

ITEM NO.803

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(s). 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 interim relief and office report)

WITH

S.L.P.(C)...CC No. 7915/2016

(With (With (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 No. 7916/2016

(With (With (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 : 09/05/2016 This petition was 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, AG
Mr. Harish Salve, Sr. Adv.
Mr. Maninder singh, ASG
Mr. Tushar Mehta, ASG
Mr. R. Balasubramanian, Adv.
Ms. Diksha Rai, Adv.
Mr. Rajat Nain, Adv.
Ms. Devanshi Singh, Adv.
Ms. Nisha Rohatgi, Adv.
Mr. Prabhas Bajaj, Adv.
Mr. Akshay Amritanshu, Adv.
Mr. M. Popli, Adv.
Mrs. Anil Katiyar, Adv.

Mr. E. C. Agrawala, Adv.

Mr. Ashok K. Mahajan, Adv.

For Respondent(s) Dr. A.M. singhvi, Sr. Adv.
Mr. Kapil Sibal, Sr. Adv.
Dr. Rajeev Dhawan, Sr. Adv.
Mr. Mukesh Giri, Adv.
Mr. Rahul Kaushik, Adv.

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

On being mentioned, the matter is taken on Board.

On 06.05.2016, this Court, after taking note of the order passed on 22.04.2016, had passed an order to which both the parties had agreed. It was also conceded that the floor test should be conducted under the supervision of this Court. Ordinarily, there should not have been any difficulty or occasion to mention. However, submits Mr. Rohtagi, learned Attorney General for India, that in paragraph 9 and 10 of the order, this Court had stated about the role of the Principal Secretary, Legislative Assembly of the State of Uttarakhand. To have a complete picture, we think it appropriate to reproduce paragraphs 9 and 10 of the previous order. They read as follows :

"(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."

It is urged by Mr. Rohtagi that a communication was sent to the principal Secretary, Legislative Assembly of the State of Uttarakhand and a reply has been received from the Principal

Secretary, Legislative and Parliamentary Affairs, State of Uttarakhand on 07.05.2016 indicating, *inter alia*, that there is no post of Principal Secretary, Legislative Assembly of the State of Uttarakhand but there is a post which is called Secretary, Legislative Assembly and there is another post called the Principal Secretary, Legislative and Parliamentary Affairs, State of Uttarakhand. Learned Attorney General would submit that this Court desired to have a neutral personality to remain present at the time of voting and an impression was given that the Principal Secretary, Legislative Assembly of the State of Uttarakhand, is from the cadre of Higher Judicial Service of the State and, therefore, a necessity has arisen for modification of the order.

Mr. Harish Salve, learned senior counsel, supporting the argument of Mr. Rohtagi, would contend that in a situation like this, there has to be an arrangement by this Court so that voting takes place in the manner the Court has intended. He has pointed out certain aspects of the order to highlight that when situations like this emerge, different steps have been taken by this Court and this is one of such instance.

Dr. A.M. Singhvi, Mr. Kapil Sibbal and Dr. Rajeev Dhawan, learned senior counsel appearing for the 1st respondent, have seriously opposed the prayer on the ground that there cannot be an outsider, namely, the Principal Secretary, Legislative and Parliamentary Affairs, State of Uttarakhand, inside the House. Emphasising his plea on the Rules made to guide the functioning of the House, it is urged that the Secretary, Legislative Assembly is appointed by the Speaker who has been authorised under the Uttarakhand Vidhan Sabha Secretariat Service (Recruitment and Conditions of Service) Rules, 2011 which have been framed under Clause (3) of Article 187 of the Constitution of India. Learned senior counsel appearing for the 1st respondent would contend that the persons who are outsiders will not be apt and it should be done by the Secretary, Legislative Assembly, who has a right to enter inside the House. It is also canvassed that the petitioners should

not have any apprehension as the Court has directed the manner in which the voting shall take place, and also for video recording.

First of all, it is obligatory on our part to recapitulate what transpired in Court on 6.5.2016. We think it necessary to do so. In course of hearing on that day, it was debated upon with regard to the status of the Principal Secretary of the Legislative Assembly and we were apprised that he is a member of the Higher Judicial Services of the State of Uttarakhand. Today, it has been told to us that he is not so. The present situation, if we allow ourselves to say so, is a piquant one. The Court ordinarily would not have directed for having a Session and direct the respondent no.1 to prove the majority in the floor test. Be it noted, in the case of Jagdambika Pal vs. Union of India & Ors. (1999) 9 SCC 95], the Court was under the constitutional obligation to innovate the method and accordingly the following order was passed :-

"(i) A special session of the Uttar Pradesh Assembly be summoned/convened for 26.2.1998, the session commencing forenoon.

(ii) The only agenda in the Assembly would be to have a composite floor test between the contending parties in order to see which out of the two contesting claimants of Chief Ministership has a majority in the House.

(iii) It is pertinently emphasised that the proceedings in the Assembly shall be totally peaceful and disturbance, if any, caused therein would be viewed seriously.

(iv) The result of the composite floor test would be announced by the Speaker faithfully and truthfully.

2. The result is expected to be laid before us on 27-2-1998 at 10.30 a.m. when this Bench assembles again."

In Anil Kumar Jha vs. Union of India & Anr. [(2005) SCC 150], the language of which we had borrowed to some extent in the last

order, the Court in paragraph 6 had stated thus :-

"We are not inclined to appoint any observer for the proceedings on the Assembly to be held on 11.03.2005. However, we desire and accordingly request the *pro tem* Speaker of the Legislative Assembly to have the proceedings of the State Legislative Assembly as held on 11-3.2005 to be video-recorded and send a copy of the video recording to this Court forthwith."

It is contended before us by learned senior counsel for the 1st respondent with immense vigour that there should not be an observer as that would not be constitutionally permissible. The purpose is to save the sanctity of democracy which is the basic feature of our Constitution. This Court, being the *sentinel on the qui vive* of the Constitution is under the obligation to see that the democracy prevails and not gets hollowed by individuals. The directions which have been given on the last occasion, was singularly for the purpose of strengthening the democratic values and the constitutional norms. The collective trust in the legislature is founded on the bedrock of the constitutional trust. This is a case where one side even in the floor test does not trust the other and the other claims that there is no reason not to have the trust. Hence, there is the need and there is the necessity to have a neutral perceptionist to see that absolute objectivity is maintained when the voting takes place. Solely for the aforesaid purpose, we intend to modify the order by directing that the Principal Secretary, Legislative and Parliamentary Affairs who belongs to the cadre of the District Judge shall remain present to conduct the affairs with perceptible objectivity and singularity of purpose of neutrality along with the Secretary Legislative Assembly. The order is modified accordingly. We ingeminate it that we have so directed so that no party can raise a cavil with regard to the process of voting.

A copy of the order be sent to the Principal Secretary, Legislative and Parliamentary Affairs, State of Uttarakhand, Secretary, Legislative Assembly of the State of Uttarakhand and the

Chief Secretary of the State of Uttarakhand by the Registry in course of the day. Learned counsel for the parties are requested to apprise the said authorities about the order passed today. The voting shall take place on 10.05.2016 as directed on the earlier occasion.

Let the matter be listed as scheduled.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master