

Dated : August 28, 2008

To
The Hon'ble Speaker,
Jharkhand,
Ranchi.

Ref. : Disqualification petition against Shri Kamlesh Singh,
MLA from Hussainabad Assembly Constituency

Sir,

A petition for disqualification had been filed against Shri Kamlesh Kumar Singh, MLA from Hussainabad Constituency who was elected for Jharkhand Vidhan Sabha on the ticket of Nationalist Congress Party, on the ground that he is not entitled to continue as Member of Legislative Assembly under Xth Schedule of the Constitution of India. Firstly, he willfully and deliberately disobeyed the direction and whip of the Nationalist Congress Party to support Shri Shibu Soren Ministry on the Vote of confidence motion. Shri Kamlesh Kumar Singh, hence became disqualified under Xth Schedule of the Constitution of India. A complaint was made before the Hon'ble Speaker and was heard at length lastly on 12.9.2006. Thereafter the matter has remained pending before the Hon'ble Speaker. A copy of the complaint is annexed as ANNEXURE-I.

You are aware that a Motion of No Confidence was moved by the applicant and others on 7.3.2008 against the Speaker. In the No Confidence Motion one of the allegations against the Speaker was that the petitions under Xth Schedule of the Constitution of India were not disposed of by the Hon'ble Speaker. Copy of Motion of No Confidence is annexed as ANNEXURE-II.

The response of the Hon'ble Speaker on the No Confidence Motion against him was as follows :

“संकल्प की कंडिका-3 में संविधान की अनुसूची-10 के तहत दायर विवादों का निपटारा नहीं करने का उल्लेख है।

इस संबंध में उल्लेख करना है कि संविधान की अनुसूची-10 के तहत दायर वादों का निपटारा करने के लिए अध्यक्ष को न्यायालय की तहत कार्य करने का अधिकार एवं कर्तव्य प्राप्त है। किसी भी न्यायालय को दायर वादों का शीघ्र निपटारा के लिए बदाव नहीं दिया जा सकता है। न्यायालय सभी साक्ष्यों एवं गवाहों के समीक्षोपरांत ही न्याय निर्णय देता है, जिसमें समय का लगना स्वाभावित है। लंबित याचिकाओं के संबंध में जानकारी प्राप्त करना न्यायालय की आवमाना एवं न्याय को प्रभावित करना है।”

Copy of the response of the Hon'ble Speaker is annexed as ANNEXURE-III.

Hon'ble Speaker heard & rejected the No Confidence Motions against himself, which is totally illegal, malafide and contrary to all established principles of law. Such unreasonable and illegal action of the office of the Hon'ble Speaker in acting as Judge in his own case is totally violative of principles of natural justice and all established Parliamentary procedures.

The applicant again addressed the office of the Hon'ble Speaker by letter dated 26.3.2008 reiterating the constitutional obligation of the office of the Hon'ble Speaker and to expeditiously and fairly dispose any complaint pending in respect of disqualification motion under Xth Schedule of the Constitution. Copy of the letter dated 26.3.2008 is annexed as ANNEXURE-IV. The judgement of the Ranchi High Court in W.P. (C) No. 1602/2005 of the Hon'ble Division Bench was

also relied up to the effect "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 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(1B) of the Constitution".

Several similar disqualification petitions are pending before yourself, some for about 2 years and some for over one year. The Xth Schedule of the Constitution providing for disqualification on the ground of defection was specifically added with the intention of ensuring the purity of the democratic structure and to ensure that elected people cannot switch over/defy party whip with the intention of self promotion and make a mockery of democracy and the Constitution. Purity of administration is part of the basic structure of the Constitution and must be upheld at all cost. Disqualified members cannot be permitted to exercise any right of voting on the floor of the House or decide the fate of the people of State. They are not allowed to participate in any proceedings of the House including

Vote of Confidence/Vote of no confidence. Such people do not have any right to represent any Constituency in such proceeding. The Hon'ble Speaker cannot and should not take any cognizance of such erring members. It is the Constitutional Scheme that the Speaker should take immediate action by way of suspension, disqualification, contempt or otherwise and to restrain such members from participating in any proceedings on the Floor of the House.

The office of the Hon'ble Speaker has heard the entire petition and all the records and proceedings are available before the Hon'ble Speaker and principles of natural justice have been met after having given full hearing to all interested parties. The record speaks for itself. No final judgment has been delivered by the office of the Hon'ble Speaker though it is ex-facie clear that the erring members are disqualified at the very threshold under Xth Schedule of the Constitution of India.

Your office is called upon to immediately disqualify the erring members. Pending final orders, immediate orders may be passed to restrain erring members from participating in the proceedings of the House with immediate effect. This action of the Hon'ble Speaker would be in consonance with the Scheme of the Constitution.

Yours sincerely,

Annexures : as mentioned above

(Saryu Roy)
MLA
Jamshedpur (West)
Jharkhand

Dated : August 28, 2008

The Hon'ble Speaker,
Jharkhand,
Ranchi.

Ref. : Disqualification petition against Shri Enos Ekka, MLA
from Kolebira Assembly Constituency

Sir,

A petition for disqualification had been filed against Shri Enos Ekka, MLA from Kolebira Constituency who was elected for Jharkhand Vidhan Sabha on the ticket of Jharkhand Party, on the ground that he is not entitled to continue as Member of Legislative Assembly under Xth Schedule of the Constitution of India. Firstly, he willfully and deliberately disobeyed the directions and whip of the Jharkhand Party to support Shri Shibu Soren Ministry in the Vote of confidence motion. Shri Enos Ekka, hence became disqualified under Xth Schedule of the Constitution of India. A complaint was made by the applicant before the Hon'ble Speaker and was heard at length on 11.9.2006 and lastly on 12.9.2006. Thereafter the matter has remained pending before the Hon'ble Speaker. A copy of the complaint is annexed as ANNEXURE-I.

Earlier on March 9, 2005 one complaint was made by Mr. N.E. Horo, President, Jharkhand Party before the Protam Speaker for Mr. Enos Ekka's disqualification on the ground of defiance of Jharkhand Party's whip to vote for the then Shri Shibu Soren Govt. That petition too was finally heard by the Hon'ble Speaker on 11.9.2006 and 12.9.2006 but decision remained pending and is still pending.

It would be relevant to quote in this regard the judgement of the Ranchi High Court in W.P. (C) No. 1602/2005 of the Hon'ble Division Bench as below-

"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 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 9.3.2005 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(1B) of the Constitution".

Several similar disqualification petitions are pending before yourself, some for about 2 years and some for more than one year. The Xth Schedule of the Constitution providing for disqualification on the ground of defection was specifically added with the intention of ensuring the purity of the democratic structure and to ensure that elected people cannot switch over/defy party whip with the intention of self promotion and make a mockery of democracy and the Constitution. Purity of administration is part of the basic structure of the Constitution and must be upheld at all cost. Disqualified members cannot be permitted to exercise any right of voting on the floor of the

House or decide the fate of the people of State. They are not allowed to participate in any proceedings of the House including Vote of Confidence/Vote of no confidence. Such people do not have any right to represent any Constituency in such proceeding. The Hon'ble Speaker cannot and should not take any cognizance of such erring members. It is the Constitutional Scheme that the Speaker should take immediate action by way of suspension, disqualification, contempt or otherwise and to restrain such members from participating in any proceedings on the Floor of the House.

The office of the Hon'ble Speaker has heard the entire petition and all the records and proceedings are available before the Hon'ble Speaker and principles of natural justice have been met after having given full hearing to all interested parties. The record speaks for itself. No final judgment has been delivered by the office of the Hon'ble Speaker though it is ex-facie clear that the erring members are disqualified at the very threshold under Xth Schedule of the Constitution of India.

Your office is called upon to immediately disqualify the erring members. Pending final orders, immediate orders may be passed to restrain erring members from participating in the proceedings of the House with immediate effect. This action of the Hon'ble Speaker would be in consonance with the Scheme of the Constitution.

Yours sincerely,

(Samir Oraon)
MLA, Sisai
Jharkhand

Dated : August 28, 2008

To
The Hon'ble Speaker,
Jharkhand,
Ranchi.

Ref. : Disqualification petition against Shri Stephen Marandi,
MLA from Dumka Assembly Constituency.

Sir,

A petition for disqualification had been filed against Shri Stephen Marandi, Independent MLA from Dumka Constituency on the ground that he won election as an Independent Candidate but later joined Jharkhand Vikas Morcha which is a registered political party registered with the Election Commission of India within meaning of Election Symbol (Reservation and allotment) order, 1968. On this ground he is not entitled to continue as Member of Legislative Assembly under Xth Schedule of the Constitution of India. A complaint was made before the Hon'ble Speaker and was heard at length lastly on 12.9.2006. Thereafter the matter has remained pending before the Hon'ble Speaker.

I am quoting here relevant portion of the judgement of the Ranchi High Court in W.P. (C) No. 1602/2005 of the Hon'ble Division Bench in this regard which is as below -

"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 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(1B) of the Constitution".

Several similar disqualification petitions are pending before yourself, some for about 2 years and some for over on year. The Xth Schedule of the Constitution providing for disqualification on the ground of defection was specifically added with the intention of ensuring the purity of the democratic structure and to ensure that elected people cannot switch over/defy party whip with the intention of self promotion and make a mockery of democracy and the Constitution. Purity of administration is part of the basic structure of the Constitution and must be upheld at all cost. Disqualified members cannot be permitted to exercise any right of voting on the floor of the House or decide the fate of the people of State. They are not allowed to participate in any proceedings of the House including Vote of Confidence/Vote of no confidence. Such people do not have any right to represent any Constituency in such proceeding. The Hon'ble Speaker cannot and should not take any cognizance of such erring members. It is the Constitutional Scheme that the Speaker should take immediate action by way of suspension, disqualification, contempt or otherwise and to restrain such

members from participating in any proceedings on the Floor of the House.

The office of the Hon'ble Speaker has heard the entire petition and all the records and proceedings are available before the Hon'ble Speaker and principles of natural justice have been met after having given full hearing to all interested parties. The record speaks for itself. No final judgment has been delivered by the office of the Hon'ble Speaker though it is ex-facie clear that the erring members are disqualified at the very threshold under Xth Schedule of the Constitution of India.

Your office is called upon to immediately disqualify the erring members. Pending final orders, immediate orders may be passed to restrain erring members from participating in the proceedings of the House with immediate effect. This action of the Hon'ble Speaker would be in consonance with the Scheme of the Constitution.

Yours sincerely,

(Chandresh Oraon)
MLA, Bisunpur
Jharkhand