

ITEM NO.39

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 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 bring on record additional question of law/ground in support of the SLP with affidavit and interim relief and office report)

WITH

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

(With appln.(s) for exemption from filing c/copy as well as plain copy of the impugned order and permission to file SLP without c/copy as well as plain copy of impugned order and permission to file SLP and Interim Relief and Office Report)

S.L.P.(C)...CC No. 7916/2016

(With appln.(s) for exemption from filing c/copy as well as plain copy of the impugned order and permission to file SLP without c/copy as well as plain copy of impugned order and permission to file SLP and Interim Relief and Office Report)

Date : 11/05/2016 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 Rohtagi, AG
Mr. maninder Singh, ASG
Mr. Tushar Mehta, ASG
Col. R. Balasubramanin, Adv.
Mr. Nalin Kohli, Adv.
Ms. Ranjeeta ohatgi, Adv.
Ms. Diksha Rai, Adv.,
Mr. Rajat Nair, Adv.
Ms. Devanshi Singh, Adv.
Mr. Prabhas Bajaj, Adv.
Ms. Misha Rohatgi, Adv.
Mr. Akashay A., Adv.

Mr. Mohan Popli, Adv.
 Mrs. Anil Katiyar, AOR
 Mr. E.C. Agrawala, AOR
 Mr. Ashok K. Mahajan, AOR

For Respondent(s) Dr. Abhishek Manu Singhvi, Sr. Adv.
 Mr. K.C. Kaushik, Adv.
 Mr. Amit Bhandari, Adv.
 Mr. Rahul Kaushik, AOR
 Ms. Satya Priya Satyam, Adv.
 Ms. Bhuvneshwari Pathak, Adv.
 Ms. Anjana Singh, Adv.
 Mr. Javed-Ur-rahman, Adv.

Mr. Kapil Sibal, Sr. Adv.
 Mr. K.C. Kaushik, Adv.
 Mr. Mukesh Giri, Adv.
 Mr. Nizam Pasha, Adv.
 Mr. Rahul Kaushik, AOR

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

Mr. Gaurav Sharma, Adv.
 Mr. Rohan Jaitley, Adv.
 Mr. Prateek Bhatia, Adv.
 Ms. Vara Gaur, Adv.

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

In pursuance of orders dated 06.05.2016 and 09.05.2016, a special session of the Uttarakhand Assembly was convened on 10.05.2016 at 11.00 a.m. The proceedings of the floor test was appropriately observed by the Principal Secretary, Legislative and Parliamentary Affairs, Government of Uttarakhand and the Secretary, Legislative Assembly of Uttarakhand. Mr. Mukul Rohatgi, learned Attorney General for India along with Mr. Tushar Mehta and Mr. Maninder Singh, learned Additional Solicitor Generals for the Union of India and Mr. Kapil Sibal, Dr. A.M. Singhvi and Dr. Rajeev Dhawan, learned senior counsel for the respondents, fairly submit

that there has been no irregularity in carrying out the voting. We have opened the result of the voting that has been produced before us in a sealed cover by Mr. Jaidev Singh, Principal Secretary, Legislative and Parliamentary Affairs, Government of Uttarakhand. On a perusal of the same, we find that the 1st respondent has obtained 33 votes out of 61 votes. Be it clarified, nine members of the Legislative Assembly could not vote as they stood disqualified as on that day and even today. Mr. Jaidev Singh, Principal Secretary, Legislative and Parliamentary Affairs, Government of Uttarakhand has apprised us that there was no irregularity in the voting procedure. We accept the same. We may hasten to clarify that the same position has been accepted by the learned Attorney General for India. At this juncture, it is submitted by the learned Attorney General that the order dated 22.04.2016 be modified so that the Union of India which is wedded to the concept of democracy, shall take steps for revocation of the proclamation of President's Rule. For the sake of completeness, we may reproduce the relevant part of the order dated 22.04.2016 :

"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."

keeping in view the prayer made by the learned Attorney General, we vary the order by granting liberty to the Union of India to revoke the proclamation of President's Rule in the State of Uttarakhand in course of the day. Needless to say, after the Presidential Rule is revoked, the 1st respondent can assume the office of the Chief Minister of Uttarakhand.

Two aspects we intend to clarify. One, the issue of justifiability of the proclamation of President's Rule that was made on 27.03.2016 which has been annulled by the impugned order passed by the High Court will remain alive, for the High Court has ascribed many a reasons to arrive at the conclusion that the said proclamation was not tenable in law. It required to be scrutinized whether within the scope of judicial review, such a finding could have been arrived at or for that matter whether the opinion arrived at by the President of India to proclaim the President's Rule at the relevant point of time was justified or not. We may hasten to add, we have directed for floor test on concession of the parties and we had varied the order today on a prayer being made by the Union of India.

The second aspect that deserves mention is that nine members of the Legislative Assembly have been disqualified. Their disqualification which has been upheld by the High Court is under assail before this Court in the special leave petition no.14140 of 2016. This Court has declined to grant interim prayer for stay of the impugned order against the disqualified MLAs in the special leave petition on 09.05.2016. The said matter has been adjourned to 12.07.2016. What will be the effect, if in the ultimate eventuate case the disqualification is set at naught would be a matter of debate. We say nothing on that score at present.

For the purpose of production of the order of revocation, let the matter be listed on 13.05.2016. On that date, a day shall be fixed for hearing of the special leave petitions on merits.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master