**(2016) 03 UK CK 0011**

**Uttarakhand High Court**

**Case No:** Intervention Application No. 2790, 2811 of 2016 In Writ Petition No. 795 of 2016 (M/S)

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| Harish Chandra Singh Rawat | | APPELLANT |
| | Vs | |
| Union of India | | RESPONDENT |

**Date of Decision:** March 29, 2016

**Hon'ble Judges:** U.C. Dhyani, J.

**Bench:** Single Bench

**Advocate:** Dr. Abhishekh Manu Singhvi, Harin Raval, Amit Sibal, Senior Advocates assisted by Devadatt Kamat, Ms. Padma Lakshmi Iyangar, Amit Bhandari, Javedur Rahman and Devendra Singh Bohra, Advocates, for the Appellant; Tushar Mehta, Addl. Solicitor General with R

**Final Decision:** Disposed Off

**Judgement**

**U.C. Dhyani, J.** (Oral) - By means of present writ petition, the petitioner seeks following reliefs:

a) issue a writ, order or any other appropriate writ(s), order(s) quashing the Proclamation dated 27.03.2016 issued under Article 356 of the Constitution of India bearing no. F.No.V/11013/2/2016-CSR-I and the consequent Notification thereof; and

b) issue a writ, order or any other appropriate writ(s), order(s) quashing the recommendation of the Respondent, recommending imposition of Presidents'' Rule in the State of Uttarakhand; and

c) issue a writ or any other appropriate writ(s), order(s) or direction directing the respondent to furnish the records pertaining to the recommendation of the respondent contained in its Report/material, which has culminated in the meeting of the Union Cabinet on 26th/27th March, 2016, recommending imposition of Presidents'' Rule in the State of Uttarakhand and Proclamation dated 27.03.2016 and the consequent Notification imposing President''s Rule in the State of Uttarakhand;

and

d) issue a writ or any other appropriate order or direction restoring the Government of the Indian National Congress headed by Shri Harish Rawat, along with his Council of Ministers, to office and revive and reactivate the 3rd Uttarakhand Legislative Assembly; and

e) issue a writ or any other appropriate order or direction in the declaring all consequential actions/orders passed and laws promulgated during the period of Proclamation and President''s Rule as illegal and void-ab-initio and accordingly quash the same;

f) issue Rule nisi in terms of prayer (a) - (e) above; and

g) pass such other order/s as this Hon''ble Court may deem fit and proper."

2. There is a stay application also, being CLMA no. 2754 of 2016, in which following prayers have been made:

"(i) stay the Proclamation date 27.03.2016 issued under Article 356 of the Constitution of India bearing no. F.No. V/11013/2/2016-CSR-I and the consequent Notification thereof; and further be pleased to stay the recommendation of the respondent, recommending imposition of President''s Rule in the State of Uttarakhand.

(ii) grant urgent relief by passing appropriate directions in terms of the order of the Supreme Court in Jagadambika Pal for holding a floor test in order to prove the majority of the petitioner on the floor of the House."

3. 18.03.2016 was fixed for passage of the Appropriation Bill, 2016. Whereas the contention of learned Senior Counsel for the petitioner is that the Appropriation Bill was passed by a voice vote, it is alleged by the opposition MLAs and 09 rebel Congress MLAs that the Appropriation Bill was not passed by majority. The Speaker of the Legislative Assembly adjourned the sitting of the Session until 28.03.2016. On 18.03.2016, the Secretary to the Governor of Uttarakhand wrote to the Secretary, Vidhan Sabha requesting for audio-video recording of the proceedings of the Assembly for the perusal of His Excellency the Governor of Uttarakhand. Speaker submitted the records of the same. On 19.03.2016, the Speaker of Vidhan Sabha issued show cause notices to the 09 MLAs of the Congress party on the disqualification petitions filed by Chief Whip of the Congress Legislative party. The Governor of Uttarakhand, on 19.03.2016, directed the Chief Minister to seek vote of confidence from the State Legislative at the earliest but not later than 28.03.2016, which date was fixed by the Speaker for convening the Session, which was adjourned on 18.03.2016. The Secretary, Uttarakhand Vidhan Sabha notified the Members of the Legislative Assembly that the next sitting of the First Session of 2016 will be held on 28.03.2016 at 11:00 A.M. The Governor once again wrote to the Chief Minister directing him to take the vote of confidence. The Chief Minister wrote

to the Governor that the vote of confidence will be sought on 28.03.2016 at 11:00 A.M. A message under Article 175(2) of the Constitution of India was sent by the Governor to the House directing that the vote of confidence should be held on 28.03.2016. In the intervening night of 26th/27th March 2016, the Union Cabinet discussed the issue of Uttarakhand and, on 27.03.2016, President''s Rule was imposed in the State, which is subject matter of challenge before this Court in present writ petition.

4. First of all, coming to the point of judicial review - whether the same is maintainable? There is a maxim known as ubi jus ibi remedium. The Hon''ble Supreme Court in a catena of decisions has held that judicial review of administrative action is permissible in such cases under Article 226 of the Constitution of India, including State of Rajasthan v. Union of India, (1977) 3 SCC 592, where there was a broad consensus among five of the seven Judges that the Court can interfere if it is satisfied that the power has been exercised mala fide or on "wholly extraneous or irrelevant grounds". Some Hon''ble Judges have stated the rule in narrow terms and some others in little less narrow terms, but not a single Hon''ble Judge held that the proclamation is immune from judicial scrutiny. It must be remembered that at that time clause (5) was there barring judicial review of the proclamation and yet they said that the Court can interfere on the ground of mala fides. Surely, the deletion of clause (5) has not restricted the scope of judicial review but has widened it.

5. In S.R. Bommai and others v. Union of India and others, (1994) 3 SCC 1, Hon''ble Supreme Court has held in paras 118 and 119 of the judgment as under:

"In view of the conclusions that we have reached with regard to the parameters of the judicial review, it is clear that the High Court had committed an error in ignoring the most relevant fact that in view of the conflicting letters of the 7 legislators, it was improper on the part of the Governor to have arrogated to himself the task of holding firstly, that the earlier 19 letters were genuine and were written by the said legislators of their free will and volition. He had not even cared to interview the said legislators, but had merely got the authenticity of the signatures verified through the Legislatures Secretariat. Secondly, he also took upon himself the task of deciding that the 7 out of the 19 legislators had written the subsequent letters on account of the pressure from the Chief Minister and not out of their free will. Again he had not cared even to interview the said legislators. Thirdly, it is not known from where the Governor got the information that there was horse-trading going on between the legislators. Even assuming that it was so, the correct and the proper course for him to adopt was to await the test on the floor of the House which test the Chief Minister had willingly undertaken to go through on any day that the Governor chose. In fact, the State Cabinet had itself taken an initiative to convene the meeting of the Assembly on April 27, 1989, i.e., only a week ahead of the date on which the Governor chose to send his report to the President. Lastly, what is

important to note in connection with this episode is that the Governor at no time asked the Chief Minister even to produce the legislators before him who were supporting the Chief Minister, if the Governor thought that the situation posed such grave threat to the governance of the State that he could not await the result of the floor-test in the House. We are of the view that this is a case where all cannons of the propriety were thrown to the wind and the undue haste made by the Governor in inviting the President to issue the Proclamation under Article 356(1) clearly smacked of mala fides. The Proclamation issue by the President on the basis of the said report of the Governor and in the circumstances so obtaining, therefore, equally suffered from mala fides. A duly constituted Ministry was dismissed on the basis of material which was neither tested nor allowed to be tested and was no more than the ipse dixit of the Governor. The action of the Governor was more objectionable since as a high constitutional functionary, he was expected to conduct himself more firmly, cautiously and circumspectly. Instead, it appears that the Governor was in a hurry to dismiss the Ministry and dissolve the Assembly. The Proclamation having been based on the said report and so-called other information which is not disclosed, was therefore liable to be struck down.

119. In this connection, it is necessary to stress that in all cases where the support to the Ministry is claimed to have been withdrawn by some legislators, the proper course for testing the strength of the Ministry is holding the test on the floor of the House. That alone is the constitutionally ordained forum for seeking openly and objectively the claims and counter-claims in that behalf. The assessment of the strength of the Ministry is not a matter of private opinion of any individual, be he the Governor or the President. It is capable of being demonstrated and ascertained publicly in the House. Hence when such demonstration is possible, it is not open to bypass it and instead depend upon the subjective satisfaction of the Governor or the President. Such private assessment is an anathema to the democratic principle, apart from being open to serious objections of personal mala fides. It is possible that on some rare occasional the floor-test may be impossible, although it is difficult to envisage such situation. Even assuming that there arises one, it should be obligatory on the Governor in such circumstances, to state in writing, the reasons for not holding the floor-test. The High Court was, therefore, wrong in holding that the floor-test was neither compulsory nor obligatory or that it was not a prerequisite to sending the report to the President recommending action under Article 356(1). Since we have already referred to the recommendations of the Sarkaria Commission in this connection, it is not necessary to repeat them here.

6. In para 265 of S.R. Bommai''s case (supra), it has been observed by Hon''ble Apex Court thus:

".... Under Article 356, the President is empowered to remove the State Government, dissolve the Legislative Assembly of the State and take over the functions of the Government of the State in case he is satisfied that the Government of that State

cannot be carried on in accordance with the provisions of the Constitution. In the context of the Indian Constitution [more specifically after the amendment of Article 74(1) by the 42nd (Amendment) Act] this really is the power vested in the Council of Ministers headed by the Prime Minister at the Centre. The action can be taken either on the report of the Governor or on the basis of information received otherwise or both. An awesome power indeed. The only check envisaged by the Constitution - apart from the judicial review - is the approval by both Houses of Parliament which in practise has proved to be ineffective, as this judgment will demonstrate. And with respect to judicial review of the action under Article 356, serious reservations are expressed by the counsel for the Union of India and other respondents. If what they say is accepted, there is a danger of this power eroding the very federal structure of our State and introducing a serious imbalance in our constitutional scheme. It is, therefore, necessary to define the parameters of this power and the parameters of judicial review in these matters in the interest of our constitutional system. It is for this reason that we heard elaborate arguments from all the parties before us on the meaning, scope and dimensions of the power under this article. We may say, we are fully aware of the delicate nature of the problem. We are aware that though the questions raised herein are constitutional in character, they do have political overtones. It is quite likely that our views will not be found palatable by some but that probably cannot be helped. Sworn to uphold the Constitution, we must say what the article says and means."

7. Whereas the President''s Rule has been imposed in the State, there is no denying the fact that the State Assembly has been put under suspended animation. The Assembly has not been dissolved. The Governor had directed the Chief Minister to seek vote of confidence. Such direction was given under Article 175 of the Constitution of India. The Governor had till date not revoked the direction seeking vote of confidence and according to learned Senior Counsel for the petitioner, in between President''s Rule under Article 356 of the Constitution of India was imposed.

8. Article 175 of the Constitution of India reads as under:

**"175. Right of Governor to address and send messages to the House or Houses.-** (1) The Governor may address the Legislative Assembly or, in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members.

(2) The Governor may send messages to the House or Houses of the Legislature of the State, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient dispatch consider any matter required by the message to be taken into consideration."

9. The Chief Minister, according to learned Senior Counsel for the petitioner, replied to the Governor that he is ready to prove his majority in the House and seek a vote of confidence.

10. Learned Senior Counsel for the petitioner submitted that no chance was given to the Assembly to meet on 28.03.2016, which date was fixed nine days ago and which was known to everybody. Can Article 365 of the Constitution of India be used to short-circuit the Governor''s direction to convene the Session and seek vote of confidence on 28.03.2016? Present Proclamation is nothing but a colourable exercise of power by the Central Government. How can there be a new factor leading to imposition of President''s Rule under Article 356 of the Constitution of India? One cannot show lack of confidence in earlier massage sent to the Speaker directing the Chief Minister to seek vote of confidence. Democratically elected Houses should not be demolished in such fashion. Floor test is the only test to prove the majority. In Schedule 10 of the Constitution, the Speaker is persona designata. The imposition of President''s Rule has given a double blow which has resulted in obviating the Speaker giving a ruling on disqualification. There is paramountcy to the floor test. Assuming for the sake of arguments that it is a case of horse trading and bribery, Article 356 of the Constitution of Indian cannot be used to prevent floor test. The so called sting operation or entrapment has not yet been tested by any Court of law and what is the relevance of that sting - nothing but a created superstructure, learned Senior Counsel for the petitioner argued.

11. It was held by Hon''ble Supreme Court in Ravi S. Naik v. Union of India and others, 1994 Supp (2) SCC 641 that the words "voluntarily given up his membership" are not synonymous with "resignation" and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs.

12. In Kihoto Hollohan v. Zachillhu and others, 1992 Supp (2) SCC 651, Hon''ble Supreme Court in paragraph no. 110 of the judgment, held thus:

"In view of the limited scope of judicial review that is available on account of the finality clause in Paragraph 6 and also having regard to the constitutional intendment and the status of the repository of the adjudicatory power i.e. Speaker/Chairman, judicial review cannot be available at a stage prior to the making of a decision by the Speaker/Chairman and a quia timet action would not be permissible. Nor would interference be permissible at an interlocutory stage of the proceedings. Exception will, however, have to be made in respect of cases where disqualification or suspension is imposed during the pendency of the proceedings and such disqualification or suspension is likely to have grave, immediate and irreversible repercussions and consequence."

13. Attention of this Court is drawn to a decision rendered by Hon''ble Apex Court in Rajendra Singh Rana and others v. Swami Prasad Maurya and others, (2007) 4 SCC 270. Relevant portion of Paragraph 48 of said judgment is reproduced here-in-below for reference:

"The act of giving a letter requesting the Governor to call upon the leader of the other side to form a Government, itself would amount to an act of voluntarily giving up the membership of the party on whose ticket the said members had got elected..... In Ravi Naik this Court observed: (SCC p. 649, para 11)

"A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs."

14. It will be appropriate to quote here-in-below the following paragraphs of judgment rendered by Hon''ble Supreme Court in Rameshwar Prasad and others v. Union of India and another, (2006) 2 SCC 1:

"68. The common thread in all the emergency provisions is hat the resort to such provision has to be in exceptional circumstances when there be a real and grave situation calling for the drastic action.

70. Whether it is a case of the existing Government losing majority support or of installation of a new Government after fresh elections, the act of the Governor in recommending dissolution of the Assembly should be only with the sole object of preservation of the Constitution and not promotion of political interest of one or the other party.

75. Undoubtedly, defection is a great evil. It was contended for the Government that the unprincipled defections induced by allurements of office, monetary consideration, pressure, etc. were destroying the democratic fabric. With a view to control this evil; the Tenth Schedule was added by the Constitution (Fifty-second Amendment) Act, 1985. Since the desired goal to check defection by a legislative measure could not be achieved, the law was further strengthened by the Constitution (Ninety-first Amendment) Act, 2003. The contention is that the Governor''s action was directed to check this evil, so that a Government based on such defections is not formed.

76. Reliance has been placed on the decision in Kihoto Hollohan v. Zachillhu (supra) to bring home the point that defections undermine the cherished values of democracy and the Tenth Schedule was added to the Constitution to combat this evil. It is also correct that to further strengthen the law in this direction, as the existing provisions of the Tenth Schedule were not able to achieve the desired goal of checking defection, by the Ninety-first Amendment, defection was made more

difficult by deleting the provision which did not treat mass shifting of loyalty by 1/3 as defection and by making the defection, altogether impermissible and only permitting merger of the parties in the manner provided in the Tenth Schedule as amended by the Ninety-first Amendment.

84. The question in the present case is not about MLAs voting in violation of the provisions of the Tenth Schedule as amended by the Constitution (Ninety-first Amendment) Act, as we would presently show.

85. Certainly, there can be no quarrel with the principles laid down in Kihoto case about the evil effects of defections but the same have no relevance for determination of the point in issue. The stage of preventing members to vote against the declared policies of the political party to which they belonged had not reached. If MLAs vote in a manner so as to run the risk of getting disqualified, it is for them to face the legal consequences. That stage had not reached. In fact, the reports of the Governor intended to forestall any voting and staking of claim to form the Government.

99. The scope of judicial review has been expanded by Bommai [S.R. Bommai v. Union of India, (1994) 3 SCC 1] and dissent has been expressed from the view taken in State of Rajasthan case [State of Rajasthan v. Union of India, (1977) 3 SCC 592].

100. The above approach shows objectivity even in subjectivity. Constitutionalism or constitutional system of Government abhors absolutism-it is premised on the rule of law in which subjective satisfaction is substituted by objectivity provided by the provisions of the Constitution itself. This line is clear also from Maru Ram v. Union of India, (1981) 1 SCC 107. It would also be clear on an in-depth examination of Bommai (supra) that declared the dissolution of three Assemblies illegal, but before we further revert to that decision, a brief historical background including the apprehension of its abuse expressed by our founding fathers may be noted.

149. The contention that the installation of the Government is different than removal of an existing Government as a consequence of dissolution as was the factual situation before the nine-Judge Bench in Bommai case (supra) and, therefore, the same parameters cannot be applied in these different situations, has already been dealt with hereinbefore. Further, it is to be remembered that a political party prima facie having majority has to be permitted to continue with the Government or permitted to form the Government, as the case may be. In both categories, ultimately the majority shall have to be proved on the floor of the House. The contention also overlooks the basic issue. It being that a party even, prima facie, having a majority can be prevented to continue to run the Government or claim to form the Government, declined on the purported assumption of the said majority having been obtained by illegal means. There is no question of such basis issues allegedly falling in the category of "political thicket" and being closed on the ground that there are many imponderables for which there are no judicially manageable

standards and, thus, outside the scope of judicial review."

15. Arguing further, learned Senior Counsel for the petitioner contended that the 09 dissidents MLAs belonging to Indian National Congress in the Uttarakhand Legislative Assembly appended their signatures on the letterhead of leader of opposition along with those MLAs, who belonged to the major opposition party (B.J.P.), they took bus ride with them to Raj Bhawan and also boarded in chartered flight with them.

16. Mr. Rakesh Thapliyal, learned Asstt. Solicitor General for Union of India sought some time to file counter affidavit. Learned counsel also drew attention of this Court towards paragraph no. 115 of S.R. Bommai''s case (supra) to bring home to point that the grant of interim relief would depend upon various circumstances including the expeditiousness with which the court is moved, the prima facie case with regard to the invalidity of the Proclamation made out, the steps which are contemplated to be taken pursuant to the Proclamation, etc. However, if other conditions are satisfied, it will defeat the very purpose of the judicial review if the requisite interim relief is denied. The least relief that can be granted in such circumstances is an injunction restraining the holding of fresh elections for constituting the new Legislative Assembly. There is no reason why such a relief should be denied if a precaution is taken to hear the challenge as expeditiously as possible taking into consideration the public interest involved.

17. He also argued that no petition should be entertained in any Court before the actual issuance of Proclamation under clause (1), it shall be open to a High Court or Supreme Court to entertain a writ petition questioning the Proclamation if it is satisfied that the writ petition raises arguable questions with respect to the validity of the Proclamation. The court would be entitled to entertain such a writ petition even before the approval of the Proclamation by Parliament - as also after such approval. But in every such case where such an order is passed the High Court/Supreme Court shall have to dispose of the matter within two to three months. Not disposing of the writ petition while granting such an interim order would create several complications.

18. Yesterday, learned Asstt. Solicitor General for Union of India submitted that learned Addl. Solicitor General for Union of India will also argue the case and, therefore, the case was postponed for today for remaining arguments.

19. Mr. Tushar Mehta, Additional Solicitor General for the Union of India, who appeared in the Court today, was kind enough to read the prayers sought in the writ petition as well as in the interim relief application. Learned Additional Solicitor General submitted, among other things, that no interim order can be passed against the Presidential Proclamation. Learned Additional Solicitor General is at pains to argue that the case of Jagdambika Pal v. Union of India & others, (1999) 9 SCC 95 is not a binding precedent and the prayer which has been sought on behalf

of the petitioner is incapable of being granted. Referring to paras 372, 373, 374 & 375 of S. R. Bommai''s case (supra), learned Additional Solicitor General submitted that most of the interim orders can be passed at the final stage and, as such, no interim relief can be granted to the petitioner. Learned Additional Solicitor General also prayed that similar opportunity granted by Hon''ble Supreme Court in Rameshwar Prasad & others v. Union of India in W.P.(C) No.257 of 2005 on 10.06.2005 and 25.7.2005 be given to the respondents.

20. Apart from relying upon paras 372, 373, 374 & 375, learned Additional Solicitor General also relied upon paras 2, 15, 153 (vi) & 435 of S. R. Bommai''s decision (supra).

21. Learned Additional Solicitor General also contended that any interim relief granted by the Court would be contrary to the provisions of Article 179 of the Constitution of India. The provisions, which have been suspended by the Presidential Proclamation, cannot be permitted to be interdicted at an interim stage.

22. Although the maintainability of the intervention application was objected to by learned senior counsel for the petitioner, but this Court permitted the interveners to address the Court in the interest of justice.

23. Mr. Vikas Singh, Senior Advocate, who appeared for some of the interveners (i.e. Ms. Shaila Rani Rawat and Mr. Umesh Sharma) referred to Article 179(c) of the Constitution of India and its proviso, arguing that a member holding office as Speaker or Deputy Speaker of an Assembly may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen (14) days'' notice has been given of the intention to move the resolution. Learned Senior Counsel for the interveners also referred to Article 189 of the Constitution of India to argue that all questions at any sitting of the House of the Legislature of a State shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman, or person acting as such.

24. Mr. Dinesh Dwivedi, Advocate appearing for the other interveners (i.e. Mr. Subodh Uniyal and Mr. Kunwar Pranav Singh `Champion'') submitted that no quia timet action is permitted after the Presidential Proclamation is issued. Learned senior counsel drew the attention of this Court towards clauses (a), (b) and (c) of Article 356 of the Constitution of India that the powers of a Legislature of a State, after Presidential Proclamation under Article 356 of the Constitution, shall be exercisable by or under the authority of the Parliament and the Legislature in such circumstances cannot function. Learned senior counsel also referred to paras 49, 86, 111, 153 & 290 of S. R. Bommai''s case (supra).

25. Mr. Amit Singh Chaddha, Senior Advocate for the interveners (Mr. Harak Singh and Ms. Amrita Rawat) adopted the arguments advanced by Mr. Vikas Singh, Sr.

Advocate and Mr. Dinesh Dwivedi, Senior Advocate. Learned senior counsel also referred to paras 147, 148, 149 in Balchandra L. Jarkiholi & others v. B.S. Yeddyurappa & others, (2011) 7 SCC 1 in this regard.

26. Learned senior counsel intervening in the writ petition also prayed in the alternative that nine disqualified MLAs should also be permitted to participate in the floor test. He also submitted that 14 days'' notice was required to be given by the Speaker, which was not done.

27. Learned Additional Solicitor General stated at this juncture that even that would be impermissible in view of the decision of Hon''ble Supreme Court. Learned Additional Solicitor General read the relevant portions of the Presidential Proclamation and submitted that the President, after issuing such Proclamation has assumed to himself all functions of Government of Uttarakhand and all powers vested in or exercisable by the Government of Uttarakhand. The President has also declared, by means of the above Proclamation, that the powers of the Legislatures of the State of Uttarakhand shall be exercisable by or under the authority of Parliament and suspended many of the provisions of the Constitution in relation to the State of Uttarakhand, which provisions have been indicated in the said Proclamation and therefore, the Assembly cannot be convened in view of Article 174 of the Constitution of India.

28. `Where ever there is a wrong, there is a remedy'', this maxim is known to everybody in jurisprudence. In English law, it is known as ubi jus ibi remedium. Whereas learned senior counsel for the respondents made an attempt to bring home the point that any relief cannot be granted to the petitioner at this stage, learned senior counsel for the petitioner vehemently argued, on the strength of various decisions of the Apex Court, that interim relief can be granted to the petitioner. It is not necessary for this Court to mention the paragraphs once again, on which learned Senior Counsel for the parties laid emphasis. This Court has carefully considered those decisions during the course of arguments. Suffice will it be to say, at present, that interim relief is possible in such set of facts and circumstances. Scope of judicial review may be limited, as contented, but the fact remains that judicial review is permissible at this stage. This Court, therefore, need not deal with this matter any further, for the same has already been highlighted in the foregoing paragraphs of this judgment, duly fortified by the decisions of the Hon''ble Apex Court.

29. Coming back to the interim relief application, there is no question of staying the effect of Proclamation under Article 356 of the Constitution of India at this stage. There is no question of staying Government Notification at this juncture. The pith and substance of the law laid down by the Hon''ble Supreme Court has to be religiously followed by the courts below, including this Court. There is, therefore, no question of taking one sentence from here and another sentence from there, for, the judicial decisions are to be read as a whole.

30. This Court is unable to agree with the submission of learned Addl. Solicitor General that Jagadambika Pal''s case is not a decision and is not binding upon the courts. Learned Addl. Solicitor General laboured hard to place three decisions of Rameshwar Prasad''s case before the Court and argued very vehemently that this Court should take recourse to such orders. In the humble opinion of this Court, the directions given by the Hon''ble Apex Court in Rameshwar Prasad''s case as well as in Jagadambika Pal''s case lay down the law and are, therefore, binding upon the court subordinate to the Hon''ble Apex Court. The Court, therefore, should not shy away from passing any interim order, whenever it is desirable.

31. There is no doubt, that there is presumption of validity of Notification, but that is subject to judicial review, which is available to this Court by virtue of the decisions of the highest court of the land.

32. Assembly has not been dissolved in Uttarakhand, and this fact may be a distinguishing feature for facilitating this Court to pass the interim order, which this Court is intending to pass.

33. The Assembly is in suspended animation. It has not been dissolved, as has been stated above. Speaker continues to hold its office. This Court intends to pass an interim order without prejudice to rival contentions, but according to the constitutional postulates. Floor test is the best test, as has been held by the Hon''ble Apex Court on a number of occasions. Further, this Court is not deciding the writ petition finally at this stage, for the same will be done only after the counter affidavit(s) by the respondents, and possibly, the rejoinder affidavit by the petitioner, is filed. The Court should not sit as a mute spectator in the interregnum.

34. The question which arises for the consideration of this Court is whether the disqualified MLAs should be permitted to participate in the motion seeking confidence or not? The rival factions are going to lose nothing if a request is made to the Speaker to permit all the MLAs to participate in the floor test, with, without or despite their disqualifications. The result of such floor test, to be kept in a sealed cover by the Speaker, will also disclose as to whether the vote seeking confidence has been passed or not. Had 09 disqualified Members not participated, whether the confidence motion has been passed? What will be the position if 09 disqualified Members also participate on motion seeking confidence of the House? The same shall be evaluated by the Court at the time of final adjudication of the writ petition, after the pleadings are exchanged. It will be useless exercise if the Speaker is requested to convene the Session without the participation of those MLAs which have been disqualified by him. Learned Senior Counsel for the petitioner submitted that the writ petition seeking challenge to their disqualification (by 09 MLAs) is not before this Court. But the fact remains that this Court has permitted intervention by disqualified Members in this writ petition and, therefore, there is every reason to consider their submissions as well. The interim order is being passed on equitable considerations also. Needless to say that the Speaker will adjudge the issue, not on

voice vote, but on division of votes, especially, when there is an argument that some of the MLAs intended to move `no-confidence motion'' against the Speaker. Tenth Schedule adjudication is always available to the Court, if challenged. Caesar''s wife must be above suspicion. Non-invasive non-prejudicial relief is, therefore, granted in the instant writ petition.

35. On hearing learned Senior Counsel for the parties, the order which commends this Court is as follows:

i) The Session of the Uttarakhand Legislative Assembly shall be convened for 31.03.2016, at 11:00 A.M.

ii) The only agenda, which would be taken up in the Assembly on that date, would be the vote of confidence, as directed by the Governor earlier. (The only change is in the date, which is fixed by the Court). In other words, on that day, the vote of confidence shall be put to floor test.

iii) To give the floor test a semblance of neutrality, and without prejudice to the rival contentions, all the MLAs shall be entitled to take part in the floor test, with, without or despite their disqualification, which will be subject to adjudication by the Court of competent jurisdiction, on an appropriate occasion.

iv) The proceedings in the Assembly shall be totally peaceful and without disturbance.

v) The result of vote of confidence shall be kept by the Speaker in a sealed cover and submitted/intimated to the Court at an earliest and, in any case, by the morning of 01.04.2016. The votes of disqualified Members shall be kept separate.

vi) This order shall be treated to be a notice to all the MLAs, leaving apart the notices, the Governor/Secretariat is supposed to issue. No separate notice would be required.

vii) Lord Chief Justice of this High Court may be moved by Registrar (Judicial) to consider the request of this Court for nominating a Registrar of this Court, as an Observer.

viii) Registrar (Judicial) of this Court shall also communicate copies of this order to the respondents through FAX today itself.

ix) This Court directs the Chief Secretary, Principal Secretary (Home), Government of Uttarakhand and Director General of Police to see that all the Members of the Legislative Assembly attend the Assembly free, safely and securely and no hindrance is caused by anyone therein.

36. To come up on 01.04.2016, at 02:00 P.M.

[Interim Stay Application No. 2754 of 2016 as well as Urgency Application No. 1706 of 2016 along with Intervention applications no. 2790 of 2016 & 2811 of 2016 stand

disposed of].

37. As prayed, let a copy of this order be supplied to learned counsel for the parties today itself on payment of usual charges.