

ITEM NO.49

COURT NO.4

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No.11567/2016

(Arising out of impugned final judgment and order dated 21/04/2016 in WP No. 795/2016 passed by the High Court of Uttarakhand at Nainital)

UNION OF INDIA

Petitioner(s)

VERSUS

SH. HARISH CHANDRA SINGH RAWAT AND ANR.

Respondent(s)

(With appln. (s) for exemption from filing O.T. and permission to file additional documents and permission to file lengthy list of dates and permission to raise additional question of law/ground in support of the SLP with affidavit and interim relief and office report)

WITH S.L.P.(C)...CC 7915/2016

(With appln.(s) for exemption from filing c/copy as well as plain copy of the impugned order and appln.(s) for permission to file SLP without c/copy as well as plain copy of impugned order and appln.(s) for permission to file SLP and interim relief and office report)

S.L.P.(C)...CC 7916/2016

(With appln.(s) for exemption from filing c/copy as well as plain copy of the impugned order and appln.(s) for permission to file SLP without c/copy as well as plain copy of impugned order and appln.(s) for permission to file SLP and interim relief and office report)

Date: 06/05/2016 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

For Petitioner(s) Mr. Mukul Rohatgi, A.G.
Mr. Tushar Mehta, ASG
Mr. Maninder Singh, ASG
Col. R. Balasubramanian, Adv.
Mr. Nalin Kohli, Adv.
Ms. Ranjeeta Rohatgi, Adv.

Ms. Diksha Rai, Adv.
Mr. Rajat Nair, Adv.
Ms. Devanshi Singh, Adv.
Mr. Prabhas Bajaj, Adv.
Ms. Misha Rohatgi, Adv.
Mr. Manan Popli, Adv.
Mr. Akshay Amritanshu, Adv.
Mrs. Anil Katiyar, AOR
Mr. Sameer Rohatgi, Adv.
Mr. Samit Khosla, Adv.
Mr. M. Thangathnai, Adv.

SLP CC 7915/16

Mr. C.A. Sundaram, Sr. Adv.
Mr. Mahesh Agarwal, Adv.
Mr. E. C. Agrawala, AOR

SLP CC 7916/16

Mr. Ashok K. Mahajan, AOR

For Respondent(s)

Dr. Abhishek Manu Singhvi, Sr. Adv.
Ms. Padmalakshmi Iyengar, Adv.
Mr. Amit Bhandari, Adv.
Mr. K.C. Kaushik, Adv.
Mr. Amit Bhandari, Adv.
Mr. Rahul Kaushik, AOR
Ms. Satya Priya Satyam, adv.
Mr. Nizam Pasha, Adv.
Ms. Anjana Singh, Adv.
Ms. Bhuvneshwari Pathak, Adv.
Mr. Ravindra Singh Bist, Adv.
Mr. Rajesh Inamdar, Adv.

Dr. Kapil Sibbal, Sr. Adv.
Mr. Nizam Pasha, Adv.
Mr. Javed-Ur Rahman, Adv.

SLP CC 7916/16

Dr. Rajeev Dhawan, Sr. Adv.
Mr. K.C. Kaushik, Adv.
Mr. Ravindra Bisht, Adv.
Mr. Ayush Negi, Adv.
Mr. Rahul Kaushik, AOR

Mr. Maninder Singh, Sr. Adv.
Mr. Nalin Kohli, Adv.
Mr. Prabhas Bajaj, Adv.
Mr. Gaurav Sharma, AOR

SLP CC 7915/16

Mr. Rahul Kaushik, AOR

UPON hearing the counsel the Court made the following
O R D E R

S.L.P.(C) No.11567 of 2016

The present special leave petition is directed against the judgment and order dated 21st April, 2016, passed by the Division Bench of the High Court of Uttarakhand at Nainital in Writ Petition (M/S) No.795 of 2016, whereby the Division Bench has quashed the order of Proclamation dated 27th March, 2016, issued by the President of India under Article 356 of the Constitution of India. We need not advert to any of the facts that has been adumbrated in the said judgment, for the nature of the order we are passing today. That is for another day.

When the special leave petition was taken up on 22nd April, 2016, the Court issued notice and passed the following order:-

"Issue notice.

As Dr. Abhishek Manu Singhvi, learned senior counsel along with Mr. Amit Bhandari, learned counsel has entered appearance on behalf of the respondent No.1, no further notice need be issued. As far as the respondent No.2 is concerned, let service be effected through Dasti.

Let the matter be listed on 27th April, 2016.

The High Court is requested to provide the judgment dated 21st April, 2016, passed in Writ Petition (M/S) No.795 of 2016, to the parties by 26th April, 2016. The judgment shall be filed before this Court on that day.

Having heard Mr. Mukul Rohatgi, learned Attorney General for the Union of India, Mr. Harish N. Salve, learned senior counsel for the Union of India in connected special leave petitions, Dr. Abhishek Manu Singhvi, learned

senior counsel for the respondent No.1 and Mr. Kapil Sibal, learned senior counsel for the Speaker of the Legislative Assembly, Uttarakhand, it is directed that the judgment of the High Court shall remain in abeyance till 27th April, 2016. That apart, as undertaken by Mr. Mukul Rohatgi, learned Attorney General, the Union of India shall not revoke the Presidential Proclamation till the next date of hearing."

Be it stated, after the said order was passed the judgment passed by the High Court was brought on record and the petitioner had sought time to amend the special leave petition to incorporate the grounds assailing the defensibility of the same and the same was permitted. The matter was adjourned thereafter and when it was listed on 4th May, 2016, regard being had to the oral suggestion given on the prior date, Mr. Mukul Rohatgi, learned Attorney General, submitted that the Union of India was seriously considering the suggestion given by this Court to have a floor test of the Assembly to put an end to the controversy that has emerged in this case. Dr. Abhishek Manu Singhvi, Mr. Kapil Sibal and Dr. Rajeev Dhawan, learned senior counsel appearing for the respondent No.1 submitted that they had no objection. The matter was accordingly adjourned and the interim order was allowed to remain in force.

Today, Mr. Mukul Rohatgi, learned Attorney General for Union of India, has submitted that the petitioners have no objection to have a floor test of the Assembly. Learned counsel appearing for both the sides have debated over the suggestions that have been given by the Court, as well as by each other, sometimes with appreciable amity and sometimes with some cavil, but, eventually, there has been an agreement.

Be it noted, the learned counsel appearing for the respondent No.1, very fairly stated, which was conceded to by

Mr. Rohatgi, learned Attorney General for the Union of India, that they have no objection and we state it with uninhibited appreciation at our command that the floor test should be conducted under the supervision of this Court. The agreed position which has emerged after quite a long debate, is recorded below:-

(1) A Special Session of Uttarakhand Legislative Assembly be summoned/convened on 10th May, 2016, commencing 11.00 a.m.

(2) The only agenda in the Assembly would be the Vote of Confidence sought by the respondent No.1, namely, Shri Harish Singh Rawat.

(3) Apart from the said agenda, nothing else shall be discussed in the Assembly.

(4) The proceedings in the Assembly are expected to be absolutely peaceful and without any disturbance. This Court expects that all the Members and all concerned with the affairs of the Assembly shall abide by the same in letter and spirit.

(5) The Chief Secretary and the Director General of Police, State of Uttarakhand, shall see that all the qualified Members of the Legislative Assembly, freely, safely and securely attend the Assembly and no interference or hindrance is caused by anyone therein.

(6) Mr. Maninder Singh, learned senior counsel, being assisted by Mr. Gaurav Sharma, learned counsel appearing for the State of Uttarakhand, shall convey it to the Chief Secretary and the Director General of the Police of the State of Uttarakhand so that the order is

carried out as directed herein-above, because it is the duty of the State and its high officials to take care to do so.

(7) The Assembly Session shall commence at 11.00 a.m. for the singular agenda, that is, the floor test of the Assembly and shall be over by 1.00 p.m.

(8) On the Confidence Motion having been put, a division of the House shall take place and the Members who are inclined to vote in favour of the Motion, shall sit on the one wing/side and the others who are against the Motion, shall sit on the other wing/side.

(9) The Principal Secretary, Legislative Assembly of the State of Uttarakhand, shall see to it that the voting is appositely done and recorded.

(10) The Members voting in favour of the Motion shall singularly vote by raising their hands one by one and that will be counted by the Principal Secretary, Legislative Assembly. Similar procedure shall be adopted while the Members voting against the Motion.

(11) The entire proceedings shall be video-graphed and the video recording shall be placed before this Court so that it can be perused by this Court, if required.

(12) The result of the voting shall be placed before this Court at 10.30 a.m. on 11th May, 2016, in a sealed cover.

Having stated about the mode of voting, computation, the person in-charge and also the control to be made outside

the House, the smooth functioning and entry of the Members, we are obliged to record the submission of Mr. C.A. Sundaram, learned senior counsel, which has been done with immense vehemence. His submission is that the disqualified Members should be allowed to vote, though their votes may not be counted as long as the disqualification remains. This Court cannot direct them to participate in the Assembly. We say no more on this score. However, our observation in *praesenti* will not cause any kind of prejudice to the merits of the case of disqualified Members of Legislative Assembly, which is *sub-judice* before the High Court.

As the parties have conceded for the floor test and we have recorded the method, to give effect to the same, there has to be a variation of the order passed by us on the earlier occasion and, accordingly, we direct that Presidential Proclamation shall remain in abeyance from 10.30 a.m. to 1.00 p.m. on 10th May, 2016, and during that period the Governor shall remain in-charge of the State. Needless to say, after 1.00 p.m. the judgment of the High Court shall remain in abeyance and our order passed on 22nd April, 2016, shall revive.

Let the matter be listed on 11th May, 2016.

The Principal Secretary, Legislative Assembly of the State of Uttarakhand, shall come on that day with the documents in the sealed cover and the video recording of the proceedings.

The Registrar (Judicial) is directed to communicate this order to the Chief Secretary of the State of Uttarakhand. A copy of the order be also handed over to Mr. Maninder Singh, learned senior counsel appearing for the State of Uttarakhand, to do the needful in the matter.

S.L.P.(C)....CC 7915/2016 & S.L.P.(C)....CC 7916/2016

Let these matters be listed on 11th May, 2016.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master