
(2005) 05 JH CK 0017

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1602 of 2005

Jharkhand Party

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-05-2005

Acts Referred:

Bihar Legislature Member (Disqualification on the Ground of Defection) Rules, 1986 — Rule 6, 7, 7(3)
Constitution (Fifty-Second Amendment) Act, 1985 — Article 122, 122(1), 136, 194, 212
Constitution (Ninety-First Amendment) Act, 2003 — Article 164(1B)
Representation of the People Act, 1951 — Section 2, 29A

Citation : (2005) 2 BLJR 1559 : (2005) 3 JCR 448

Hon'ble Judges : Altamas Kabir, C.J; R.K. Merathia, J

Bench : Division Bench

Advocate : S. B. Gadodia, S.K. Gadodia, Rajeev Agarwal and R.K. Anand, for the Appellant; A.G. for Respondent No. 1, Delip Jerath and S. N. Prasad for Respondent No. 2, R. Krishna and Pinki Anand, Anil Kumar, Nilesh Kumar and Rajesh Ranjan, for the Respondent

Judgement

1. This writ petition was filed before a learned Single Judge by the Jharkhand Party, but was referred to the Division Bench by the learned Single Judge by his order dated 21st April, 2005 having regard to the fact that several important questions of law relating to the interpretation of various constitutional provisions had been raised in the writ petition. The matter was thereafter taken up by the Division Bench and notices were issued to all the respective parties. All the parties were duly represented by their learned counsels and submissions were advanced on all of their behalf.

2. In the writ petition, the writ petitioner has prayed for the following reliefs :

(i) "For issuance of an appropriate writ/order/direction, including a writ of certiorari, to quash the election of Sri Inder Singh Namdhari (Respondent No. 2) as Speaker of the Jharkhand Legislative Assembly, being elected illegally,

malafidely and contrary to Tenth Schedule of the Constitution of India.

(ii) And, in the alternative to prayer (i) above; for issuance of appropriate writ/ order/direction, including writ of mandamus, directing respondent No. 2 to decide the issue of disqualification of respondent No. 4 within a week.

(iii) For issuance of any other writ (s)/ order(s)/direction(s) as Your Lordships may deem fit and proper in the facts and circumstances of the case for doing justice to the petitioner".

3. Appearing on behalf of the writ petitioner, Mr. R.K. Anand, learned senior counsel, urged that the writ petitioner was a registered un-recognized political party and included at serial No. 345 in Table III of the List published by the Election Commission of India. As such political party, the writ petitioner had contested the recent election to the Legislative Assembly in the State of Jharkhand and one of its members, namely, the respondent No. 4, Sri Enos Ekka was elected a member of the Assembly as would be evident from the Certificate issued by the Returning Officer on 27th February, 2005, which has been made annexure 1 to the supplementary affidavit affirmed on 30.3.2005 by Sri N.E. Horo on behalf of the petitioner in his capacity as the President of the petitioner party.

4. According to the petitioner, the Legislative Assembly was convened after an invitation was extended by the Governor of Jharkhand to Sri Arjun Munda, MLA of the Bharatiya Janata Party (BJP) to form the Government of Jharkhand. It is also the case of the writ petitioner that Sri Kariar Munda, MLA of the Bharatiya Janata Party was nominated as Protem Speaker to preside over the House till the election of the Speaker was held and a new Speaker of Jharkhand Assembly was elected.

5. Thereafter, the respondent No. 2, Sri Inder Singh Namdhari was nominated as its candidate for the post of Speaker of the Jharkhand Assembly by the National Democratic Alliance (NDA) and declared elected as such Speaker of the Assembly.

6. Although, initially, the petitioner had prayed for quashing of the election of the respondent No. 2 as the Speaker of the Jharkhand Legislative Assembly, the said relief was ultimately not pressed and the main contention on behalf of the writ petitioner was for a direction and/or a writ in the nature of mandamus upon the respondent No. 2 to decide the question relating to the disqualification of the respondent No. 4 to be a member of the Jharkhand Assembly on account of his actions after being elected to the Assembly as a member of the Jharkhand Party. Mr. Anand contended that the respondent No. 4 has aligned himself with the BJP and the NDA and has been rewarded a ministerial berth in the Government of Arjun Munda. Mr. Anand submitted that his actions were contrary to the directions of his political party. Mr. Anand also submitted that the president of the petitioner (Jharkhand Party) had written to the Governor of the State of Jharkhand indicating that the Member of the Jharkhand party would vote in support of the United Progressive Alliance, hereinafter referred to as the UPA.

According to Mr. Anand, such Jharkhand Party had duly authorized Sri N.E. Horo, to issue such direction in terms of paragraph 2 (1) (b) of the Xth Schedule to the Constitution of India. It was also submitted that by his actions, the respondent No. 4 had made it obvious that he would support the NDA. According to Mr. Anand, by his said conduct and actions, which were contrary to the directions of the political party which he represented, the respondent No. 4 stood disqualified to be a member of the Jharkhand Assembly and the respondent No. 2 was under a legal obligation to declare him to be disqualified.

7. Mr. Anand pointed out that on account of the conduct of the respondent No. 4 which was contrary to the wishes of his party, a complaint dated 9th March 2005, was filed with Sri P. Balmuchu, who had earlier been appointed as Protem Speaker, for disqualifying the respondent No. 4 from being a member of the Jharkhand Assembly. The said Protem Speaker had also issued a show cause notice to the respondent No. 4 requiring him to show cause as to why he should not be disqualified in accordance with the provisions of Xth Schedule to the Constitution of India.

8. It is the further case of the writ petition that the respondent No. 4 did not file any reply to the said show cause notice within the time stipulated in the show cause notice, but because of certain political developments, Sri P. Balmuchu resigned as the Protem Speaker and Sri Karia Munda was nominated as the Protem Speaker in his place. The said Sri Karia Munda without deciding the question of disqualification of the respondent No. 4 allowed the election of the Speaker of the Legislative Assembly to be held despite the fact that the issue of disqualification of the respondent No. 4 had a material and vital bearing on the outcome of the election of the Speaker. According to the writ petitioner, the respondent No. 2 came to be benefited by the acts of omission of Sri Karia Munda, and he failed to discharge his constitutional function in terms of the Xth Schedule of the Constitution of India in not deciding the issue relating to the disqualification of the respondent No. 4 and allowing him to continue not only as a member of the Jharkhand Assembly, but also as a Minister in the Government of Sri Arjun Munda.

9. Mr. Anand submitted that it is on account of the inaction of the respondents No. 2 and 3 that the writ petitioner was compelled to file the instant application for the reliefs as indicated herein above.

10. Referring to the provisions of the Xth Schedule to the Constitution of India, Mr. Anand urged that the conduct of the respondent No. 4 brought him within the ambit of the disqualification clause as contained in paragraph 2(1)(a)(b) of the Xth Schedule to the Constitution. Mr. Anand also submitted that the action of the respondent No. 4 also attracted the provisions of Article 164(1B) of the Constitution which had been introduced by the "Constitution (91st Amendment) Act, 2003 which disqualified him to be appointed as a Minister.

11. Mr. Anand submitted that by not disposing of the complaint made on behalf

of the Jharkhand Party to disqualify the respondent No. 4 from the membership of the Jharkhand Assembly, the respondent No. 2 was subverting the Constitution in order to benefit not only the respondent No. 4, but also the Government in power. It was contended that a constitutional duty had been cast on the Speaker to take a decision with regard to the continuance of the respondent No. 4 as a member of the Jharkhand Assembly on account of the provisions of the Xth Schedule which had been introduced in the Constitution by the 52nd Amendment. Mr. Anand submitted that in such a situation, the intervention of the Court had become necessary, so that the constitutional provisions were not rendered ineffective.

12. In support of his submissions Mr. Anand firstly referred to a well-known decision of the Constitution Bench of the Hon''ble Supreme Court in the case of *Shri Kihota Hollohon Vs. Mr. Zachilhu and others*, , in which the vires of the 52nd Amendment of the Constitution introducing Schedule Xth in the Constitution was under challenge. While dealing with the constitutionality of the Xth Schedule, the Hon''ble Supreme Court also had the occasion to consider the finality clause in sub-paragraph (1) of Paragraph 6 of the Constitution, which says that the decision of the Chairman or, as the case may be, the Speaker of such House shall be final. The Hon''ble Supreme Court also had the occasion to consider the role of the Speaker in the house in the light of the necessity to enact the 52nd Amendment of the Constitution. Mr. Anand pointed out that while considering the effect of paragraph 7 of the Xth Schedule of the Constitution, the majority view was that having regard to the nature of the function that is exercised by the Speaker/Chairman under paragraph 6, the scope of judicial review under Articles 136, 226 and 227 of the Constitution of India in respect of an order passed by the Speaker/Chairman under paragraph 6 would be confined to jurisdictional errors only, such as, the infirmity based on violation of a constitutional mandate, malafides, non compliance with the rules of natural justice and perversity. Mr. Anand was, however, quick to point out that the situation under . contemplation as envisaged in paragraphs 109 and 110 of the judgment was after a decision had been given by the Speaker in terms of paragraph 6 of the Xth Schedule, but that the same was with regard to the High Courts power to issue a writ in the nature of certiorari. As far as the issuance of a writ in the nature of mandamus and/or direction in the nature of mandamus are concerned, Mr. Anand contended that the same had also been dealt with by the Hon''ble Supreme Court and it had been held in no uncertain terms that the Speaker while discharging the functions under the Xth Schedule acts in a quasi judicial capacity and as a Tribunal for all practical purposes and the High Court would, therefore, have ample authority to issue a writ of or in the nature of mandamus or direction to the Speaker in his capacity as such Tribunal for the purposes of deciding the disputed questions relating to disqualification in paragraph 6(1) of the Xth Schedule to the Constitution.

13. Mr. Anand then placed reliance on another decision of the Hon''ble Supreme Court in the case of *Dr. Mahachandra Prasad Singh Vs. Hon. Chairman, Bihar*

Legislative Council and Others, , wherein the reasons for introduction of the Xth Schedule to the Constitution and the provisions of the Xth Schedule thereof has been considered in great detail. Mr. Anand urged that while commenting on the evils of political defection, the Hon"ble Supreme Court also made certain telling remarks regarding the duty cast upon the Chairman or the Speaker to carry out the mandate of the constitutional provisions contained in the Xth Schedule. Mr. Anand submitted that the Speaker of the Assembly was required to act in an impartial manner which cast upon him the duty of deciding the question of disqualification of a Member of the house on the grounds indicated in the Xth Schedule. Mr. Anand submitted that the Speaker could not leave such a question un-deter-mined for an indefinite period of time, as that would have the effect of perpetuating an illegality, which was not desirable.

14. In this connection, Mr. Anand also referred to the decision of the Honble Supreme Court In the case of Mayawati Vs. Markandeya Chand and Others, , in which Srinivasan, J. speaking for himself, observed that it was absolutely necessary for the Speaker to fix a time schedule in the relevant rules for disposal of the proceedings for disqualification of an MLA or M.P. and that all such proceedings should be concluded and order should be passed within a period of three weeks from the date on which the petitions are taken on file.

15. Mr. Anand submitted that in the instant case, since the complaint had been made to the Protem Speaker on behalf of the writ petitioner as far back as on 9th March 2005, it was the bounden duty of the Speaker to dispose of such complaint without any bias within the shortest possible time. Since he had not done so, the High Court was fully competent to issue a direction to him to dispose of such an objection within the specified time.

16. Appearing on behalf of the State of Jharkhand, the learned Advocate General submitted that his role would be to assist the Court in looking into the constitutional and legal questions which have been raised in the writ petition. In that regard, the learned Advocate General firstly submitted that the writ petition was not maintainable, since the Jharkhand Party was not a recognized political party for the purposes of the Xth Schedule to the Constitution. The learned Advocate General contended that the Jharkhand Party was neither a recognized national party, nor a recognized State party, which would confer necessary status on the petitioner party to invoke the provisions of the Xth Schedule. The learned Advocate General pointed out that admittedly, the petitioner party is an unrecognized party, which would not entitle it to invoke the provisions of the Xth Schedule to the Constitution.

17. It was then submitted by the learned Advocate General that under Rule 6 of the Bihar Legislature Member (Disqualification on the ground of Defection) Rules, 1986, all references to the Speaker under paragraph 6 of the Xth Schedule to the Constitution has to be made by way of objections which are required to be signed by the petitioner and verified as per the law laid down in the Code of Civil Procedure, 1908 for verification of the pleadings. Referring to the letter

addressed by Sri N.E. Horo to the Protem Speaker of the Jharkhand Legislature Assembly on 9th March, 2005, the learned Advocate General submitted that since the same was not in conformity with Sub-rule (6) of Rule 7 of the aforesaid Rules, the same could not be taken note of by the Speaker and, in fact, no valid petition could, therefore be said to be pending before the Speaker for disposal. According to the learned Advocate General, there was, therefore, no cause of action for the writ petition, which was liable to be dismissed.

18. Mr. Pinki Anand, who appeared for the respondent No. 4, urged that the petition was incompetent having been filed by Mr. N.E. Horo, who had been removed from the post of the President of the Jharkhand Party and, therefore, had no locus standi to maintain the writ petition on behalf of the Jharkhand Party. Ms. Anand also adopted the submissions of the learned Advocate General regarding the validity of the letter/petition dated 9th March, 2005 addressed by Sri N.E. Horo to the Protem Speaker of the Jharkhand Legislative Assembly. Ms. Anand also contended that the same was invalid as it was not in conformity with the procedure prescribed by Rule 6 of the aforesaid 1986 rules. Ms. Anand contended that the Rules had been framed under the power delegated under paragraph 8 of the Xth Schedule to the Constitution and that the same could not be avoided in order to invoke the provisions of the Schedule. Ms. Anand vehemently urged that the matter relating to the disqualification of a member of a House related to the proceedings in the House and was, therefore, outside the jurisdiction of the Courts of law, including the High Court, in exercise of its powers under Article 226 of the Constitution of India. It was urged that paragraph 6(1) of the Xth Schedule to the Constitution made it quite clear that the decision of the Speaker with regard to the question as to whether a member of a House had become subject to disqualification was final. Furthermore, although the jurisdiction of the Courts had been ousted in paragraph 7 of the Xth Schedule, but having regard to the decision of the Hon'ble Supreme Court in the case of Kihoto Hollohan (supra), the power of judicial review had been recognized after a decision had been rendered by the Speaker under paragraph 6, but only to correct jurisdictional errors, such as, any infirmity based on a violation of the constitutional mandate, malafides, non compliance with the rules of natural justice and perversity. Ms. Anand especially referred to paragraph 110 of the said judgment wherein it was observed that in view of the limited scope of judicial review that is available on the ground of the finality clause in paragraph 6 and also having regard to the constitutional intendment and the status of the repository of the ad-judicatory power, i.e. Speaker/Chairman, judicial review cannot be available at a stage prior to the making of the decision by the Speaker, nor would interference be permissible at an interlocutory stage of the proceedings, except in certain exceptions.

19. Ms. Anand submitted that it was well established that proceedings before the House were matters of privilege, which did not entitle the High Court to interfere under Article 226 of the Constitution. In support of her submission, Ms. Anand firstly referred to a decision of the Hon'ble Supreme Court in case of M.S.M.

Sharma Vs. Sri Krishna Sinha and Others, and another decision of the Supreme Court between the same parties, reported in Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and Others, . Ms. Anand contended that it had been duly recognized that the validity of the proceedings inside the Legislature cannot be called in question on the allegation that the procedure laid down by law had not been strictly followed. Interpreting the provisions of Articles 212 and 194 of the Constitution, the Hon"ble Supreme Court held further that no Court can go into those questions which are within the special jurisdiction of the Legislature itself which has power to conduct its own business.

20. Ms. Anand then contended that the notice which had been issued to respondent No. 4 by Sri Balmuchu in his capacity as the Protem Speaker was bad in law, being contrary to the provisions of Rule 7(3)(b) of the aforesaid 1986 Rules which provides for a minimum period of seven days to show cause, with provision for extension, if so required. It was submitted that in the instant case, while the show cause had been issued on 10th March, 2005, the respondent No. 4 was directed to submit his reply within 4.00 p.m. on the same day. Ms. Anand submitted that for whatever reason such a notice to show cause was not contemplated under the Rules and was not, therefore valid in law. Ms. Anand then contended that since the respondent No. 4 had taken oath before the Protem Speaker only in the afternoon of 10th March, 2005, he could not have been disqualified under either of the provisions of paragraph 2 of the Xth Schedule since the respondent No. 4 neither had any occasion to vote or abstain from voting in the House, contrary to any direction given by the political party, nor had he voluntarily given up his membership of such political party.

21. Ms. Anand contended that since it had been stated on behalf of the Speaker that the matter was under consideration, no further cognizance was required to be taken of the writ petition which was liable to be dismissed.

22. Ms. Anand also urged that although, in the case of Kihoto Hollohan (supra), the Supreme Court had held that the High Court would be entitled to judicially review an order passed by the Speaker under paragraph 6, such a stage had not yet arrived and the entire matter was premature.

23. Mr. Delip Jerath, appearing for the Speaker, contended that it was not for the High Court to issue any direction to the Speaker who was a constitutional authority and having regard to the provisions of Articles 194 and 212 of the Constitution, the proceedings in the Legislature of the State were immune from inquiry by Courts, including the High Court. Mr. Jerath, however, informed that the complaint made on behalf of the Jharkhand Party regarding the disqualification of the respondent No. 4 was under active consideration of the respondent No. 2, but that no specific time schedule could be fixed for disposing of the matter.

24. Replying to the contentions made on behalf of the respondents, Mr. R.K. Anand submitted that the objection taken to the effect that the Jharkhand Party

was not a recognized State party was of no consequence on account of the fact that in the Xth Schedule to the Constitution, reference has been made only to political parties defined in Section 2(f) of the Representation of the People Act, 1951, to mean an association or body of individual citizens of India registered with the Election Commission as a political party u/s 29-A, which also deals with political parties and not only political parties which are registered as National parties and or State parties by the Election Commission of India.

25. Regarding the power of the High Court to issue either a writ in the nature of mandamus or direction to the Speaker of the Jharkhand Legislative Assembly, Mr. Anand firstly referred to the decision of the Hon''ble Supreme Court in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , in which it was, inter alia held that under Article 226 of the Constitution, writ could be issued to any person or authority discharging functions of a public nature or performing a public duty. Mr. Anand submitted that it could not be denied that the Speaker was discharging a public duty and that since the office of the Speaker has been held to be a Tribunal by the Hon''ble Supreme Court in the case of *Kihoto Hollohan*, an appropriate writ of mandamus could be issued to the Speaker. Mr. Anand submitted that the said position had once again been reiterated by the Hon''ble Supreme Court in the case of *M/s. Zee Telefilms Ltd. and Anr. v. Union of India and Ors.*, reported in 2005 (1) Scale 666, wherein it was observed that under the Indian jurisprudence, there is always a just remedy for violation of a right of a citizen and though remedy under Article 32 of the Constitution is not available, an aggrieved party can always seek remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32. On the basis of such submission, Mr. Anand submitted that the High Court had ample power, even at the interlocutory stage, to issue necessary directions and/or a writ to the Speaker of the Legislative Assembly, since the constitutional provisions could not be left pending indefinitely.

26. Although, lengthy submissions have been made on behalf of the respective parties, the scope of the writ petition, in our view, is confined to the question as to whether any material was before the Speaker which could prompt him to take appropriate action under the Schedule X of the Constitution and whether the High Court has any power to issue any direction and/or mandamus to the Speaker in the event he remains inactive despite such materials being available to him.

27. The object of introduction of the Xth Schedule in the Constitution by the 52nd Amendment has been dealt with in detail in the case of *Dr. Mahachandra Prasad Singh (supra)* relied on by Mr. R.K. Anand. The statement of object and reasons appended to the Bill which finally was enacted into the Constitution (52nd Amendment) 1985 indicated that the evil of political defection had been a matter of National concern. If it was not combated, it was likely to undermine the very foundation of our democracy and the privileges, which sustain it. It was also

indicated that the Anti-defection Bill introduced in the Parliament was meant for outlawing defection.

28. While dealing with the provisions of the Xth Schedule, the Honble Supreme Court also had the occasion to deal with the Rules framed by the Chairman of the House in the said case under paragraph 8 of the Xth Schedule and it was observed as follows :

"16. Sub-rule (1) of Rule 6 says that no reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member made in accordance with the provisions of the said rule and Sub-rule (6) of the same rule provides that every petition shall be signed by the petitioner and verified in the manner laid down in the CPC for the verification of pleadings. The heading of Rule 7 is "procedure". Sub-rule (1) of this rule says that on receipt of petition under Rule 6, the Chairman shall consider whether the petition complies with the requirement of the said rule and Sub-rule (2) says that if the petition does not comply with the requirement of Rule 6, the Chairman shall dismiss the petition. These Rules have been framed by the Chairman in exercise of power conferred by paragraph 8 of the Tenth Schedule. The purpose and object of the Rules is to facilitate the job of the Chairman in discharging his duties and responsibilities conferred upon him by paragraph 6, namely for resolving any dispute as to whether a member of the House has become subject to disqualification under the Tenth Schedule. The rules being in the domain of procedure, are intended to facilitate the holding of inquiry and not to frustrate or obstruct the same by introduction of innumerable technicalities. Being sub: ordinate legislation, the Rules cannot make any provision which may have the effect of curtailing the content and scope of the substantive provision, namely, the Tenth Schedule. There is no provision in the Tenth Schedule to the effect that until a petition which is signed and verified in the manner laid down in CPC for verification of pleadings is made to the Chairman or the Speaker of the House. He will not get the jurisdiction to give a decision as to whether a member of the House has become subject to disqualification under the Schedule. Paragraph 6 of the Schedule does not contemplate moving of a formal petition by any person for assumption of jurisdiction by the Chairman or the Speaker of the House. The purpose of Rules 6 and 7 is only this much that the necessary facts on account of which a member of the House becomes 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 Tenth Schedule. The object of Rule 6 which requires that every petition shall be signed by the petitioner and verified in the manner laid down in CPC for the verification of pleadings, is that frivolous petitions making false allegations 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 (Fifty second Amendment) Act by which the Tenth Schedule was added would be defeated. A defaulting legislator, who has otherwise incurred the disqualification under Paragraph 2, would be able to get away by taking the advantage of even a slight or insignificant error in the petition and thereby asking the Chairman to dismiss the petition under Sub-rule (2) of Rule 7. 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."

29. The above observations of the Hon"ble Supreme Court would indicate that even if no petition was before the Hon"ble Speaker, a duty has still been cast upon him to carry out the mandate of the Xth Schedule if he has sufficient materials before him to satisfy himself, *prima facie*, that grounds existed for taking action. As has also been observed, the Rules being in the domain of procedure are intended to facilitate holding of an enquiry and not to frustrate or obstruct the same by introduction of innumerable technicalities. There can be no controversy that information was given to the Speaker about certain irregularities with regard to the activities of the respondent No. 4 after his election as a member of the Jharkhand Party. It is also undisputed that no decision has yet been taken in the matter. As we have repeatedly pointed out to the learned counsels appearing for the respondents, while we do not intend to interfere with the functioning of the Speaker, we cannot also remain silent spectators if the provisions of the Constitution are allowed to be subverted for whatever reason. As has been repeatedly indicated in the decision in the case of Kihoto Hollohan, the fiction in paragraph 6(2) of the Xth Schedule places it in the first clause of Article 122 or 212, as the case may be. The words "proceedings in parliament" or "proceedings in Legislature of State" in paragraph 6(2) have their corresponding expression in Articles 122(1) and 212(1) respectively which attracts an immunity from mere irregularity of procedure. As has been mentioned extensively in the said judgment, in a parliamentary democracy, the office of the Speaker is held in very high esteem and respect. Once a person is elected Speaker, he is expected to be above all parties, above politics. In other words, he belongs to all parties or belongs to none. He holds the scale of justice evenly irrespective of a party or person though no one expects that he will do absolute justice in all matters, because as a human being, he has human drawbacks and shortcomings.

30. There is no doubt in our minds that the Speaker of the House represents the House itself. But we are unable to agree with Ms. Pinky Anand that the proceedings before him relating to the disqualification of a member of the House involves a "privilege of the House itself. In fact, the Hon"ble Supreme Court, while considering the said question, observed in the Kihoto Hollohan case that proceedings of disqualification are, in fact, not before the House, but only before the Speaker as a specially designated authority. The decision in paragraph 6(1) is not the decision of the House nor is it subject to controversy by the House. The

decision operates independently of the House.

31. Having regard to the above and having regard to the high esteem in which the office of the Speaker is held, without going into the question as to whether the High Court is competent to issue a writ of mandamus and/or direction under article 226 of the Constitution of India, we would earnestly request the Speaker of the Jharkhand Legislative Assembly to discharge and perform the onerous duty cast upon him under the Xth Schedule with utmost expedition so as to uphold the high tradition of his office and to dispel all manner of doubt regarding any favour shown to the respondent No. 4 in allowing him to continue not only as a member of the House, but as a Minister of the present Government by postponing a decision on the petition filed before the Protem Speaker on behalf of the Jharkhand Party regarding the right of the respondent No. 4 to continue as such member of the House or remaining a Minister in violation of the provisions of Article 164(1-B) of the Constitution.

32. The writ petition stands disposed of with the aforesaid observations and/or exhortations to the Speaker. There will be no order as to costs.