

ITEM NO.501

COURT NO.3

SECTION XIV & 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).876/2016

(Arising out of impugned final judgment and order dated 07/01/2016
in WPC No.10/2016 passed by the High Court of Gauhati)

NABAM REBIA

Petitioner(s)

VERSUS

REGISTRAR GENERAL, GAUHATI HIGH COURT AND ORS.

Respondent(s)

(With office report)

WITH

S.L.P. (C) ...CC Nos.779-780/2016

(With appln.(s) for permission to file SLP and Office Report)

SLP(C) Nos.1259-1260/2016

(With appln.(s) for exemption from filing c/c of the impugned
judgment and permission to file lengthy list of dates)

WP(C)No.53/2016

(With appln.(s) for exemption from filing c/c of the impugned
judgment and permission to file amended writ petition and
permission to file lengthy list of dates and stay and office
report)

W.P. (C)No.60/2016

(With appln.(s) for permission to file lengthy list of dates and
stay and office report)

W.P. (C)No.59/2016

(With appln.(s) for permission to file lengthy list of dates and
stay and office report)

Date : 01/02/2016 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR

HON'BLE MR. JUSTICE DIPAK MISRA

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE

HON'BLE MR. JUSTICE N.V. RAMANA

For Petitioner(s)

Mr.Kapil Sibal, Sr.Adv.

In SLP(C)876/16

Ms.Kanika Singh, Adv.

Mr.Ashish Jha, Adv.

Mr.Sarvesh Singh Baghel, Adv.

Mr.Nizam Pasha, Adv.

In SLP(C).....

Mr.Fali S.Nariman, Sr.Adv.

CC Nos.779-780/16

Mr.Subhash Sharma, Adv.

& WP(C)No.53/16

Mr.Arunabh Chowdhary, Adv.

Mr.Vaibhav Tomar, Adv.
Ms.Heena Khan, Adv.
Mr.Ashish Jha, Adv.
Mr.Panmei, Adv.
Ms. Pallavi Langar, AOR

Mr.Vivek K.Tankha, Sr.Adv.
Mr.Savesh Singh Baghel, Adv.
Mr.D.Kumanan, Adv.
Mr.Varun K.Chopra, Adv.
Mr.Sachin Pojari, Adv.
Mr.Parth T., Adv.

In SLP(C)Nos.1259-
1260/2016 &
WP(C) 60/16

Mr.Kapil Sibal, Sr.Adv.
Mr.Ankur Chawla, Adv.
Ms.Kanika Singh, Adv.
Mr.Samir Malik, Adv.
Mr.Nizam Pasha, Adv.

In WP(C)59/16

Dr.Rajeev Dhawan, Sr.Adv.
Ms.Megha Gupta, Adv.

For Respondent(s)
(For UOI)

Mr.Mukul Rohatgi, AG
Mr.Ranjeet Kumar, SG
Ms.Madhavi Divan, Adv.
Ms.Nidhi Khanna, Adv.
Mr.Abhinav Mukerji, Adv.
Ms.Devanshi Singh, Adv.
Mr.B.V.Balram Das, Adv.
Ms.Ranjita Rohatgi, Adv.
Ms.Sushma Suri, Adv.

Mr.Ashok Desai, Sr.Adv.
Mr.Shekhar Naphade, Sr.Adv.
Mr.Vikas Singh, Sr.Adv.
Mr.Rajiv Dalal, Adv.
Mr.Ashmeet Singh, Adv.
Mr.Anmol, Adv.
Mrs.Deepika Kalia, Adv.
Mr.Kapish, Adv.
Mr.Abhay Kumar, Adv.
Mr.Tenzing Tsering, Adv.

Mr.L.N.Rao, Sr.Adv.
Mr.Rakesh Dwivedi, Sr.Adv.
Mr.Subramonium Prasad, Sr.Adv.
Ms.Meha Aggarwal, Adv.
Mr.G.Srinivasan, Adv.
Mr.Utkarsh, Adv.
Ms.Sanskriti Pathak, Adv.
Mr.Aditya Singh, AOR

For RR No.16 Mr.T.R.Andhyarujina, Sr.Adv.
In SLP(C)1259-60/16 Mr.Satya Pal Jain, Sr.Adv.
& for R.No.2 in Mr.Vikramjit Banerjee, Adv.
WP(C)53/16 Mr.Bhakti Vardhan Singh, Adv.
 Mr.Vikas Singh Jangra, AOR
 Mr.Siddharth Sijoria, Adv.
 Mr.Amit Kumar Pathak, Adv.

For RR No.1 Mr.P.I.Jose, Adv.
 Mr.Nitin Kumar Singh, Adv.
 Mr.Anupam Mishra, Adv.

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

In Writ Petition(C) No.53 of 2016, on 27.01.2016, notice was issued to respondent No.2 and liberty was granted *inter alia* to respondent No.2 to file his counter affidavit, if any, by 29.01.2016. Additionally, Mr.Satya Pal Jain, learned senior counsel representing the Governor of Arunachal Pradesh, undertook, on the Court's asking, to furnish a copy of the Governor's Report and other material, recommending issuance of a proclamation under Article 356 of the Constitution of India.

During the course of hearing today, learned Attorney General invited our attention to a decision rendered by a Constitution Bench of this Court in Rameshwar Prasad vs. Union of India, (2006) 2 SCC 1, and placed reliance on paragraph 173, which is extracted hereunder:

"173. A plain reading of the aforesaid article shows that there is a complete bar to the impleading and issue of notice to the President or the Governor inasmuch as they are not answerable to any court for the exercise and performance of their powers and duties. Most of the actions are taken on the aid and advice of the Council of Ministers. The personal immunity from answerability provided in Article 361 does not bar the challenge that may be made to their actions. Under law, such actions including those

actions where the challenge may be based on the allegations of mala fides are required to be defended by the Union of India or the State, as the case may be. Even in cases where personal mala fides are alleged and established, it would not be open to the Governments to urge that the same cannot be satisfactorily answered because of the immunity granted. In such an eventuality, it is for the respondent defending the action to satisfy the Court either on the basis of the material on record or even filing the affidavit of the person against whom such allegation of personal mala fides are made. Article 361 does not bar filing of an affidavit if one wants to file on his own. The bar is only against the power of the Court to issue notice or making the President or the Governor answerable. In view of the bar, the Court cannot issue direction to the President or the Governor for even filing of affidavit to assist the Court. Filing of an affidavit on one's own volition is one thing than the issue of direction by the Court to file an affidavit. The personal immunity under Article 361(1) is complete and, therefore, there is no question of the President or the Governor being made answerable to the Court in respect of even charges of mala fides."

Based on the conclusion recorded by the Constitution Bench, it was the submission of the learned Attorney General, that there was a complete immunity to the Governor under Article 361 of the Constitution of India, and that, even notice could not be issued to the Governor.

Having given our thoughtful consideration to the issue in hand, we consider it just and appropriate to recall the notice issued to respondent No.2 on 27.01.2016, in Writ Petition (C) No.53 of 2016. That, however, would not preclude respondent No.2 to respond, in case he so desires, as he is already participating in collateral proceedings in this Court.

W.P. (C)No.59 of 2016 and W.P. (C)No.60 of 2016

Issue notice to respondent No.1.

Ms.Sushma Suri, advocate, on our asking, accepts notice on behalf of respondent No.1.

Liberty is granted to respondent No.1 to file counter affidavit within three days i.e. by 04.02.2016, with a copy in advance to the learned counsel for the petitioner.

List after hearing of connected matters.

W.P.(C)No.53 of 2016

After having heard learned counsel for the rival parties at some length, we are of the view, that certain record deserves to be furnished to the former Chief Minister, former Ministers and the former Parliamentary Secretaries, whose offices were sealed and from whose offices files and documents were taken to be kept in safe custody. We accordingly hereby direct the Administrator/the Chief Secretary, to make copies of all official files, documents as were taken into safe custody from the offices of the former Chief Minister, former Ministers and former Parliamentary Secretaries, and furnish the same to them.

We also consider it just and appropriate to direct the Administrator/Chief Secretary to make copies of all hard disc drives of computers, seized from the offices of the former Chief Minister, former Ministers and former Parliamentary Secretaries, and to hand over the copies to them.

We also direct respondent No.1 to return all private letters, files, books etc., if any, which were seized or which are in the custody of the authorities from the official premises of the former Chief Minister, former Ministers and former Parliamentary Secretaries.

The instant directions be complied with by 05.02.2016.

List after hearing of connected matters.

SLP(C)No.876/2016, SLP(C).....CC Nos.779-780/2016 and
SLP(C)Nos.1259-1260/2016

For further consideration, list on 02.02.2016 at 10.30

A.M.

(SATISH KUMAR YADAV)
AR-CUM-PS

(RENUKA SADANA)
COURT MASTER