



JHARKHAND LEGISLATIVE ASSEMBLY

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

JHARKHAND LEGISLATIVE ASSEMBLY SECRETARIAT, RANCHI

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



सत्यमेव जयते

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

Mr. Thomas Soren, M.L.A. Petitioner

Versus

Mr. Thomas Hansda, M.L.A. Respondent

JHARKHAND LEGISLATIVE ASSEMBLY SECRETARIAT, RANCHI

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

झारखण्ड विधान-सभा सचिवालय

अधिसूचना

13 अगस्त, 2009

संख्या-कार्मिक-05/09-2636/वि०स०--एतद् द्वारा सर्वसाधारण की जानकारी के लिए भारतीय संविधान की दसवीं अनुसूची (अनुच्छेद 191(2) के साथ पठित) के तहत श्री यमिस हाँसदा, संवि०स० के विरुद्ध दल परिवर्तन के आधार पर विधान-सभा की सदस्यता से निरहता संबंधी श्री यमिस सारेन, संवि०स० द्वारा चायर 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 किराोर प्रसाद,
प्रभारी सचिव,
झारखण्ड विधान-सभा, राँची ।

Before Hon'ble Speaker, Jharkhand Legislative Assembly, Ranchi

Mr. Thomas Soren, M.L.A. Petitioner

Versus

Mr. Thomas Hansda, M.L.A. Respondant

In the matter of an application filed by Mr. Thomas Soren, M.L.A. on 18th May 2009 against Mr. Thomas Hansda, M.L.A. for disqualification of his membership from Jharkhand Legislative Assembly under Para (2)(1)(a) of the 10th Schedule read with article 191 (2) of the Constitution.

Facts: Main points in the pleading

1. Mr. Thomas Hansda was elected from 01, Rajmahal Assembly Constituency on the ticket of Congress party and being an M.L.A. of Congress party he has contested Lok Sabha election of 2009 on the ticket of Rastriya Janta Dal which falls under the purview of 10th Schedule and hence he has requested to disqualify Mr. Thomas Hansda from the membership of Jharkhand Legislative Assembly.

2. This petition was taken into cognizance by the Speaker and a show cause notice was issued by the Speaker vide letter no. 467, dated 19th May 2009 to Mr. Thomas Hansda to file the reply within 7 days that why not petition be accepted for consideration. A letter was sent to Mr. Manoj Kumar Yadav leader of Congress Legislative Party in Jharkhand Vidhan Sabha by the Speaker vide letter no. 468, dated 19th May 2009 to furnish the opinion regarding this matter so that further action can be taken upon this petition.

3. Again the reminder was given to Mr. Thomas Hansda vide letter no. 739, dated 17th July 2009 and it was requested to file the reply within 7 days, otherwise it may be treated as you don't have to say anything regarding this matter and accordingly one sided action can be taken. Another letter was also sent to the leader of Congress Legislative Party, Mr. Manoj Kumar Yadav, M.L.A. vide letter No. 740, dated 17th July 2009 to furnish the opinion regarding the matter of disqualification of Mr. Thomas Hansda, M.L.A. but till date neither any reply from the respondent Mr. Thomas Hansda nor any opinion from Mr. Manoj Kumar Yadav could be received by this Secretariat.

4. Hence I am compelled to take decision upon the facts and available materials. In my opinion it is similar to the case of Mr. Mahachandra Prasad Singh, M.L.C. of Bihar Legislative Council.

5. It is pertinent to state here some portion of the judgment of the Supreme Court of India which was delivered in 2004 vide Supreme Court cases 747. The main points of the judgement is as follows : the petitioner Mr. Mahachandra Prasad Singh was elected as an MLC from a Constituency in Bihar as a candidate of Indian National Congress subsequently, he contested Lok Sabha election from another Constituency as an independent candidate. Mentioning that information had been received about the said events and referring to Article 191 (2) and Schedule 10, the Secretary, Bihar Legislative Council vide his letter dated 19th May 2004 asked the petitioner to submit his explanation. The petitioner in his reply dated 25th May, 2004 asked for a copy of the said information and requested for 15 days time to submit his reply. Thereafter on 10th June, 2004 another MLC sent a petition to the Chairman,

The petitioner herein had become disqualified for membership of the House. Enclosing the copy of that petition, the Secretary, Bihar Legislative Council again by his letter dated 12th June, 2004 asked the petitioner to submit his explanation to the Chairman within a week. In his reply dated 18th June, 2004 petitioner contended that the petition was not maintainable and was liable to be dismissed under Rules 7(2) of the Bihar Legislative Council Members (disqualification on ground of defection) rule 1994 (for short the rules) for non compliance with Rules 6. He also asked for personal hearing on the said points. He was given opportunity of a personal hearing on 22nd June 2004 and again on 25th June, 2004 but each time he asked for further time to seek legal advice. On 26th June, 2004 the Chairman, Bihar Legislative Council passed an order to the effect that by contesting the Lok Sabha Election as an independent candidate, the petitioner had voluntarily given up his membership of Congress Party and therefore, stood disqualified for being a member of the House in view of paragraph 2(1)(a) of the 10th Schedule read with article 191 (2). The petitioner then filed the present petition under article 32 seeking quashment of that order.

6. In the case of Mr. Mahachandra Prasad Singh the Chairman of the Legislative Council held that the petitioner had been elected to the Legislative Council on the ticket of Indian National Congress but he contested the Parliamentary election as an independent candidate. On these facts a conclusion was drawn that he had given up his membership of Indian National Congress. This being a matter of record, the petitioner could not possibly dispute them and that is why he has admitted these facts in the petition as well. In such a situation, there can be no escape from the conclusion that petitioner had incurred the disqualification under paragraph 2(1)(a) of the Schedule and the decision of the Chairman was perfectly correct.

7. It is pertinent to mention one thing more that in the case of Mr. Mahachandra Prasad Singh Supreme Court held that there is no provision in the 10th Schedule to the effect that until a petition which is signed and verified in the manner led down in CPC for verification of pleading is made to the Chairman or the Speaker of the House, he will not get the jurisdiction to give a decision as whether a member of the House has become subject to disqualification under the Schedule. The purpose of Rule 6 and 7 is only that the necessary facts on the account of which a Member of the House become disqualified for being a member of the House under paragraph 2 may be brought to the notice of the Chairman. There is no lis between the person moving the petition and the member of the House who is alleged to have incurred a disqualification. It is not an adversarial kind of litigation where he may be required to lead evidence even if he withdraws the petition it will make no difference as a duty is cast upon the Chairman or the Speaker to carry out the mandate of the Constitutional provision viz. the 10th Schedule.

8. The object of Rule 6 is that frivolous petition making false allegation may not be filed. In order to cause harassment it is not possible to give strict interpretation to Rules 6 and 7 otherwise the very object of the Constitution 52nd Amendment Act by which the 10th schedule was added would be defeated the validity of the Rules can be sustained only if they are held to be directory in nature as otherwise on strict interpretation they would be rendered ultra vires. The provisions of Rules 6 and 7 are directory in nature and on account of non filing of an affidavit as required by order 6 rule 15 (4) CPC the petition would not be rendered invalid nor would the assumption of jurisdiction by the Chairman on its basis be adversely affected or rendered bad in any manner.

9. In the Mahachandra Prasad Singh Case Supreme Court has held that the Chairman of the Legislative Council has held that the petitioner have been elected to the Legislative Council on the ticket of Indian National Congress but he contested the Parliamentary election as an independent candidate on these facts a conclusion has been drawn that he has given up his membership of Indian National Congress. This being a matter of record, the petitioner could not be possibly dispute them, and that is why he has admitted these facts in the petition as well. In such a situation there can be no escape from the conclusion

that the petitioner has incurred the disqualification under para 2(1)(a) of the Schedule and the decision of the Chairman is perfectly correct.

10. Finally Hon'ble Supreme Court has held in the case of Mahachandra Prasad Singh Vs. Chairman, Bihar Legislative Council that no new point has been urged by Sri Prabha Shankar Mishra, Learned Counsel for the Petitioner Mr. Mahachandra Prasad Singh in the present case it is admitted in para 4 and 6 of the petition that the petitioner had been elected as a member of Legislative Council in the year 1998 as a candidate of Indian National Congress Party and that he filed his nomination papers for contesting the Parliamentary election held in May 2004 as a candidate of Samajwadi Party. This factual position was not disputed by the petitioner in the replies given by him to the Chairman of the House in such circumstances there can not be even the slightest doubt that the petitioner has voluntarily given up his membership of Indian National Congress Party. No exception can therefore be taken to the decision taken by the Chairman of the House that the Petitioner has incurred the disqualification for being a member of the House under paragraph 2(1)(a) of the 10th Schedule and article 191(2) of the Constitution and the seat held by him had fallen vacant. The petition lacks merit and is dismissed with cost.

11. Keeping in mind the above mentioned judgment delivered by the Hon'ble Supreme Court of India, it is very much clear that this case is similar to the case of Mr. Mahachandra Prasad Singh Vs. Chairman, Bihar Legislative Council and the respondent Mr. Thomas Hansda was given ample opportunity to put his side but neither he put his side nor he has requested for extension of time. There is no need for hearing of this case and one sided decision can be delivered.

ORDER

Therefore, the petition is disposed of as follows :

1. The request made by the petitioner in the application is allowable and is allowed with respect to the respondent at this point of time.
2. Under the 10th Schedule of the Constitution of India and the Jharkhand Legislative Assembly Member (disqualification on the ground of defection) Rules, 2006, it is decided that Mr. Thomas Hansda has incurred disqualification for being a member of the Jharkhand Legislative Assembly and has ceased to be the member of Jharkhand Vidhan Sabha with effect from the date of this order.
3. The case is closed.
4. Other necessary steps may be taken in terms of the law and Rules.

Sd/-
(Alamgir Alam)

Speaker

Jharkhand Legislative Assembly

Ranchi

Dated : 13th August, 2009