



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. Surya Singh Besra, Ex. M.L.A.-cum-founder

All Jharkhand Student Union

Mr. Bimal Kachap

Versus

Mr. Sudesh Kumar Mahto

..... Petitioner

..... Intervenor

..... Respondent

JAHRKHAND LEGISLATIVE ASSEMBLY SECRETARIAT, RANCHI

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

झारखण्ड विधान-सभा सचिवालय

अधिसूचना

13 अगस्त, 2009

संख्या-कार्मिक-37/07-2634/वि०स०--एतद् द्वारा सर्वसाधारण की जानकारी के लिए भारतीय संविधान की दसवीं अनुसूची (अनुच्छेद 191(2) के साथ पठित) के तहत श्री सुदेश कुमार महतो, संवि०स० के विरुद्ध दल परिवर्तन के आधार पर विधान-सभा की सदस्यता से निरर्हता संबंधी श्री सूर्य सिंह बेसरा (पूर्व विधायक) सह अध्यक्ष, झारखण्ड पिपुल्स पार्टी द्वारा दायर याचिका पर सुनवाई के उपरान्त अध्यक्ष, झारखण्ड विधान-सभा द्वारा दिनांक 13 अगस्त, 2009 को दिए गए निर्णय (संलग्न) को प्रकाशित किया जाता है ।

माननीय अध्यक्ष महोदय के आदेश से,

कौशल किशोर प्रसाद,

प्रभारी सचिव,

झारखण्ड विधान-सभा, राँची ।

Before Honourable Speaker of the Jharkhand Legislative Assembly,

**Mr. Surya Singh Besra, Ex. M.L.A cum founder
All Jharkhand Student Union,
Mr. Bimal Kachap Intervenor**

Petitioner

Versus,

Mr. Sudesh Kumar Mahto,

Respondent

In the matter of an application filed by Mr. Surya Singh Besra, Ex. M.L.A and founder of All Jharkhand Student Union on 16th October 2007 against Mr. Sudesh Kumar Mahto, M.L.A for disqualification of his membership from Jharkhand Legislative Assembly under Para 2(2) of 10th Schedule of the constitution read with article 191(2) of the constitution.

Facts:

Main points in the pleading.

- (1) Mr. Sudesh Kumar Mahto was elected on the ticket of UGDP in 2000 for Bihar Legislative Assembly from Silli constituency and to remain as an M.L.A. of UGDP. He had requested on 19th September 2002 to the Election Commission of India to register the All Jharkhand Student Union as a Political Party. Mr. Sudesh Kumar Mahto being in the capacity of president of All Jharkhand Student Union. A show cause notice was issued by the Election Commission of India dated 26th February 2003 to The President of All Jharkhand Student Union Mr. Sudesh Kumar Mahto and it was mentioned that in 2002 he was the M.L.A. of UGDP from Silli and it was found by The Election Commission of India that the affidavit annexed with the application of Sudesh Kumar Mahto was also false.
- (2) Mr. Anuj Kumar Sinha advocate of Delhi High Court received reply regarding his right to information, from Election Commission of India that Sudesh Kumar Mahto was requested repeatedly to change the name of All Jharkhand Student Union because such type of Student organization was already existing since 1992 and it is a co-partner of the Political Party Jharkhand Peoples Party which is registered before The Election Commission of India in the year of 1992. Mr. Sudesh Kumar Mahto was elected on the ticket of UGDP in Bihar Vidhan Sabha in 2000 election and remained as a Minister of P.W.D. in Jharkhand Government. He had registered the Party All Jharkhand Student Union as a Political Party before The Election Commission of India on 15th November 2002 which is contrary to the rules of 10th Schedule.
- (3) Mr. Sudesh Kumar Mahto M.L.A cum President of All Jharkhand Student Union had convened a general body meeting in Tulsi Bhawan Jamshedpur on 4th 5th and 6th October 2007 and constituted a new party whose name is AJSU Party. Again Mr. Sudesh Kumar Mahto was elected President of that Party.
- (4) Mr. Sudesh Kumar Mahto M.L.A cum President of All Jharkhand Student Union had constituted another AJSU Party which is contrary to the anti defection rules under 10th Schedule, according to the provisions of 10th Schedule in Para 2(2), an elected member of a house who has been elected as such otherwise then as a candidate setup by any Political Party shall be disqualified for being a member of the House if he joins any Political Party after such Election; and hence Mr. Surya Singh Besra Ex. M.L.A. the petitioner has requested to disqualify the membership of Mr. Sudesh Kumar Mahto the respondent from Silli constituency of Jharkhand Legislative Assembly. There are two main points in the writ petition one is that Mr. Sudesh Kumar Mahto being an M.L.A. of UGDP in

the year of 2002 has requested The Election Commission of India to register the All Jharkhand Student Union, AJSU, as a Political Party, and another question is that on 4th, 5th and 6th October 2007 in Tulsi Bhawan Jamshedpur, he convened a general body meeting of All Jharkhand Student Union which is known as AJSU and change the name of AJSU as AJSU Party. Whether these two points are maintainable in view of law or not; for this matter a legal opinion was taken from the Advocate General of Jharkhand. It is pertinent to state here word by word the opinion given by the Advocate General of Jharkhand Government which is as follows "pursued the file and the notings the petition has been filed on 16th October 2007 by Mr. Surya Singh Besra Ex. M.L.A. cum founder of All Jharkhand Student Union before the Hon'ble Speaker, Jharkhand Legislative Assembly for cancelling the membership of Mr. Sudesh Kumar Mahto, M.L.A. of the present house under schedule 10 of the Constitution of India. On the ground that during the tenure of Bihar Legislative Assembly from the year 2000 to 2005, Mr. Sudesh Kumar Mahto was elected as M.L.A. on the ticket of United Goan Democratic Party UGDP and on 19th September 2002, he applied before the Election Commission of India for forming a new Party in the name of All Jharkhand Student Union and there by he suffered disqualification under schedule 10 of the Constitution and therefore his membership should be cancelled. The tenure of Bihar Legislative Assembly ended in the year 2005 and thereafter fresh election has been held and Mr. Sudesh Kumar Mahto has been elected as M.L.A. on the ticket of All Jharkhand Student Union. Disqualification, if any, was suffered by Mr. Sudesh Kumar Mahto in 2002 during the tenure of previous Legislative Assembly which was dissolved in 2005, no action can be taken at this stage on the petition of Mr. Surya Singh Besra in the respect of and/or relating to previous Legislative Assembly.

- (5) Further allegation by Mr. Surya Singh Besra is that though Mr. Mahto was elected in 2005 on the ticket of All Jharkhand Student Union but recently on 4th, 5th and 6th of October 2007 Mr. Sudesh Kumar Mahto has constituted and/or formed a new Political Party AJSU if this allegation is correct there may be a prima facie case against Mr. Mahto under the circumstances a show cause may be issued to Mr. Sudesh Kumar Mahto only in respect of second allegation." Hence it is very much clear that the first allegation was not maintainable in the eye of law and a show cause notice was issued vide letter no. 3295 dated 13th December 2007 to Mr. Sudesh Kumar Mahto M.L.A. by the Speaker. It is mentioned in the show cause notice that the petition has been already taken into cognizance under Para 6 of 10th schedule. The two points of the show cause notice is as follows-

- (i) On 4th, 5th and 6th of October 2007 a general body meeting was convened by Mr. Sudesh Kumar Mahto M.L.A. cum President of All Jharkhand Student Union and a new Party, namely AJSU Party was constituted. Mr. Sudesh Kumar Mahto was elected as the President of that newly formed AJSU party.
 - (ii) The other is to constitute a Party i.e. AJSU Party remaining as a member of All Jharkhand Student Union falls under the purview of anti defection law or not and it was expected to reply within 15 days. Mr. Sudesh Kumar Mahto, the respondent has requested to extend the time limit for at least 15 days to reply the show cause notice vide his letter no. 63 dated 28th December 2007, Which was accepted by the Sepeaker and extended time was granted to him till 12th January 2008. Mr. Sudesh Kumar Mahto the respondent has given his explanation vide his letter no. 64 dated 8th January 2008 to the Speaker. The main points of the explanation are as follows :-
1. The Election Commission of India, New Delhi has directed Mr. Sudesh Kumar Mahto to change the name of All Jharkhand Student Union vide his letter no. 753 dated 22nd May 2007, letter is annexed along with the explanation.

- II. It was decided by the Central Committee of then All Jharkhand Student Union that the revised name of AJSU should be AJSU party and it should be intimated properly to Election Commission of India New Delhi, letter is annexed here with.
 - III. Election Commission of India New Delhi has given a consent to the amended name of AJSU Party and recognition was granted by the Commission and it is intimated vide Election Commission, letter no. 4271 dated 8th August 2007 which is annexed II(iv) in the notification of Election Commission of India, New Delhi vide notification no. 56/2007 dated 8th November 2007. It is mentioned that the amended name of All Jharkhand Student Union is AJSU party this letter is also annexed with the reply. In the explanation given by the respondent to the Election Commission of India he has requested that AJSU Party was not newly formed-party as according to the consent and direction given by the Election Commission of India All Jharkhand Student Union was amended in the form of AJSU Party and in the light of above facts it is requested to make suitable action. It is pertinent to state here that in the letter of Election Commission of India letter no. 753 dated 22nd May 2007; the subject is, All Jharkhand Student Union a registered unrecognized political party as according to the letter sent to the president All Jharkhand Student Union; it is mentioned that in earlier letters on the above subject and to say that no reply has been received from the party regarding the modification of name of the party till now. Hence the time was given up to 11th June 2007 to furnish reply in this regard. A letter was sent to the Election Commission by the organising Secretary Mr. Sapan Kumar Singh Deo of All Jharkhand Student Union. On the subject All Jharkhand Student Union a registered unrecognized political party regarding it is mentioned that with reference to your letter no. 56/158/2006/JS3/753 dated 22 May 2007 on the subject cited I am to inform you that the general meeting of Central Committee of our party i.e All Jharkhand Student Union held on 11th June 2007 at Ranchi to discuss the matter related to modification of the name of the party. I am further to inform you that it has been unanimously decided in the said meeting that the name of the party will be AJSU party. In view of the above it is requested to your good self to accept the modified name of our Party that is AJSU Party in place of All Jharkhand Student Union. It is very important to note here that Election Commission of India has sent a letter to the President All Jharkhand Student Union vide his letter no. 4271 dated 8th August 2007 regarding change of the name of the Party. It is mentioned here that I am directed, referred to your letter dated 7th July 2007 on the subject cited and to inform that the Commission has accepted the name of your Party, AJSU Party, you are advised to furnish a copy of the minutes of the meeting held on 11th June 2007 in which the decision to change the name of the Party was taken and also submit a copy of attendance register bearing the names and signatures of the participating members of the meeting copy of the minutes referred to in your letter has not been received here. A revised notification was issued by the Election Commission of India vide notification no. 56/2007 dated 8 November 2007 in the sub-clause (6) it is mentioned that in serial no. 77 the present entries under column no. (2) should be re-established by the entry of Ajasu Party.
- (6) Mr. Bimal Kachap Central President of AJSU, All Jharkhand Student Union has given a letter to the Speaker requesting him that the reply of the show cause notice given by the respondent Mr. Sudesh Kumar Mahto was mischievous and to mislead from the facts. Hence he has requested to allow him to take part in the hearing so that, he can put the points regarding the matter. Ultimately a date of hearing was fixed on 12 January 2009 at

11 am in the South Lobby of Jharkhand Legislative Assembly building. In which Mr. Surya Singh Besra, the petitioner, Mr. Bimal Kachap, the intervenor and Mr. Sudesh Kumar Mahto, the respondent were requested to present either personally or through their advocates to present their sides either verbally or in written.

- (7) On 20th January 2009 at 11 A.M Mr. Surya Singh Besra, the petitioner and Mr. Bimal Kachap, the intervenor were present himself whereas Learned Advocates Mr. B.P.Pandey and Mr. B.K.Tiwary were appeared before the Speaker on behalf of the respondent Mr. Sudesh Kumar Mahto. Petitioner stated that the case is pending before the Election Commission of India. Mr. Sudesh Mahto was the M.L.A of UGDP and he has filed an application to register before the Election Commission for the registration of All Jharkhand Student Union. On 19th September 2002 the affidavit attached with the application was found false by the Election Commission of India. The name All Jharkhand Student Union should be revised and ultimatum was given to the respondent Mr. Mahto to furnish the reply before 31 March 2003. It is very much clear that till 2003 Mr. Sudesh Kr. Mahto has not changed the name of AJSU till date a case is pending before the Election Commission, Hon'ble Speaker, Sir in the year of 2005 he contested a Election and in the year of 2007 he has formed a new Party AJSU Party. In the year of 2005 Mr. Sudesh Kumar Mahto has contested on the ticket of All Jharkhand Student Union which is a registered Political Party and in the year of 2007 again a new Party AJSU Party was formed by Mr. Sudesh Kumar Mahto. I have already given petition to the Election Commission of India several times regarding this matter and it is mentioned that Mr. Sudesh Kumar Mahto has done a fraud as it is also mentioned in the letter of under Secretary of Election Commission of India vide letter no. 489 dated 26 February 2003. A show cause notice was issued by the Election Commission of India to the President of All Jharkhand Student Union. The main points of the show cause is as follows the application was supported by a false affidavit and hence prima facie it appears that the original application for registration of the party was supported by false affidavit and to that extent the registration appears to have been obtained by fraud. Hence in view of the above it was requested that to furnish the reply before 31st March 2003 failing which registration should be cancelled any appropriate order can be passed by the Commission. Again Mr. Bimal Kachap, the intervenor has pleaded himself before the court and he stated that Mr. Sudesh Kumar Mahto used to mislead the Court, mislead the All Jharkhand Student Union too by forming another political party. He stated that when Mr. Sudesh Kumar Mahto applied for registration of the All Jharkhand Student Union then he has constituted a constitution of the Party. Normally in Central Committee, members are nominated from the entire Jharkhand State whereas in this case only Silli is mentioned. My Lord, I want to say that keeping in dark to the Election Commission of India, Mr. Sudesh Kumar Mahto has formed the All Jharkhand Student Union which is an independent student union to form a political party hence his membership should be terminated. Mr. B.P.Pandey Senior Advocate for the respondent appeared before the Court and he stated that under rules 6(1) of the 10th Schedule it is mentioned that if any question arises as to whether a member of the house had 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. It means if anybody gives an application and if you take it in cognizance or otherwise you may take it as suo motto case if you got a knowledge from anybody else then there is a provision to take cognizance and to frame the case under the 10th schedule. But in this case you may see that it is clear cut violation of the sub-clause (6) of rule (6) because the petitioner should sign in the petition as well as in the annexures as CPC 1908

but the documents are not verified in accordance with the CPC. Hence what should be the fate of the petition. If you attach some annexures along with the petition then it should be authenticated whether this document is correct. Mr. B.P.Pandey Senior Advocate for the respondent stated that the more stringent the law the application of it should be strict. He stated that I had read your observation regarding maintainability and non maintainability. Your observation was correct because you may take cognizance, suo motto. You may here it, you may take it suo motto, even a petition is not filed it is just between the respondent and the petitioner. Respondent and your honour now on going into merit of the case I have to say that it is a matter of debarring any one from membership then what the constitution says in the 10th schedule Para (2) it is stated that subject to the provisions of paragraph 3, 4 and 5, a member of the house belonging to any political party shall be disqualified for being a member of the house, If he voluntarily gives up membership of such political party. The emphasis is upon voluntarily if anybody left his/given up his party voluntarily from which party he got elected. Again he stated that in the clause 3 it is mentioned that where a member of the house makes a claim that he and any other member of this legislature party constitute a group representing a faction which has a reason as a result of split in the original political party and such group consist has not less then 1/3 of the members of such legislature party. He shall not be disqualified under paragraph 1 or paragraph 2 on the ground that he has voluntarily given up his membership of his original political party and then with regard to the abstention and voting a member of the house shall not be disqualified under Para (1) of paragraph(2). Which is original political party merges with another political party and he claims that he and his other member of his original political party have become members of such other political party or as the case may be of a new political party found by such merger. In the document of Election Commission of India, letter no. 753 the commission has written that I am directed to invite your attention to commission's letter even number dated 27 March 2007 and the earlier letter on the above subject and to say that no reply has been received from the party regarding the modification of the name of the party till now. You are given time up to 11th June 2007 to furnish your reply in this regard. It is between the correspondence of Election Commission of India and AJSU party ultimately on 22 May 2007, it has given finally a time period from the Election Commission of India. After that party meeting was held to discuss about the Election Commission's letter no. 753 dated 22 May 2007 and after discussion a resolution was passed by the committee and ultimately the name of the party AJSU was modified as AJSU Party and after that we have sent a copy of the resolution to the Election Commission of India. Now the name of our party is AJSU Party which is confirmed by the Election Commission of India on 6th January 2007. Here a question arises that whether Sudesh Kumar Mahto has formed another party AJSU Party or it is just modified. Regarding this question Mr. B.P.Pandey Senior Advocate for the respondent has pleaded that no party was formed according to the letter of Election Commission of India. It was intimated to the party that in the name of AJSU there was some another party already registered before the Election Commission of India. Hence to change the name of the party it was requested. Mr. B.P.Pandey Learned Advocate for the respondent again stated that there is a change but it lock stock and barrel entire member of the legislative party has merged from AJSU to AJSU Party. There are only two member of the house and both of the members has merged into the AJSU Party. It is total lock stock barrel, it is 100 percent transformation and under the 10th schedule no action can be taken regarding this matter. It is not the case of split, it can be treated as a 100 percent merger and no case of disqualification arises in this matter. Regarding the question of submitting the proceedings and signature of the meeting of 11th June 2007, Mr. B.P.Pandey

Senior Advocate for the respondent stated that the documents as well as resolution were demanded by the Election Commission of India and we have already provided a copy of resolution as well as signatures of the members of the committee to the Election Commission of India. With reference to your second letter it was also stated that general meeting of the Central Committee of the party i.e All India Jharkhand Student Union held on 11th June 2007 at Ranchi to discuss the matter relating to modification of the name of the party I am further to inform you that it has unanimously decided in the said meeting that the name of the party will be AJSU Party and hence we have supplied the document. It is the document which is rejoinder to the documents filed it earlier. The second document was given to the Secretary to the Election Commission of India on 7th July 2007. We have written in this letter that with reference to your letter number so and so dated 22 May on the subject and to inform you the general meeting of the Central Committee of the party i.e All Jharkhand Student Union held on 11th June 2007 at Ranchi to discuss the matter related to modification of the name of the party. I am further to inform you that it has been unanimously decided in the said meeting that the name of the party will be AJSU Party in view of the above request to your good self to accept the modified name of our party as a AJSU Party in place of All Jharkhand Student Union. After that a letter was given by the Election Commission of India to the AJSU Party vide letter no. 4271. In that letter it is mentioned that I am directed to, refer to your letter dated 7th July 2007 of the subject cited and to inform that the commission as accepted the name of your party AJSU Party. You are advised to furnish a copy of minutes of the meeting held on 11th June 2007 in which the decision to change the name of the party was taken and also submit a copy of the attendance register bearing the name and signature of the participating members of the meeting. Copy of the minutes refer in your letter has not received here. My Lord we have already send the minutes of the meeting as well as copy of the attendance register to the Election Commission of India and after that on 8th November 2007 Election Commission has modified as serial no. 77 in which it is mentioned that in serial no. 77 the present entries under the column no. 2 should be re-established by the entry of AJSU Party. It is serial no. 77, it can be seen in the notification of the Election Commission of India of 6th January 2007, on page no 28. It is not the formation of any new party according to Election Commission of India. The Election Commission of India intimated AJSU by the name AJSU you want the registration, it can not be possible you may give any other name and we have accepted it, we have change the name of AJSU as AJSU party and election commission has accepted it. The Commission has given the consent to form the new name of the party, which is the AJSU party. If it is considered that a new party is formed then I may say in that case also it is lock stock barrel 100 % transformation. If 100% transformation takes place then there should be no question of disqualification. In Para 4 it is already mentioned that a member of the house shall not be disqualified under Para 1 of Para 2 where the original political party merges with another political party and he claims that he and other members and of the original party. We have become the member of such other political party as the case may be of new political party have not accepted the merger and obtained to function as a separate view and from time of such merger as such political party or new political party or group as the case may be deemed to be a political party to which he belongs for the purpose of paragraph 1 and 2 and to be his original political party for the purpose of this paragraph so when lock stock barrel when transformation takes place it is original political party, it is not the defection and therefore it does not come under schedule 10 of the constitution.

- (8) Sir, one thing more to mention here that if I have done a fraud before the Election of 2005 then it is beyond the purview of this court, if I have done the fraud with the Election Commission of India then it is solely upon the Election Commission of India that he should file the case upon me. He has given a show cause notice to me which has been accepted when the name of the party was changed from AJSU to AJSU party and ultimately he has accepted it and hence there is no fraud if the petitioner think so that I have done any fraud with him then this is not the proper forum is else where. Mr. Surya Singh Besra the petitioner again stated that My Lord it should be considered in the main petition of 29th May 2007 Mr. Anuj Kumar Sinha who is the Advocate of Delhi High Court has requested the Election Commission of India under right to information act and he got some information according to that the matter was decided at the level of Deputy Election Commissioner in charge of judicial wings.
- (9) Sir This matter is till date pending before the Election Commission regarding the question of registration before the Election Commission of India Mr. Surya Singh Besra the petitioner stated before the court that registration of the party should be registered before the Election Commission of India and in this, the case is pending before the Election Commission also and it is also the case of 10th schedule because Mr. Sudesh Kumar Mahto has elected on the ticket of AJSU in 2005. In the year of 2007 he has modified the name of AJSU to AJSU party he has change the name, its flag, its Constitution and the concept of original AJSU. A copy of the Constitution of original AJSU was given to the court earlier the entire concept was change by the respondent. Hence it can be matter of fraud and change of the entire party. It is the matter of fraud since 2000 again in the year of 2005 there was also a fraud and in the year of 2007 he has changed the name of the party, My Lord he is going to mislead the entire party concept and model of AJSU because All Jharkhand Student Union is a wing of Jharkhand Peoples Party and Jharkhand Peoples Party was already registered in the year 1992 before the Election Commission of India. In the Constitution of Jharkhand Peoples Party it is mentioned that there will be a student wing in the name of All Jharkhand Student Union at thrashing all the matters Mr. Sudesh Kumar Mahto has mislead the Students of the Jharkhand mislead Election Commission of India as it is already mentioned in the letter of the Election Commission of India. In the last, ultimately Mr. Surya Singh Besra petitioner stated that Mr. Bimal Kachap is originally President of the AJSU I am the founder member. I am not in a group of AJSU party which is under the President ship of Mr. Sudesh Kumar Mahto he has done all the things in hurry. He could get registration by using false affidavits of only persons of a single village. There is not a question of the members of Central Committee, Central Committee means West Bengal, Central Committee means Orisa greater Jharkhand the map of greater Jharkhand. It was held by the Election Commission of India that by making form and using the false affidavit he could get registration from the Election Commission and a warning was given by the Election Commission to change the name, to change the party and to leave AJSU it is also the fact. In spite of that Mr. Sudesh Kumar Mahto has not given an importance to the Election Commission of India again he contested on the ticket of disputed All Jharkhand Student Union.
- (10) It is under consideration till date and hence it is to say that this is not the matter to make the healthy tradition of democracy. The entire correspondence of the Election Commission of India should be seen and after the examination of all the documents any order can be passed it is our only one and only prayer.

- (11) Mr. B.P.Pandey Senior Advocate for the respondent stated that I have to say the word in addition to that to see the defection under the 10th schedule, we are here to see the defection under the 10th schedule. He stated that Mr. B.P.Pandey learned counsel for the respondent stated that I have done the fraud from Delhi only he can look after this matter it is not the proper forum. If the petitioner believes that I have done fraud with the Election Commission of India or I have done fraud with him then he should go to the Election Commission, he should filed the case there. This tribunal only could decide about the case of 10th schedule how can it hold the case of that fraud. He says that his party was registered in the year of 1992, it is not the matter Election Commission has told me that your registration can be void if you don't change your party's name. We are making correspondence since 2002 and ultimately we have obeyed the order of Election Commission of India and we have change the name of the party from AJSU to AJSU party and it can be treated as lock stroke barrel by party's only name is transform. There is not a case of defection as far as fraud is concerned if any fraud has taken place then the case can be filed there. If I had done a fraud with Delhi then how can a case can be filed in Jharkhand Ranchi, I want to say only that a rejoinder was filed by Mr. Anuj Kumar Sinha Advocate for the intervener Mr. Bimal Kachap on 19 January 2009 that is after the date of hearing the main points of the rejoinder as follows:- All Jharkhand Student Union was established in the year 1986 as the student party and in the year 2002 Mr. Sudesh Mahto being an M.L.A. from the UGDP applied to the Election Commission of India for the registration of AJSU as the political party. Sri. Sudesh Mahto also filed an affidavit before the Election Commission swearing there in that he does not belong to any other political party and hence All Jharkhand Student Union namely registered as the political party. It is pertinent to mention here that this assertion of fact by Sudesh Kumar Mahto that he is the president of All Jharkhand Student Union can not be given by mistake because he was the person who had applied to the Election Commission to register the All Jharkhand Student Union as the political Party. Whereas at that time he was an elected M.L.A from UGDP this was a fraud committed by the member of the house and the same must be get with seriously otherwise the faith of common people in the democracy on the adversely affected. Again on behalf of Sri Bimal Kumar Kachap Advocate Mr. Anuj Kumar Sinha stated that we are also requested Election Commissioner to institute the criminal proceeding for filing false affidavit before the Election Commission and be recognize the All Jharkhand Student Union from the political party as the same has been fervently registered again it is stated that the show cause notice itself is very apparent that registration of All Jharkhand Student Union has been obtained by fraud. In the fourth Para Mr. Anuj Kumar Sinha stated that the Election Commission issued a letter to the president of All Jharkhand Student Union to modify its name. A reminder letter dated 22 May 2007 a respect of the modification of name was also issued by the Election Commission to the president of All Jharkhand Student Union the letter dated 22 May 2007 is annexed here with. Again it is stated that it is humbly submitted that when the party was fraudently registered by filing false affidavit the registration of party becomes void from the date of registration and hence merely modification of name cannot be better status to AJSU party unless the fresh application for registration is apply form. He further stated that whereas the contention of Sri Sudesh Kumar Mahto is that the All Jharkhand Student Union has been converted into AJSU party which is wrong in sense and merit, it is pertinent to mention here that the registration of All Jharkhand Student Union as the political party is void and ab initio and hence by the modification of name AJSU party cannot enjoy better status than All Jharkhand Student Union. Mr. Sinha further stated that for the sake of argument but without prejudice to whether said here in above even if it is considered that

the Election Commission has rightly allow to modify the name of party under our protest. So as to allow, All Jharkhand Student Union to remain as the student party, it can be said that AJSU party is a new party and hence Sudesh Kumar Mahto is liable to the disqualified from the house. In the facts and circumstances stated here in above there can be only two possibilities firstly the registration of All Jharkhand Student Union is void because false affidavit was filed by Sudesh Kumar Mahto to register All Jharkhand Student Union as the political party and hence modification of name there of cannot be cure the defect of filing false affidavit and consequently conversion of name of All Jharkhand Student Union to AJSU party becomes void too. Secondly the advise of Election Commission to the president Mr. Sudesh Kumar Mahto to modify the name of the party was intended to keep All Jharkhand Student Union as the Student party and to form AJSU party a new party. It is pertinent to mention here that second examination appears to the correct if the content of the show cause notice dated 26 February 2003 and letter dated 22 May 2007 issued by the Election Commission is taken into account conjunctively. Mr. Anuj Kumar Sinha further mentioned that this direction was not given to convert All Jharkhand Student Union into another party in different name. But to obtained new name so as to keep All Jharkhand Student Union free from the affect of registration because Election Commission had observed that registration of the All Jharkhand Student Union had been obtained by fraud. The intention of the Election Commission therefore was to allow the president Sudesh Kumar Mahto to setup a new political party rather than converting All Jharkhand Student Union into AJSU party. Sri Sudesh Kumar Mahto therefore is liable for disqualification from the house as he became the member of new political party. In the last Mr. Anuj Kumar Sinha stated that there is no merger that no merger can be assumed under the facts and circumstances mentioned here in before. It is therefore requested that Sri Sudesh Kumar Mahto should be disqualified from the house and the direction may also be given to the appropriate authority to initiate criminal proceeding for filling false affidavit before the Election Commission. In the opinion the entire case is based upon the concept of political party. The petitioner as well as the intervener has apply before the court to disqualified Mr. Sudesh Kumar Mahto from the membership of Jharkhand Legislative Assembly. On the basis of Para 2(2) of 10th schedule of the Constitution of India read with article 191(2) before coming to the conclusion it is pertinent to state here about the concept of political party, according to the representation of peoples Act 1951 in section 2(1)F meaning of political party says that section 2(1)F defines political party to means association or a body of individual citizens of India registered with the Election Commission as a political party under section 29(A) of the Act 1951. In part 4(1) it is mentioned about the registration of political parties section 29(A) states that registration with the Election Commission of associations and bodies as political party-

1. Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this part shall make an application to the Election Commission for its registration as a political Party for the purposes of this act to every such application shall be made a if the association or body is it existence at the commencement of the representation of people amendment Act 1988 one of 1989 within 60 days next following such commencement.
2. If the association or body form after such commencement within 30 days next following the date of its permission.

3. Every application under sub section (1) shall be signed by the Chief Executive Officer of the association or body whether such a Chief Executive Officer is known as secretary or by any other designation and presented to the secretary to the commission or send to such secretary by registered post.
4. Every such application shall contend the following particulars namely: (a) The name of the association or body, (b) The state in which its head offices situate, (c) The address to which letters and other communications made for it should be send, (d) The names of its President, secretary, treasurer and other office bearer, (e) The numerical strength of its members and if there are categories of its members the numerical strength in each category, (f) Whether it has any local units if so at what levels, (g) Whether it is represented by any member or members in either house of Parliament or of any state legislature, It so the number of such member of all members.
5. The application under sub section (1) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body by whatever name form and such memorandum or rules and regulations shall contend a specific provision. That the association or body shall be a true faith and allegiance to the Constitution of India as by law established and to the principles of socialism, secularism and democracy and would a formed the sovereignty, unity and integrity of India.
6. The Commission may call for such other particulars as it may deem fit from the association of body.
7. After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard the commission shall beside either to register the association or body as a political party for the purpose of this part or not so to register it and the commission shall communicate its decision to the association or body provided that no association or body shall be registered as a political party under the sub-section unless the memorandum or rules and regulation of such association or body confirm to the provision of sub-section 5.
8. The decision of the commission shall be final.
9. After an association or body has been registered as a political party as aforesaid any change in its name headoffice and office bearers, address or in any other material matters shall be communicated to the commission without delay.

In addition to that the concept of political party was recognize by the constitution for the first time in the 10th schedule. Thus file interpreting the definition of political party at included in the 10th schedule one has to keep in mind the intention of the legislature. In other words in the context reference may be made to the judgments of the Hon'ble Supreme Court reported in 2006 in (7) Supreme Court cases (1) vide paragraphs nos. 382, 385, 451, 452 and 462, Which deals with the concept of the political party as well as its interpretation in the context of 10th schedule. In the said case in paragraph 382 the Hon'ble Supreme Court has categorically mentioned that the concept of political party was recognized by the constitution of the 10th schedule. That in another case reported in 2004 in (2) Supreme Court cases 759. The Hon'ble Supreme Court vide paragraph nos. 11 and 12 while determining the question as to which of the candidate has to be said to have been setup by the political party has referred the definition of political party as used under section 229A of the R.P Act 1951 establish for the court. That in another judgment reported in 1985 in (4) Supreme Court cases 628 the Hon'ble

Supreme Court vide Para 10 has given emphasis in the system of political party in our democratic setup. The Hon'ble Supreme Court vide interpreting the definition of political party has referred to the definition of the same under section 29A of the R.P Act 1951. Thus from the above decisions it is evident that the term political party as used in 10th schedule has to be given the same meaning as it has been defined under the representation of people Act 1951 under section 29A. 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 etc, Which were establish on various occasions either by the Hon'ble Supreme Court Hon'ble High Court or by several eminent Parliamentarians. The main object of the 10th Schedule is as follows-

"The evil of political defections has been a matter of national concern. If it is not combated which is likely to undermine the very foundation of our democracy and the principles with this objects and assurance was given in the address by the President to the Parliament. That the government intended to introduce in the current session of Parliament and anti defection bill. The bill is ment for outline defection and fulfilling the above assurance."

The purpose for enacting the Constitution 52 amendment that is incorporation of the 10th Schedule and other amendments was not only to stabilize the legal elected government and to prevent the politically morality but also to make the effective. If the provisions are laid down the main purpose would be defeated. It was reported in Prakash Singh Badal versus Union of India A.I.R 1987 Panjab and Hariyana 263F(b).

The object is to curve and evil of political defections motivated by lure of offices for other single constintions which in danger the foundation of our democracy. It is reported in Kilhoto Holohan Versus Zechihu. A.I.R 1993 Supreme Court 412.

J.V.Mavalankar who most distinguishing occupant of that high office says in Parliamentary Democracy, The office of the Speaker is held in very high office and respect. There are many reasons for this some of them are purely historical and some are inherent in the concept of Parliamentary Democracy and the powers and duties of the Speaker once a person is 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 is irrespective of party or persons. Though any one expect that he will do absolute justice in all matter because as a human being he has his drawbacks and short comings. However everybody knows that he will intentionally do not in justice or show partiality. Such a Speaker is only respect by on.

The Speaker /Chairman holds a pivotal position in the scheme of the Parliamentary Democracy and 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 are in it of determinating jurisdiction under the 10th Schedule would be vitiated for violation of a basic feature of democracy in (Kilhoto Holohan versus Zechulu 1992 supplementary 2 S.C.C 651).

Pandit Nehru referring to the office of the Speaker stated, the Speaker represents the house, he represents the dignity of the house, the freedom of the house and because the house represents the nation in the particular way. The Speaker becomes the symbol of the nations, freedom and liberty. Therefore it is right that Speaker should be at an honoured position, free position and should be occupied always by a man of outstanding ability and impartiality. Before coming to the conclusion it is necessary to mention here Para 2(2) of 10th Schedule and elected member of a house who has been elected as such otherwise than as a candidate setup by any political party shall be disqualified for being a

member of the house. If he joins any other political party after such election, the whole matter was seen on the canvas of Para 6(1) of the 10th Schedule which is as follows. Decision on question as to disqualification on ground of defection.

(1) 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 this 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. The entire case is based upon the concept of political party whether 10th Schedule should be applicable in this case or not it is solely dependent upon the provisions of section 29A of R.P. Act 1951 which is mentioned earlier. Keeping in mind all the aspects of the facts of both sides, I am of the opinion that the entire case is based upon the concept of political party registration of political party before the Election Commission of India because Sudesh Kumar Mahto has applied for registration in the year 2002 as in the name of AJSU and after the direction of Election Commission of India he has requested to change the name of AJSU to AJSU Party. From the definition of the political party it appears that Election Commission of India is the competent authority to decide the cases of registration of political parties under 10th Schedule. The role of Speaker is as a tribunal and he should act within the purview of the 10th Schedule only and read with Article 191(2) of the Constitution. In my opinion it is the complete jurisdiction of the Election Commission of India whether to decide it is the case of fraud or mala fide intention or otherwise else. Election Commission has ordered Mr. Sudesh Kumar Mahto to change the name otherwise his registration may be terminated and according to the direction of the Election Commission of India. Mr. Sudesh Kumar Mahto being the President of AJSU has changed the name of AJSU to AJSU Party then I think so there is no anomaly in this case. Regarding the case of split/merger or transformation I am of the opinion that, "There is no matter of split or merger because in this case Election Commission has requested the President of AJSU to change the name only to transform the name and accordingly he has done in the same manner then there is no case of merger, split or anything else. It is only the change of the name which was certified and well accepted by the Election Commission of India. Hence it is evident that the petitioner Mr. Surya Singh Besra as well as the intervener Mr. Bimal Kachap who is the President of the Central Committee of AJSU have relied upon the matter registration of AJSU or AJSU Party before the Election Commission of India. It has no legal significance in view of this tribunal because Speaker's jurisdiction is not beyond the concept of 10th Schedule."

ORDER

Therefore the petition is disposed of as follows:-

- (i) The petition is dismissed.
- (ii) The respondent is not subject to disqualification.
- (iii) The case is closed.
- (iv) Copies of this order be forwarded to the petitioner, intervenor and the respondent at an earliest.

Jharkhand Vidhan Sabha Secretariate
Dated the 13th August, 2009

(Alamgir Alam)
Speaker,
Jharkhand Vidhan Sabha