

(1998) 02 AHC CK 0073
In the Allahabad High Court
Case No : C.M.W.P. No. 7151 of 1998

Narendra Kumar Singh Gaur

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 23-02-1998

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 3
Constitution of India, 1950 — Article 163, 164, 174, 356, 356(1)

Citation : (1998) 1 AWC 438 : (1998) 1 UPLBEC 536

Hon'ble Judges : D.K. Seth, J; B. Dikshit, J

Bench : Division Bench

Advocate : Ashok Mehta, S.P. Gupta and Yatindra Singh, for the Appellant; S.K. Rai and V.B. Singh, for the Respondent

Final Decision : Disposed Of

Judgement

B. Dikshit and D.K. Seth, JJ.—After hearing learned counsel for the petitioner and counsel for the State Mr. Ashok Mehta and Mr. S. K. Rai for the Union of India on 21.2.1998 we had retired and dictated the order, but before it could be pronounced, Mr. V. B. Singh, learned counsel appeared and submitted that he was representing Sri Jagdambika Pal and prayed that he may be heard before the order is pronounced. Accordingly, we had allowed him to intervene and heard him at length. The main thrust by Mr. V. B. Singh was that pronouncement of the order should be postponed till 11 a.m. of 22.2.1998 in order to enable him to produce the relevant records relating to the matter and no interim order should be passed. He was asked to furnish the materials on which he wanted to oppose the order. But he always continued to submit that he should be given an opportunity. Such opportunity can be effectively availed of by him only upon receipt of the record which he will be able to produce before the Court at 11 a.m. of 22.2.1998.

2. In the circumstances, each of us had agreed to adjourn the matter till 9 a.m. of 22.2.1998 with reference to the materials that might be produced by Mr.

Singh. That is how the matter has been placed before us on the basis of the order that we had passed in respect of adjourning the matter till 9 a.m. of 22.2.1998.

3. In view of the situation, with the permission of Hon"ble the Chief Justice. Court room was opened on our proposal to take up the hearing in open Court. The matter was taken up at 10 a.m. on 22.2.1998. Mr. V. B. Singh, who had submitted that he was representing Sri Jagdambika Pal, submitted that he was representing the Government of U. P, as a special counsel assisted by Mr. Ashok Mehta, chief standing counsel. Mr. S. P. Gupta, senior counsel assisted by Mr. Vineet Saran represented Sri Jagdambika Pal. We have heard Sri Yatindra Singh, counsel for the petitioner, Mr. S. P. Gupta, senior counsel and Sri V. B. Singh at length. The hearing continued till about 5.45 p.m. Mr. Yatindra Singh had made his brief submissions and Mr. V. B. Singh had produced the records and made his elaborate submissions. Mr. S. P. Gupta continued to argue for about five hours after Mr. V. B. Singh and Mr. Yatindra Singh had concluded their submissions. Mr. Gupta insisted that he may be allowed to continue his arguments so long he does not feel that he has been able to give his best. Since he could not conclude his submissions, the matter was adjourned and taken up today at 10 a.m. for continuing the hearing. Mr. Gupta had concluded his submissions, whereafter Mr. V. B. Singh had further submitted and produced some more documents. Mr. Yatindra Singh had also concluded his reply. Thus, hearing stood concluded and orders were reserved. We proposed to pronounce the order in open Court at 3 p.m. today. Accordingly, is was so pronounced at 3.30 p.m. today.

4. A preliminary objection was taken by Mr. S. P. Gupta that in view of Rule 3. Chapter VIII of the Allahabad High Court Rules, there having been a difference of opinion between two Members of the Bench, the matter has to be referred to Full Bench even in respect of inter-locutory order and had elaborated his submissions on the said point with reference to the relevant rules.

5. The fact remains that the difference of opinion cannot be said to have come into being when the order was not pronounced and at the behest of Mr. V. B. Singh representing Sri Jagdambika Pal, the matter was adjourned till morning 9 O'clock of 22.2.1998 in order to enable him to produce the records. Then again, one of us (Hon"ble B. Dikshit, J.) did not express any opinion as to whether the interim order should be granted or not and had expressed that one opportunity should be given to the respondents. After having got pronouncement of the order postponed on behalf of Sri Jagdambika Pal through Mr. V. B. Singh, it is not open for Mr. S. P. Gupta representing Sri Jagdambika Pal to take advantage of such situation which is his (Sri Jagdambika Pal"s) own creation. It was only on the submission of Mr. V. B. Singh that both of us had agreed to adjourn the matter till 9 a.m. for hearing before pronouncing the order though the same was dictated but in the absence of the counsel while we had retired for the purpose. Thus, on facts in the eyes of law, there was no difference of opinion since the order was not pronounced on 21.2.1998 and was adjourned to 9 a.m. of

22.2.1998.

6. Rule 3, Chapter VIII of Allahabad High Court Rules prescribes that if there is a division of opinion as to the decision given on any point, the same is to be decided by majority, if there is majority or otherwise if the division is equal then it should be heard on that point by one or more of the other Judges, as may be nominated by Hon"ble the Chief Justice and the point should be decided accordingly and the opinion of the majority would prevail. Therefore, this rule postulates that there should be division of opinion to the decision given on any point. In the present case there was no such division of opinion with regard to any point. On the other hand before the decision could be given at the behest of one of the respondents, the pronouncement was adjourned. Therefore, no division of opinion at all was formed or formulated on any points.

7. After hearing Sri V. B. Singh, learned senior counsel, both of us had agreed to adjourn the matter till 9.00 a.m. in order to look into the materials that might be produced by Sri V. B. Singh. Thus, we were unanimous on the question that the matter should be adjourned till 9.00 a.m. and that was the reason why the order was not pronounced except that the same was adjourned till 9.00 a.m. on 22nd February, 1998. Thus, the provision of Rule 3 of Chapter VIII of the Allahabad High Court Rules, in our considered view does not come into play, in the present facts and circumstances of the case.

8. Sri Yatinder Singh, learned counsel for the petitioner repeated his argument and sought to capitalize the question of mala fide on the ground that the Governor had attempted to prevent Sri Kalyan Singh from becoming Chief Minister and had recommended dissolution of the Assembly itself unsuccessfully, in October, 1997, which he cannot do at that point of time only out of vindictiveness he had found out at this moment to vindicate his long desired action.

9. We are not prepared to go into the mala fide of His Excellency the Governor (hereinafter referred to as the Governor) in respect of the present order with reference to what had happened in 1997 for the purposes of grant of interim relief, at this stage, in which it is necessary to us only to find out whether sufficient prima facie case has been made out or not.

10. Sri Singh then argued that the order of the Governor dismissing the Ministry on 21.2.1998 cannot be Justified in view of haste in which the entire transaction has been processed. There was no justifiable reason to pass such an order on the eve of Lok Sabha Election, scheduled on 22nd February, 1998, which was few hours ahead. He also contended that there cannot be any justified reason to pass such an order by the Governor in the given circumstances. That apart, he has strenuously argued that it was not open for the Governor to pass such an order without getting the confidence tested on the floor of the House, as has been observed in the case of S. R. Bommat v. Union of India and others. 1994 (3) SCO 1 and H.S. Jain and Others, etc. Vs. Union of India (UOI) and

Others, etc., He also contended that the power exercised by the Governor under Articles 163 and 164 of the Constitution is part material, almost the same, which he exercised for the purposes of recommendation under Article 356(1) to his Excellency, the President of India through a report. Therefore, the observation made in the said two judgments are fully attracted to the present case.

11. Sri V. B. Singh, learned counsel appearing for the State as Special counsel with Sri Ashok Mehta, chief standing counsel, upon production of the records, had strenuously argued that it was within the jurisdiction of the Governor to pass the aforesaid order on the basis of the materials as are disclosed on the records produced before the Court by him. He contended that this Court while reviewing the said order is not supposed to weigh the sufficiency of the material relied on by the Governor- The Court can only scrutinise as to whether there is any mala fide or there is absence of any material, if there is some material, at that event, the Court has no jurisdiction to interfere with the order. He next contended that the writ petition as framed on the basis of pleading and prayer is not maintainable. He has elaborated his argument on this score. He also contended that the order of dismissal of Sri Kalyan Singh has already been passed and that Sri Jagdambika Pal. has already been sworn in as Chief Minister of Uttar Pradesh and, therefore, the situation, basis appears, is *fait accompli* and the petitioner is not entitled to any kind of interim order at this stage. He also contended that despite disclosure of the materials, particularly, the order dated 21.2.1998 by which Sri Kalyan Singh was dismissed as Chief Minister and Sri Jagdambika Pal was called upon to form ministry, the same having not been challenged and the writ petition having not been amended, it was no more open for the petitioner to pray for the interim order it may be noted that the amendment has been allowed, as prayed, by us today.

12. Mr. S. P. Singh on the other hand submitted that the entire order has been couched in such a manner that this Court cannot pass any interim order. He also contended and pointed out that the observations made in the case of S. R. Bommai (*supra*) cannot be attracted in the present facts and circumstances of the case since those observations were neither *ratio decidendi* nor can be considered to be *stare decisis* inasmuch as the issues involved in the case of S. R. Bommai (*supra*) was altogether different from the issues involved in this case. According to him, the Apex Court in the said case was called upon to decide the report of the Governor in the context of Article 356(1) of the Constitution. The context of the said observation was with regard to the dissolution of the Assembly. Relying on several decisions, he had pointed out that a judgment has to be read in the context in which it was so observed having regard to the issues involved, it cannot be applied in a case which does not come within the scope and ambit of the question involved in the decision, in the present case, according to him, the Assembly has not been dissolved it is only a decision as to find out the person on whom the Assembly reposes confidence, in the order itself, the question has been left open to be decided on the floor on 24.2.1998 as has been fixed in the order though Sri Jagdambika Pal. According to him the floor test has

neither been overlooked nor been done away with. There again the said question has to be looked into from the point of view of dissolution of the Assembly and not from the point of view as to the question of finding out the person on whom the Assembly reposes confidence. According to him, the floor test is not the only manner in which the question in the present context is to be gone into. Relying on the order itself, he had pointed out that there were sufficient materials which the Governor had verified to come to a reasonable conclusion that Sri Kalyan Singh had lost confidence of the house and Sri Jagdambika Pal has staked his claim and therefore he was asked to prove his confidence at the floor of the House. He relied upon various decisions on this question.

13. Majority of the questions that were raised relates to the merit of the case. We are tempted to address ourselves on all these questions but in our opinion, it appears to be better not to address on all the questions raised by him so as not to predetermine the issues which are required to be determined at the time of final disposal of the matter. Mr. S. P. Gupta and Mr. V. B. Singh had declined the proposal suggested by Mr. Yatindra Singh for disposal of the writ petition at this stage. Both of them had prayed that they may be given opportunity to file counter-affidavit and prepare themselves better for arguing the case, since it involves very important question of law, it was pointed out by them that they have come prepared on the matter/question of grant of interim order. In fact, we had also adjourned the matter for deciding the question of grant of interim order after giving opportunity to the parties and accordingly we feel that we should confine ourselves to the question of grant of interim order and we proceed accordingly.

14. The preliminary question which falls for our consideration in the present context is as to whether there is any prima facie case made out for grant of interim order in the present situation. One of the points that was very seriously argued by Mr. S. P. Gupta which was supported by Shri V. B. Singh was that this Court cannot put the clock back since it is a *fait accompli* with regard to the dismissal of Shri Kalyan Singh and swearing in of Sri Jagdambika Pal as Chief Minister on the given facts that the floor test has been scheduled on 24.2.1998. Both of them had elaborated their submissions which we would be answering immediately hereafter.

15. It contended that the interim order of stay of the decision of dismissal of Shri Kalyan Singh would amount to grant of an order of status quo ante, namely, that a status quo prevailing before the writ petition was presented would be restored. The fact remains that the writ petition was affirmed on 21.2.1998 at about 7.30 p.m. and was presented before the senior Judge before 9.00 p.m. and it was assigned to this Bench. Mr. V. B. Singh had informed us that the order of the dismissal of the Ministry was passed by the Governor at 9.00 p.m. This fact has not been disputed by any of the parties. Therefore, the writ petition was presented before the order of dismissal of Shri Kalyan Singh Ministry. Therefore, even if status quo as existed at the time when the writ petition was presented

would be no stretch of imagination be status quo ante to a stage when the writ petition was presented. Then again from the order it self, is appears that Shri Kalyan Singh was informed of the situation at 2.45 p.m. and he called on the Governor at 5.00 p.m. Therefore, the writ petition was presented at the earliest which could have been presented. Therefore, the decisions cited by Shri S. R. Gupta on the question that this Court cannot grant status quo ante to the presentation of the writ petition except on the principles laid down in the said decisions, which contentions are thoroughly in the present situation, does not require any discussion at this stage since it is not status quo ante as such.

16. Then again he also contends that status quo should be restored in rare cases whereas status quo ante in rarer cases. This question, by now, it settled. The principle on which such orders can be passed are no more rest Integra.

17. Now, we are to look into the prima facie case both from the facts as well as from the question of law having regard to the records produced before us. The election was scheduled to be held on 22.2.1998. From the order it appears that the exercise started on 21.2.1998 at 1.30 p.m. and Shri Kalyan Singh was informed about the situation at 2.45 p.m. and Shri Kalyan Singh had met the Governor at 5.00 p.m. and had denied the situation and demanded to prove confidence on the floor through a written request to the Governor. He had also sent a similar letter to His Excellency the President.

18. Thereafter, he had dismissed Shri Kalyan Singh Ministry and had sworn in Shri Jagdambika Pal at 10.30 p.m. Thus, we see that it is in extreme haste the entire process has been gone into. That apart from the order itself, is appears that some of the leaders of different groups of political parties either has met him and intimated him that they had withdrawn support from the Government headed by Shri Kalyan Singh or by letters handed over by some of the leaders, The position would be clear from his reasons recorded in the impugned order itself which is quoted herein :

" 12 members of the Lok Tantrik Congress comprising the following came to see me around 13.30 hrs, this afternoon.

1. Shri Jagdambika Pal
2. . Shri Naresh Aggarwal
3. Shri Sarswati Pratap Singh
- 4 Shri Mandleshwar Singh
- 5 Shri Shyam Sunder Sharma
6. Shri Sangram Singh
7. Shri Ganga Bux Singh
8. Shri Vinay Kumar Pandey

9 Shri Vikramajeet Maurya

10. Shri Puran Singh Bundela

11. Shri Bihari Lal Arya

12. Shri Rakesh Tyagi

They were accompanied by Shri Raja Ram Pandey of the Breakaway Janta Dal. Ms. Mayawati, President of the BSP, Shri Kokeb Hameed, leader of the Legislative Party of the BKKP and Shri Ahmed Hassan of the Samajwadi Party, Shri Pramod Tewari, Leader of the Congress Legislative Party joined them. Shri Jagdambika Pal intimated that the Lok Tantrik Congress had withdrawn support from the Kalyan Singh Government and staked the claim to form a Government under his leadership it support, letters were handed over to me from Ms. Mayawati on behalf of the BSP. Shri Pramod Tewari on behalf of the Congress (I) Shri Raja Ram Pandey on behalf of the Breakaway Janta Dal and Shri Ram Singh on behalf of the Janta Dal. Shri Kokeb Hameed personally informed me that all his nine members were supportive of Shri Jagdambika Pal. I received a telephone call from Shri Harkishan Singh Surjeet, General Secretary of the CPM that all CPM MLAs will support Shri Jagdambika Pal. I also received a telephone call from Shri Alok Bharati of the CPI that their one member will support Shri Jagdambika Pal. Based on the above, the claim of Shri Jagdambika Pal comprised the following :

Lok Tantrtk Congress

22

BSP

66-12

54

(From which 12 were to be deducted as they have joined the Cabinet of Shri Kalyan Singh and their case is under dispute before the Speaker for determining as to whether they come within the provisions of the Anti-Defection Law or not)

Congress Party

15

BKKP

9

SamajwadiParty

110

CPI

1

CPM

4

Janta Dai Breakaway

3

Total

221

With the withdrawal of the support by the Lok Tantrik Congress and the Breakaway Janta Dal making a total of 25 members, Shri Kalyan Singh Government had fallen into a clear minority as they only now have a strength of 197, when for a majority of 213 is required in the current House of 424. This is taking it account 12 members of the Breakaway BSP who may be disqualified by the Speaker as even after 4 months they have not been able to prove that they would have an additional support of 11 MLAs of the BSP so as to form 1/3rd of the BSP strength of 66.

I informed Shri Kalyan Singh of the situation at 2.45 p.m. He along with some of his Cabinet colleagues and Shri Raj Nath Singh came to me at 5 p.m. They brought with them Shri Vivek Singh of the Lok Tantrik Congress who had earlier sent a fax message to me that he was still with Shri Kalyan Singh Government. Just before they were leaving I was told that Shri Virender Singh of the Lok Tantrik Congress would also be supporting the Kalyan Singh Government. They, therefore, maintained that there was a clear 1/3rd of the Lok Tantrik Congress which was not supporting Jagdambika Pal as only 12 of his MLAs out of 22 had turned up. Chaudhry Narinder Singh of the Jana Morcha BSP maintained that in addition to their 12, they had another 11. To my enquiry as to what their names were and why they have still not been produced their names since the last four months, he gave a vague reply that they would be produced. This was unacceptable. The matter is still before the Speaker of the U. P. Vidhan Sabha.

It informed Shri Kalyan Singh that they had clearly lost the majority it was not for me to do the count of heads. I have to go by what the leaders of the recognised political parties maintained. The question as whether a split has taken place or not was for the Speaker to decide. As of now there is no split which has been brought to my attention, barring the 12 members of the BSP whose case is disputed. They insisted that there were what happened in October, 1997 when Ms. Mayawati withdrew support, and with 221 now supporting Shri Jagdambika Pal, there was however possibility of efforts being made to break that number by offering Ministerships etc. On the other hand Shri Jagdambika Pal had been supported by letters by leaders it was from entire groups and not from any breakaway factions. Under the Anti-Defection Law is now an accepted Parliamentary practice that a letter from the leader of the party is accepted by the Head of State signifying support or withdrawal. Only such splinter groups can be taken cognizance of whose status has been accepted by the Speaker. Further,

in the case of Shri Jagdambika Pal, the question would not be of filling a gap, but ensuring that the support he claimed would continue and would be reflected in the Assembly.

A question arose in my mind regarding the Lok Tantrik Congress. Only 12 of the Lok Tantrik Congress MLAs had come to Raj Bhavan. They were later joined by two others. S/Shri Vivek Singh and Virender Singh and then by Shri Hari Shanker Tewari. This made a total of 15 out of 22. I had also received a call from Shri Satish Sharma that he was on his way from Ghaziabad. That will make 16. At worst only 6 or 7 will be left. Even seven do not constitute 1/3rd of the strength of 22 of the Lok Tantrik Congress. They would, therefore, come within the purview of the Anti-Defection Law. In any event even a reduction of seven would not alter the fact that the Kalyan Singh Government was now in a minority.

Under this situation I have now to take a very difficult decision. Do I permit a Government which is clearly in a minority to test its strength on the floor of the House and thereby provide opportunity for horse-trading as additional strength could only be secured through defections or splits from the other parties, or, swear in Shri Jagdambika Pal who had the support of all the opposition parties barring the Samta Party and a total strength of 221 Members, in my view, this was the safer course as here the question of filling a gap will not arise. There will be no need for horse-trading, it would only be a question of keeping the flock together. This would be the most democratic manner and also avoid to the maximum extent possible the question of horse-trading.

I looked into the provisions of the Bommai's case. This case relates to the dismissal of a Government under Article 356 of the Constitution. Here it was not a case of dismissing a Government and imposing President's rule. The essence of Bommai judgment is that the establishment of a majority or otherwise must be determined on the floor of the House. The principle of the floor test should be invoked. I wished to adhere to that particularly as Shri Kalyan Singh had also made a similar request.

While looking at precedents in U. P., I also noted that in June, 1995, Shri Mulayam Singh Yadav who was heading a coalition lost his majority when the BSP withdrew its support. He demanded a floor test. The then Governor did not accept that contention as Ms. Mayawati had been promised outside support by the BJP which would have given her a majority. The then Governor overruled the request of Shri Mulayam Singh Yadav. He was dismissed. Ms. Mayawati was sworn in. After 14 days the Assembly was convened to first decide upon the change of Speaker and then seeking a vote of confidence.

Shri Jagdambika Pal and all supporting parties have also demanded that the Speaker be changed. For this a minimum notice of 14 days is required.

Taking all factors into account, it is my view that a more stable Government is possible, with lesser chances of horse-trading by my inviting Shri Jagdambika Pal to form a Government and prove his strength on the floor of the House in the

shortest time possible. The question of change of the Speaker could be determined later. As 22nd February is voting day. I have decided to fix that a vote of confidence be determined by the Assembly two days after that, namely, 24th February at 3 p.m. This would be giving by and large the same time to Shri Jagdambika Pal as was given to Shri Kalyan Singh in October, 1997.

In the light of the above facts and after deep thought and consultation with experts and looking into past precedents, I am constrained to dismiss the Kalyan Singh Government as he has not agreed to tender his resignation even after coming into a minority status and to invite Shri Jagdambika Pal.

15 Lok Tantrik Congress MLAs out of a strength of 22, the leader of the BKKP Shri Kokeb Hameed and two of the Lok Tantrik Breakaway are to be sworn in at 10 p.m. tonight.

Shri Jagdambika Pal informed me that as others were coming from out of station, they will be sworn in subsequently.

Sd/- (Ramesh Bhandari) GOVERNOR OF UTTAR PRADESH 21.2.1998"

19. From the above reasons, it appears that the Governor proceeded on the information as referred in the above order. From the entire order it appears that he had proceeded on the basis of such information, intimation, letters or telephone calls. Nowhere he has mentioned that he had verified the question himself for coming to any conclusion. The assessment was based on the intimation given to him through some of the leaders of the parties.

20. In the order itself, it has been pointed out that Sri Kalyan Singh had demanded to get his strength decided on the floor but he having come to an assessment that Sri Kalyan Singh had lost the confidence of the House and Sri Jagdambika Pal having staked his claim in view of his strength, he had dismissed Sri Kalyan Singh and had called upon Sri Jagdambika Pal to head the Government as Chief Minister.

21. It appears that he had sought to find out himself about the loss of confidence on the basis of information as mentioned in the said order from the leaders of some groups or parties and had calculated himself to come to the conclusion that Sri Jagdambika had mustered support of the majority on loss of confidence upon Sri Kalyan Singh. He had also mentioned that "it was not for me to do the count of heads. I have to go by what the leaders of the political parties maintained." He has also had taken note of the split. The order itself shows that even the Lok Tantrik Congress had been splitting inasmuch as he has mentioned that out of twenty two members fifteen had split. He has also relied on the averment made by Sri Vivek Singh and Sri Virender Singh. He records that "I was told Sri Hari Shanker Tewari was on his way from Gorakhpur to support Jagdambika Pal, in addition. Sri Satish Sharma and may be a couple of others will be joining the latter." Thus, the calculation he had made appears to be based on surmises. He has also recorded that he had weighed the conflicting claims. According to him,

no opportunity to Sri Kalyan Singh to test his strength on the floor should be given. The reason for such a decision was sought to be supported on the ground that there is chance of horse-trading on the basis of his experience what had happened in October, 1997. He also records that he received telephone calls from some persons who had informed that they were on way to Lucknow from different places. About the split, he had mentioned that it is necessary to keep the flock together avoiding horse-trading for the purpose of maintaining democracy. He had also mentioned that he wished to adhere to the principles of floor test, "the essence of Bommal Judgment". He had referred to the precedents that have taken place in June, 1995 and then proceeded to dismiss Sri Kalyan Singh on the ground that such a step would foreclose the chance of horse-trading if Sri Jagdambika Pal is invited to form the Government at 10.00 p.m. of the same day and prove confidence in floor test on 24th February at 3.00 p.m. He, therefore, did not allow Sri Kalyan Singh an opportunity to test confidence on the floor and recorded that since he did not agree to tender his resignation even after coming to minority status he was dismissed and Sri Jagdambika Pal was invited to head the Government.

22. Prima facie it appears that the decision is based on materials which in our view cannot form materials for the Governor to form such an opinion in such a serious and touchy issue in such hot haste on the eve of Lok Sabha election scheduled to be held on 22nd February, 1998, a few hours later, it cannot be ruled out that power has been exercised for purpose not warranted by law.

23. In the case of S. R. Bommal (supra), Hon'ble Mr. Justice P. B. Sawant and Hon'ble Mr. Justice Kuldeep Singh in para 118 at page 127 had observed that it was not for the Governor to take upon himself the task of deciding the question outside the floor even if there is scope of horse-trading, it was further held that Chief Minister was never asked to produce the legislators before him supporting the Chief Minister and that the Governor had thrown to the wind all canons of propriety with undue haste which itself smacked of malafides. 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.

24. In para 119, it has been further observed that "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, is is not open to by-pass is 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 malafides it is possible that on some rare occasions, the floor test may be impossible, although his is difficult to envisage such situation. Even assuming that there arises one is should be obligatory on the Governor in such circumstances, to state in writing, the reasons for not holding the floor test."

25. Similarly in paras 391, 392, 393, 394, 395 and 396, the Hon"ble Mr. Justice B. P. Jeevan Reddy and Hon"ble Mr. Justice S. C. Agrawal had laid down similar principles as has been enunciated in paras 118 and 119 referred here in before, it the said paragraphs is has been observed by their Lordships that "the Governor is a very high constitutional functionary. He is supposed to act fairly and honestly consistent with his oath.....The Constitution does not create an obligation that the political party forming the ministry should necessarily have a majority it the Legislature. Minority Governments are not unknown. What is necessary it that the Government should enjoy the confidence of the House.....Secondly, and more importantly whether the Council of Ministers has lost the confidence of the House is not a matter to be determined by the Governor or for that matter anywhere else except the floor of the House. The principle of democracy underlying in our Constitution necessarily means that any such question should be decided on the floor of the House. The House is the place where the democracy it in action,it is not for the Governor to determine the said question on his own or on his own verification. This is not a matter within his subjective satisfaction it is an objective fact capable of being established on the floor of the House."

In para 392is has been observed that "exceptional and rare situations may arise where because of all pervading atmosphere of violence or other extraordinary reasons, is may not be possible for the members of the Assembly to express their opinion freely. But no such situation had arisen here. No one suggested that any such violent atmosphere was obtaining at the relevant time."

In para 393, their Lordships further observed :

"Where the Governor is satisfied by whatever process or means, that the ministry no longer enjoys majority support, he should ask the Chief Minister to face the Assembly and prove his majority within the shortest possible time. If the Chief Minister shirks this primary responsibility and fails to comply, the Governor would be it duty bound to initiate steps to form an alternative ministry. A Chief Minister's refusal to test his strength on the floor of the Assembly can well be Interpreted as prima facie proof of his no longer enjoying the confidence of the Legislature. If then, an alternative ministry can be formed, which, in the Governor's view, is able to command a majority in the Assembly, he must dismiss the ministry in power and install the alternative ministry in office."

In para 395,is has been observed :

The High Court, in our opinion, erred in holding that the floor test is not obligatory. If only one keeps in mind the democratic principle underlying in the Constitution and the fact that it is the Legislative Assembly that represents the will of the people and not the Governor- the position would be clear beyond any doubt in this case, it may be remembered that the Council of Ministers not only decided on April 20, 1989 to convene the Assembly on 27th of that very month, i.e., within 7 days, but also offered to propound the Assembly if the Governor so desired it pains us to note that the Governor did not choose to act upon the said offer. Indeed, it was his duty to summon the Assembly and call upon the Chief Minister to establish that he enjoyed the confidence of the House. Not only did he not do so but when the Council of Ministers offered to do the same, he demurred and chose instead to submit the report to the President. In the circumstances, it cannot be said that the Governor's report contained, or was based upon, relevant material. There could be no question of the Governor making an assessment of his own. The loss of confidence of the House was an objective fact, which could have been demonstrated one way or the other, on the floor of the House in our opinion, wherever a doubt arises whether the Council of Ministers has lost the confidence of the House, the only way of testing it is on the floor of the House except in an extraordinary situation where because of all pervasive violence, the Governor comes to the conclusion and records the same in his report that for the reasons mentioned by him, a free vote is not possible in the House."

In para 396, it has been observed :

"We make it clear that what we have said above is confined to a situation where the incumbent Chief Minister is alleged to have lost the majority support or the confidence of the House.".....

26. Justice Pandian in his judgment in S. R. Bommai's case had expressed opinion to the extent that "I found myself in agreement with the opinion of Justice Sawant. J., on his conclusion T. "2", 4 to "8" with which Hon"ble B. P. Jeevan Reddy, J., had concurred in his judgment, speaking for himself and on behalf of Hon"ble S. C. Agarwal, J. But so far as the reasoning and other conclusions are concerned I agree fully with the judgment of Hon"ble B. P. Jeevan Reddy, J." it appears that Hon"ble B. P. Jeevan Reddy, J., had concurred to the view expressed in paras 391 to 396 and had repeated the same view as has been expressed by Hon"ble P. B. Sawant. J., for himself and on behalf of Hon"ble Kuldeep Singh, J., as observed by their Lordship in paras 118 and 119. Thus, Hon"ble Pandian, J., had concurred with the reasoning given in paras 118, 119 and 391 to 396. Thus, five of the Hon"ble Judges of nine Hon"ble Judges Bench decision, had expressed the view as enunciated in paras 118, 119, 391 to 396. Out of remaining four Hon"ble Judges three Hon"ble Judges "did not express any opinion with regard to the same. Hon"ble K. Ramaswamy. J., however, had given another reasoning, which appears to us to be a minority view which has not been concurred by any of the Hon"ble Judges, it para 263 Hon"ble Ramaswamy, J, has

observed that "the Floor test may be the first consideration which the Governor may have to view but whether it should be resorted to or not, is depends upon the situation. The possibility of horse-trading is also to be kept in view, having regard to the prevailing political situation it is not possible to formulate set rules for exercise of powers by the Governor to conduct the floor test. The Governor should be left free to deal with the situation according to his best judgment, keeping in view of the considerations and the conventions of the Parliamentary system of the Government. Thus the Sarkaria Commission headed by two distinguished Hon"ble Judges of this land, recommended floor test, it would only mean that this it a consideration which must cross the mind of the Governor, it would suffice to say that the Governor should be alive of the situation but he will be the sole Judge on the question whether or not the conditions are conducive to resort floor test"

27. We have seen that the consideration of horse-trading has also been dealt with in para 118 and has not been considered to be the relevant consideration and that has also not been approved to be consideration in paras 391-396.

28. On a plain reading is appears that is it only floor test that is to be resorted to normally except in the given case of exception, as mentioned in paras 392 and 395 that on account of all pervasive violence that might make impossible to resort to floor test, it para 119, is has been observed that it is possible that on some rare occasion floor test may not be possible although it is difficult to envisage such a situation. Even assuming that there arises once, it should be obligatory on the Governor in such circumstances to state in writing the reasons for not holding floor test. Thus, it appears that no exhaustive ground has been mentioned in the said paragraph though, however, the question of horse-trading has altogether been ignored when is observed that "the Governor got information that there was horse-trading going on. Even assuming that it was so, the correct and proper course for him to adopt was to await test on the floor." From the above view, it appears that even when horse-trading is going on, yet that circumstances cannot be taken into consideration for by-passing the floor test and this view being the majority view, according to us, unless there are exceptional circumstances, which makes the floor test impossible, it was not open for the Governor to evade floor test.

29. In the present case, records were summoned and were produced. We have gone through the entire record. We have not found any other reason to evade floor test except the horse-trading. Learned counsel for the parties have not been able to point out any exceptional circumstances as observed in consonance with the majority view in S. R. Bommai's case, (supra). No case was made out that floor test was impossible for any exceptional circumstances. The very fact that the floor test by Jagdambika Pal having been fixed on 24th February, 1998, presupposes the floor test is possible and there was no exceptional circumstance rendering is impossible. Thus, if the floor test was possible in absence of any exceptional circumstances, it was not open to the Governor to evade floor test,

though demanded by Kalyan Singh, which fact has not been denied and finds mention in the order itself, it was Incumbent on the Governor to summon the house for floor test.

30. It is not necessary to repeat the reasoning given in various paras of S. R. Bommai's case (supra) as quoted above, once again. For the reasoning given therein, we are of the considered opinion, prima facie, and even strong one, that there has been infraction of the constitutional obligation cast upon the Governor on this score. Therefore, in our view, the order dated 21st February, 1998 passed by the Governor, dismissing Kalyan Singh, and inviting Jagdambika Pal to head the Government by-passing the floor test is wholly illegal exercise of the powers conferred on him. directly hit by the principles of democracy, underlying the Constitution, contrary to the majority view expressed in S. R. Bommai's case.

31. It has been sought to be argued by Sri Gupta, learned senior counsel, that the decision in the case of S. R. Bommai cannot be attracted to the present case on the ground that the decision and observation made therein were confined to the issues involved in the said case, it was exercise of power under Article 356(1) which was involved therein and not Articles 163, 164 and 174 with which we are concerned. The Court did not consciously consider the scope of those Articles. The observation and the view expressed were confined to the context of power exercised under Article 356 of the Constitution. Therefore, those observations cannot be borrowed for the purposes of applying the same in the present case. He next relied on number of decisions in support of his contention in the cases of Amar Nath Om Prakash and Others Vs. State of Punjab and Others, , paras 10 and 11 and in J.K. Industries Ltd. and Others Vs. Chief Inspector of Factories and Boilers and Others,

32. Relying on the aforesaid decision, he contended that the judgment of Hon'ble Supreme Court cannot be read as a Statute, it is to be interpreted on the basis of fact involved and the issues concerned with reference to the context, in our view these are well-established propositions which need no elaboration. Article 356(1) of the Constitution is the power given to the President. Such power is exercised on the basis of report by the Governor, that "situation has arisen in which the State Government cannot carry on in accordance with the provisions of the Constitution." Therefore, while reporting under Article 356, the Governor does not exercise his power under Article 356 but merely reports to the President for exercise of such power by the President, in order to ascertain that the Government of State cannot be carried on in accordance with the provisions of the Constitution and he has to function within the ambit and scope of the power conferred on him. Article 356 does not confer any power on the Governor but requires him to send report, which report he forwards about the constitutionality of the Government on the basis of power conferred on him which could be found under Articles 163 and 164 of the Constitution.

33. In the case of S. R. Bommai, it has been specifically pointed out and has also

been dealt with a situation where if one Chief Minister loses confidence of the House, according to the Governor, in that event he has to give opportunity to Chief Minister to prove his majority through floor test and if he shirks his responsibility, then it will be presumed that he has lost his majority and in case he fails to resign despite being called upon by the Governor, then only he can ask someone else to head the Government. On the basis of such specific view expressed, it is not possible for us to agree with the contention of Mr. S. P. Gupta that the view taken in S. R. Bommai's case cannot be applied in the present case. Even when exercising of power under Article 356 for the purpose of ascertaining the situation to be recorded in the report there under he has to find out a situation in exercise of power that conferred on him under Articles 163 and 164. The Governor being constitutional authority, he cannot claim any power dehors the Constitution, it was in this context under which Governor can report under Article 356, the Judgment in S. R. Bommai's case has proceeded. In such process it was specifically pointed out that the Governor has to explore alternative possibility even when the Chief Minister lost confidence only after floor test if offered by such Chief Minister.

34. In the present case Sri Kalyan Singh had offered floor test. The reason for denying the same on the supposed possibility of horse-trading cannot be a ground because of the majority view taken in S. R. Bommai's case.

35. On the question of grant of interim order, at this stage, when subsequent events have taken place, should not be granted, was one of the contentions raised by Mr. Gupta. The fact remains that it was at the behest of Sri V. B. Singh who prayed for grant of time, the matter was adjourned till 9 a.m. of 22nd February, 1998. The hearing continued throughout 22nd February till 6 p.m. and continued till today. The majority of the time during the course of argument was consumed by Mr. V. B. Singh and Mr. S. P. Gupta. One of the grounds advanced by Mr. Gupta was that on account of paucity of time he was unable to prepare himself for which he insisted on 22.2.98 that the matter should continue. The respondent cannot reap the benefit of a situation which was brought about by his own action.

36. On the other hand, the petitioner had come at the earliest and there was no laches or negligence on his part and the petition was presented before 9 p.m. namely before the order dated 21.2.1998 was passed. A situation which is also necessary to be taken into consideration. The order so gravely violates the provisions of the Constitution, as has been interpreted through the majority view in S. R. Bommai's case, in the facts and circumstances of the case as it appears prima facie and that too very strongly, we do not think it is a fit case in which the Court should shirk its responsibility in upholding law declared by Apex Court and dispense justice. Therefore, we are unable to persuade ourselves to agree with Mr. Gupta on this score.

37. Mr. Gupta has also argued on the question of locus standi of the petitioner. He contended that as the petitioner was not the Chief Minister, he cannot

maintain this writ petition, He also contended that the relief from this Court by writ petition can be asked for only by the then Chief Minister and not by the petitioner. According to him, this writ petition cannot be taken to be a public interest litigation on the principle that has been enunciated in the case of S.P. Gupta Vs. President of India and Others, . The principal object of this writ petition being to obtain political mileage and thereby achieve personal gain, this writ petition cannot come within the purview of Public Interest Litigation wherein it was held that it is an abuse of Public Interest Litigation if a writ petition is moved out of political motivation or under other oblique motive.

38. In the present case, it is argued that no public Injury has been sought to be remedied, it is only personal Injury of an individual that has been sought to be achieved. The petitioner is a politician, therefore, he cannot be allowed to abuse Public Interest Litigation for political objective.

39. We are not Impressed with such submissions. Admittedly, the petitioner is a Cabinet Minister namely. Minister of Higher Education and a sitting Member of Legislative Assembly from Allahabad and is a member of the Council of Ministers, therefore, he has locus standi to challenge the dismissal of the Council of Ministers headed by the Chief Minister. This fact that he was Minister has not been disputed, it cannot be denied that one of the members of the Council of Ministers has every right to challenge the order dismissing the Chief Minister by reason whereof the Council of Ministers are also dismissed. The matter concerned in the present case is wholly political and has been enacted within a political arena, it is not concept of abuse through politician for political objectives that can be Imported in the present case inasmuch as it was not an oblique political objective in respect of something other than politics. When the subject-matter is set fit within political purview and in the political arena, these objections cannot at all be sustained for the purpose of denying locus standi to the petitioner.

40. Mr. Gupta has also supported the order on the ground that the floor test is not far away which was due to be held on 24.2.1998. However, in Court today, it was submitted by him that the date has been shifted to 27.2.98. Mr. V. B. Singh has also submitted the same by producing relevant records by which the date has been changed. It was contended by Mr. Gupta that the floor test is in the offing and, therefore, Sri Kalyan Singh cannot have any grievance but the fact remains as we find, that it was the floor test meant for Sri Jagdambika Pal. If in case, Sri Jagdambika Pal fails to prove confidence in the floor test, then the chance of floor test of Sri Kalyan Singh is lost altogether. Therefore, it is skipping of one step which the Governor ought to have followed as demanded by Sri Kalyan Singh. The fixing of floor test after dismissing Sri Kalyan Singh does not satisfy the test of exercising the power by the Governor according to the majority view of S. R. Bommat's case, in our opinion, this is an Important consideration for grant of Interim order as we will be considering at the end of this order.

41. Before parting with the case, we may refer to an argument raised by Mr. S. P.

Gupta on the question of attracting the view of S. R. Bommai's case to the facts of present case, it was that the views cannot be deciphered on the reading of selective paragraphs and that there was no unanimous final view or final order. But, Mr. Gupta has not been able to refer to any such paragraph wherefrom we can deviate ourselves from the view expressed, it paras 118, 119, 391-396". The view may not be unanimous but as we have already found that the same is majority view.

42. Before parting at the cost of repetition, we would also like to mention that Shri S. P. Gupta tried to argue that there is no unanimous opinion in respect of what has been held in the Bommai's case, it not necessary to have the unanimous opinion. Once the majority comes to a particular-proposition of law laid down by the Apex Court, then that is the law of the land and no one can wriggle out from it by saying that refers to separate Judgment. As a view can be culled out from most of the Judges from judgments of the Supreme Court in a particular case, then it is a majority judgment and is to be followed.

43. An argument was also raised on the Principle of law that there should be a bona fide prima facie case, of extraordinary nature and balance of convenience maintaining status quo by continuing Jagdambika Pal as Chief Minister of U. P. As the dismissal of Ministry of Kalyan Singh is self is contrary to what has been stated by the Supreme Court, no question of considering balance of convenience, in a matter, where the law of the Apex Court stands violated, arise. As stated earlier. If the interim order is not passed in this case, then the petitioner will be deprived of an opportunity whose continuance is dependent on the continuance of the Ministry, it will never have an opportunity even if the vote of confidence in respect of Jagdambika Pal, as stated earlier, fails. So far as the question of balance of convenience is concerned, it will not be attracted merely because the petition has not been filed by Mr. Kalyan Singh himself, who was the Chief Minister but by the Minister of his Council.

44. For all these reasons, we find that there is sufficient prima facie case made out for the grant of interim order which we are proposing hereafter and we also find that the balance of convenience, having regard to the law laid down by the Supreme Court, is in favour of grant of interim order having regard to the fact that the writ petition was presented before the orders were going to be passed, namely, immediately within three hours after Shri Kalyan Singh had demanded floor test, the writ petition was presented but before the order of dismissal was passed. We have also taken into account the irreparable injury that might occasion to the principle of democracy underlying in the Constitution which is supreme and has to be upheld and restored in view of the law declared by the Apex Court in S. R. Bommai's case.

45. In that view of the matter we have already passed the following order, reasons of which we have given above :

"For the reasons we have to assign today, the decision dated 21.2.1998

dismissing the Council of Ministers headed by Sri Kalyan Singh, shall remain stayed and status quo as existing immediately preceding the said decision shall continue during the pendency of the writ petition. However, it will be open to the Governor to summon the House if he so thinks fit to have the vote of confidence tested in case, the vote of confidence is taken and goes against Sri Kalyan Singh, then the Governor may take appropriate steps."