to dismiss the petition filed against her under the 10th Schedule by this counter affidavit she has presented her side again before the Speaker. It is stated that the newspaper clippings which have been filed along with the complaints filed by Mr. Arjun Munda does not contain a word or whisper alleging her any activity in the matter of working against the candidate of Bharatiya Janata Party. A campaigning against the BJP candidates in Parliamentary Constituency and Assembly Constituency has alleged or at all. In that view of the matter the allegations made in the complaint petition do not get any support of any evidences.

36. Again she stated that the allegation with regard to joining hand with Jharkhand Vikas Morcha led by Sri Babu Lal Marandi and participating in the rally of said Vikas Morcha are totally fails and concocted. There is no evidence in the hand of the complainant to substantiate the aforesaid charge leveled against her in the complaint. It was submitted that casting of vote to Sri Perimal Nathwani in Rajya Sabha showing the same to the Sachetak of Bharatiya Janata Party can not be said to the and can not be said to be disqualification within the meaning of 10th Schedule of the Constitution of India and said submission get support from the judgement of the Hon'ble Supreme Court of India. In that view of the matter elections of giving vote in Rajya Sabha can not be said to be a disqualification within the meaning of 10th Schedule of the Constitution of India.

37. That it is submitted that it has come in evidence that on the date of proving confidence in the floor. She was present but since she had gone under major operation few months back. She could not recover properly and since she became ill even by attending the House on the date of confidence motion. She had to leave the House because of her serious ailment and that on suggestion of Sri Saryu Rai MLA, Sri Raghuwar Das MLA and P.S of Sri Arjun Munda leader of BJP legislative party who were available in the House that day.

38. It was submitted that the allegation of not giving reply to the show cause can not be said to be fettle, even assuming the same to be true for the time being, particularly in a situation that no action has been taken their own by the party against her nor the same has been substantiated before the Speaker in any manner whatsoever.

39. Before reaching the conclusion it is pertinent to state here about the provisions of 52nd Amendment concept of 10th Schedule 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.

40. The main object of the 10th Schedule is as follows:
 "The evil of political defection 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 the object an assurance was given in the address by the President to the Parliament that the Government intended to introduce in the current session of Parliament an anti defection bill. The bill is meant for outline defection and fulfilling the above assurance"
41. The purpose for enacting the constitution (52nd Amendment) that is incorporation of the 10th Schedule and other amendments was not only to stabilize the legally elected government and to prevent the political immorality but also to make them effective if the provisions are laid down the main purpose would be defeated (*Prakash Singh Badal Vs. Union of India* AIR 1987 P & H 263 FB).
42. The object is to cure and evil of political defections motivated by lure of offices or other similar Constitutions which endanger the foundations of our democracy. (*Kihotto Hollohan Vs. Jachillhu* AIR 1993 Supreme Court 412).
43. G. V. Mavalankar who was most distinguishing occupant and that high offices "in Parliamentary democracy the offices of the Speaker is held in very high offices 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 be above parties, above politics. In other words he belongs to all the members or belongs to none. He holds the scale of justice irrespective of party or person though anyone expect that he will do absolute justice in all matters because as a human being he has his drawbacks and shortcomings. However, everybody knows that he will intensely do not in justice or so partiality such a person is only respect by all."
44. The Speaker/Chairman holds a pivotal position in the scheme of the Parliamentary democracy and a guardian of the right and privileges of the House. It would indeed be unfair to the high tradition of that great office to say that the investiture in it of determinative jurisdiction under the 10th Schedule would be vitiated for violation of a basic feature of a democracy (*Kihotto Hollohan Vs. Zachillhu* 1992 Supplementary (2) SCC 651).
45. Pandit Nehru referring to the office of the Speaker stated "the Speaker represents the House. He represents the dignity of the House. The freedom of the House and because the House represents the nation in a particular way. The Speaker becomes the symbol of the nation's freedom and liberty. Therefore, it is right that Speaker should at an honoured position, free position and should be occupied always by a man of outstanding ability and impartiality."
46. Before coming to the conclusion it is necessary to mention here para 2(1)(a) and (b) of the 10th Schedule.

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 for 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.

47. In regard to the various contentions raised and urged at the hearing the Supreme Court held that the paragraph 2 of the 10th Schedule of the Constitution is valid, its provisions do not suffer from the vice of subverting democratic rights of elected members of Parliament and the Legislatures of the States. It does not violate their freedom of speech, freedom of vote and conscience as contended. The provisions of paragraph 2 do not violate any rights or freedom under Article 105 and 194 of the Constitution. The provisions are salutary and are intended to strengthen the fabric of Indian Parliamentary democracy by curbing unprincipled and unethical political defections.

48. The Speaker's function under the 10th Schedule called for a judicial determination of issued under the law hence the whole matter was seen on the canvass of para 6(1) of the 10th Schedule which is as follows:

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

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

49. The petitioner Mr. Arjun Munda relied upon the judgement of Rajya Sabha in the case of Mr. Jai Narayan Prasad Nishad, Member of Parliament from Rajya Sabha disqualified on the basis of report of the Committee of privileges of Rajya Sabha which was cheered by Mr. K. Rahman Khan, Chairman to the Committee of privileges. The petition was filed by Mrs. Sushma Swaraj for disqualification of Jai Narayan Prasad Nishad from the membership of Rajya Sabha. Mr. Jai Narayan Prasad Nishad was a member of Rajya Sabha from BJP has subjected himself to the disqualification under the 10th Schedule when vide his letter dated 18th October, 2005 addressed to the Bihar State President of the BJP, he resigned from the primary membership of the party and thus voluntary relinquish the membership of the party.

50. According to the petitioner immediately after his resignation Sri Nishad has indulged in anti party activity during the elections to the Bihar Legislative Assembly and openly started campaigning against BJP and other candidates of NDA sighting various newspapers which had published campaign programme of Sri Nishad along with member of Rashtriya Janata Dal. According to the petitioner Sri Nishad had also publicly declared that after resigning from the BJP. He would relinquish his membership of Rajya Sabha and submitting his resignation to the Chairman, Rajya Sabha but he could not do so and later he withdraws the resignation by his letter dated 17th November, 2005.

51. It is very much clear from newspaper cuttings that Mr. Nishad was indulged in the anti party activities like campaigning against the NDA candidates by supporting RJD candidate. Mr. Nishad said that appearing in the newspaper showing the name of Sri Nishad and he would campaign for RJD in the Assembly elections. Sri Nishad stated that it was reported but he do not go anywhere for campaigning on being specifically asked whether he would issued any rebuttal to the RJD or the newspaper publishing his name with the campaign advertisement of RJD? Sri Nishad replied that since he was not going anywhere There was no need for rebuttal

Sri Nishad denied having either campaign for his son who contested as a candidate for RJD in Assembly elections or having addressed public meetings from the forum of RJD on being question he further stated that he had written to concern newspapers to the effect that his name and statement appearing therein were wrongly quoted when committee desired a copy of those letters written by him to the newspapers, Sri Nishad cutting produced them and stated that he would have to search for the same. He however, further admitted that none of his statements rebutting the impugned news/advertisements was published in the newspapers.

52. The petitioner has further relied on the alleged anti party activities of Sri Nishad. On the basis of his statement appearing in the media and other news reports.

53. The Committee feels that the onus of disproving the allegations leveled in the petition lies on Sri Nishad and the respondent Mr. Nishad was fail to 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. It is well established that he was the respondent was failed to send a rebuttal to the newspaper or to contradict the news published in the print media.

54. In addition to that Mr. Nishad claimed that the party deducted Rs. 1200/- per month as subscription fee from his bank account till 10th December, 2005. Hence he was a bona-fide member of BJP. The Committee noted that an amount Rs. 1200/- being deducted from the Bank account from Sri Nishad until 10th December, 2005 which according to Sri Nishad, was the subscription fee for membership of the BJP regarding this one. The privilege committee of Rajya Sabha is of the opinion that it is a routine exercise done in a 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 continued to be so deducted until 10th December, 2005. The Committee is, therefore, of the opinion that all these acts on the part of the office bearers of BJP do not necessarily suggest that they were treating Sri Nishad as a Member of the Legislature Party of the BJP in Rajya Sabha.

55. The Committee moreover feels the fact of not sending the information about his suspension to the Chairman, Rajya Sabha does not materially change the position. In his favour particularly when he has voluntarily given up the membership.

56. It is pertinent to mention here that the respondent has filed an affidavit on 06/08/2007 and in the para 6.10 it is submitted by the respondent that Bharatiya Janata Party has submitted the list of Members to the Hon'ble Speaker as per the demand and in the last name of MLA submitted by the Bharatiya Janata Party the name of the respondent also appears.

57. It can be quashed on the basis of the report of privilege committee of Rajya Sabha in Jai Narayan Prasad Nishad case and it was held by the Committee that Sri Nishad has referring to sub Rule 1(a) of Rule 3 of the rules, also stated that no information pertaining to change in the strength of BJP Legislature Party in Rajya Sabha or the information required to be furnished in form 1. In respect of all the Members of Legislature Party to the Chairman, Rajya Sabha was given by the leader of the BJP in Rajya Sabha. By referring to the relevant provisions of the rules, Sri Nishad, in Committee's view, implied to mean that had his resignation from the primary membership been assumed have taken effect the information required under the rules should have been furnished to the Chairman, Rajya Sabha by the leader of the BJP in the Rajya Sabha and since no such information was given it could be presumed that his resignation did not take effect.

58. As regards non furnishing of requisite information by the leader of BJP, as provided under our sub Rule 1(a) of Rule 3 of the Rules to the Chairman, Rajya Sabha. The Committee would light to observe that the In action on the part of leader of the BJP in the matter of furnishing information in respect of Members of the Legislature Party in the Rajya Sabha or particular, in respect of change in that information to the Chairman, Rajya Sabha does not have any bearing on the position of Sri Nishad if he had voluntarily given up his membership of his party. The Committee opines that it is a procedural infirmity in the implementation of the provisions of the Rules and would like to leave it to the discretion of the Chairman, Rajya Sabha for issuing the appropriate guidelines on the issue.

59. In the last Committee is therefore, of the opinion that in pursuance of paragraph 2(1)(a) of the 10th Schedule to the Constitution, Sri Jai Narayan Prasad Nishad had incurred disqualification for being a Member of Rajya Sabha.

60. In the matter of Ravi S. Nayak Vs. Union of India, AIR 1994 SC 1558 (Para 11); 1994 Supp. 2 SCC 641

The Supreme Court had further held : the expression "Voluntary 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 resignation to that party, an inference about his voluntarily given up of membership can be drawn from the conduct of that member.

61. The entire case is based upon the following questions:

- (i) Whether she has voluntarily given up her membership of BJP?
- (ii) Whether she abstains from the voting during the confidence motion voluntarily?
- (iii) If her abstention was not voluntarily then why not she try to get condonation from the party authority within 15 days from the date of such abstention which is the time specified in the 10th Schedule in para 2(1)(b)?
- (iv) Whether she gave the statement before the print media as well as electronic media in the Assembly premises on 3/12/2008 that she had voted for Nathwani. Can it be exempted?
- (v) Whether she has participated in meetings or other campaigning programme of JVM?
- (vi) After getting show cause notice why has she not replied and in the last whether she was loyal with her original party BJP.

Keeping in mind all the aspects of facts of both sides I am of the opinion that she was not loyal with her original party i.e. BJP, she abstained from voting during the confidence motion of Sibu Soren Government. She has casted her vote in favour of Mr. Parmial Nathwani in contrary to the directions of party authority. She could not get condonation for abstention from the House during the vote of confidence within the specified time period. Her statement before the print media as well as electronic media was not denied and from that an angle it is more or less similar to the case of Mr. Jai Narayan Prasad Nishad, M.P. from Rajya Sabha. On humanitarian ground it can be accepted that she should not cast her vote during the confidence motion due to her health ailment and she has provided medical certificates in support of that but it is not sufficient evidence because according to para 2(1)(b) a Member of a House belonging to any political party shall be disqualified for being a Member of a House 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. As she could not get condonation for abstention, hence it is not a valid ground for exemption. Hence it is proved that she has violated the provisions of the Constitution under the 10th Schedule. The Court is of the view that petitioner has 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 Smt. Kunti Devi has incurred disqualification for being a Member of the Jharkhand Vidhan Sabha and has ceased to be a Member of the Jharkhand Vidhan Sabha with effect from the date of this order.
3. The case is closed.
4. Copies of this order be forwarded to the petitioners and the respondent at an earliest.

Ranchi
Dated the 13th August, 2009

Sd/-
(Alamgir Alam)
Speaker
Jharkhand Vidhan Sabha