



उत्तराखण्ड विधान सभा

उत्तराखण्ड विधान सभा की कार्यसूची

मंगलवार, 20 बैशाख, शक सम्वत्, 1938
(दिनांक : 10 मई, 2016)

समय : 11 : 00 बजे पूर्वाह्न

शुभारम्भ “वन्दे मातरम्” (देखिये नत्थी “क”)

1. माननीय सर्वोच्च न्यायालय में योजित याचिका संख्या 11567/16 में पारित निर्णय दिनांकित 06 मई, 2016 की अपेक्षानुसार विश्वास के प्रस्ताव पर मत विभाजन।

(आदेश की प्रति देखिये नत्थी “ख” एवं निर्णय दिनांकित

09 मई, 2016 की प्रति देखिए नत्थी “ग”)

देहरादून :

दिनांक : 09 मई, 2016

आज्ञा से,

(जगदीश चन्द्र)

सचिव।



उत्तराखण्ड विधान सभा

नत्थी "क"

वन्दे मातरम्

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मलयज शीतलाम्।

शष्य श्यामलाम्।

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शुभ-ज्योत्सना-पुलकित-यामिनीम्

फुल्ल-कुसुमित-द्रुमदल-शोभिनीम्

सुहासिनीम्

सुमधुर भाषिणीम्

सुखदाम्

वरदाम्

मातरम्। वन्दे मातरम्॥

नत्थी - 'रब'

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SLP(C) 11567/16

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ITEM NO.49

COURT NO.4

Confirmed to be true copy
SECTION X
Assistant Registrar (Judl.)
6-5-16 2016
Supreme Court of India

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.

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

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

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.

नत्पी 'ग'

ITEM NO. 803

COURT NO. 4

SECTION X
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petitioner(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.

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

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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

