

10597/2014

F.No.20-23/2014-Desk-CU-VI
Government of India
Ministry of Human Resource Development
Department of Higher Education
Desk CU-VI

532-C, Shastri Bhawan,
New Delhi-110115

Dated: 24th February, 2014


OFFICE MEMORANDUM

Subject: Immunity enjoyed by the President of India under Article 361 of the Constitution and even as a Visitor of the Central Universities.


It has come to the notice of this Ministry that some of employees of the University both in the teaching and non-teaching faculties have been filing WP in the High Courts or other Courts imploding the Visitor (President of India) as one of the respondents.

2. In this connection it is pointed out that the Allahabad High Court, in a Civil Miscellaneous Contempt petition No.221 of 2000 delivered a judgment that the immunity enjoyed by a President of India under Article 361 (1) of the Constitution remains available to the President even in respect of functions and duties discharged as the Visitor of the University. It was further held that **"no court can compel President to exercise any power or to perform any duty nor is he amenable to the writ or direction issued by any court"**. A copy of the judgment is enclosed.

3. Registrars of the Central Universities and other officials dealing with court cases must ensure that this is brought to the notice of the Registrars of the Hon'ble High Courts and also apprise their Lawyers that whenever the Visitor is imploded in any court case, the order of the Allahabad High Court must be quoted invariably about the immunity enjoyed by the President of India as Visitor. Necessary action may be taken accordingly.


(Pramod Kumar Saha)
Deputy Secretary to the Government of India
Telefax No.: 23073639

Enc.: Copy of Judgement dated 3.8.2000 by the Hon'ble Bench of the Allahabad High Court.

To
The Registrars of
All Central Universities (as per list attached) 

J. A. F. K. 2
(166)
COURT NO. 40

Civil Misc. Contempt Petition No. 271 of 2000
Dr. Shyamji Shukla Vs. Sri K.R. Narayanan, Visitor,
Banaras Hindu University, Varanasi.

Hon'ble S. Rafat Alam, J.

This is an application under Section 12 of the Contempt of Courts Act for initiating contempt proceeding and punishing the opposite party for the alleged willful and deliberate defiance of this Court's order dated 17.2.1998 passed in Writ Petition No. 20883 of 1997 and the order dated 24.7.1998 passed in the review application no. 20094 of 1998.

I have perused ~~the~~ the aforesaid orders of this Court contained in Annexures 1 & 2 to the contempt petition. It appears that the petitioner had filed writ petition no. 20883 of 1997 for quashing the advertisement and selection as well as appointment of Sri Ashok Sonkar who was arrayed as respondent no. 4 to the writ petition, to the post of Lecturer in Tridesh Vigyan, Department of Basic Principles Institute of Medical Sciences, Banaras Hindu University, Varanasi. The Division Bench of this Court, after hearing the learned counsel for the parties, declined to entertain the writ petition in view of the alternative remedy available under Section 5 (7) of the Banaras Hindu University Act. However, while dismissing the writ the Division Bench has observed under:

"However, it is provided that in case the petitioner will file representation before the learned Visitor, that would be entertained and decided on merit."

Thereafter the petitioner filed the review petition no. 20094 of 1998 which was partly allowed by providing that the learned Visitor should consider the representation of the petitioner, dated 14.5.1997

In the High Court of Judicature at Allahabad

Civil Side

Appellate Jurisdiction

Dated: Allahabad 3.8.2000

Present

The Hon'ble S. Hafiz Ahmad... Judge

70LS

Civil Misc. Contempt Petition No. 221 of 2000

Contempt Appeal has been preferred against the Judgment and order dated 17.2.1998 passed in Writ Petition No. 20803 of 1997 and the order dated 24.7.1998 passed in the review application no. 20094 of 1998.

Dr. Shyam Ji Shukla son of late
Rajdeo Shukla, Resident of B-31/406-
3A, Behind Sankat Mochan, Bhogabear,
City and District Varanasi... Applicant

Versus

Sri K.R. Narayanan, the Visitor,
Banaras Hindu University, Varanasi,
the President House, New Delhi... Opposite party

Counsel for the Applicant: Shri Sheo Shankar Tripathi
Shri Aya Prasad Tewari

Counsel for the Respondent:
Opposite party.

By the Court



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period of ten weeks from the date of production of a certified copy of the order

It has been alleged in the contempt petition that despite service of the order of this Court upon the Hon'ble Visitor, the representation of the petitioner has not been decided.

It is apparent from the array of parties to the writ petition that the Hon'ble Visitor was not arrayed as respondent, and rightly so, because of constitutional bar as provided under Article 361 (1) of the Constitution of India. Clause 1 of Article 361 of the Constitution of India provides that the President shall not be answerable to any Court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties. Therefore, no Court can compel the President to exercise any power or to perform any duty, nor he is amenable to the writ or direction issued by any Court. Article 361 (1) of the Constitution gives complete immunity to the President and Governors of States from any proceeding of the Court in the exercise and performance of their powers and duties of his office including any duty or function which are incidental to the exercise of his power and performance of his duties. The protection given under this provision not only extends to his official acts and omissions but also to those acts and omissions which are incidental to the exercise of powers and performance of his duties. Therefore, the orders of this Court dated 17.2.1998 and 24.7.1998 were not binding on him. No doubt, the action or the order of the President can be scrutinized by the Courts in order to give relief to the individuals against the Government and, ~~therefore~~ the personal immunity given to the President under the Constitution will not stand as a bar in instituting any suit or writ petition against the Government. But in such suit or proceeding the President is not a necessary party and no writ or direction can be issued to the President.

Section 5 of the Banaras Hindu University Act provides that the President of India shall be Visitor of the University. The President has been made Visitor of the University by virtue of his office and not in his personal capacity and thus, in my view, the personal immunity to the President for official acts provided under Clause 1 of Article 361 of the Constitution is available to him in respect of his functions and duties as Visitor of the University, because he has been made Visitor by virtue of his office.

In this view of the matter, the contempt petition fails and it is hereby dismissed. The notice issued to the opposite party is hereby discharged.

Dated: 3.8.2000
SA

S. Rafiq Alam - 3

V. K. 19.8.2000

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	The Registrar Aligarh Muslim University, Aligarh – 202 002.		
	The Registrar Banaras Hindu University, Varanasi – 221 005		
	The Registrar Hyderabad University, Hyderabad – 500 134.		
	The Registrar North-Eastern Hill University, Shillong – 793 022.		
	The Registrar INDIRA GANDHI NATIONAL OPEN UNIVERSITY, MAIDAN GARHI, NEW DELHI -110 068		
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	The Registrar, Maulana Azad National Urdu University, Gachibowli, Hyderabad-500032.		
	The Registrar Mahatma Gandhi Antarrashtriya Hindi Vishwavidyalaya, P.B.No.16, Umri. Wardha – 442 001 Maharashtra		
	The Registrar, Manipur University, Canchipur, Imphal – 795003		
	The Registrar, Mizoram University, P.B.No.190, Aizawl 796012. Mizoram		
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	The Registrar, Indira Gandhi National Tribal, University, Amarkantak, (M.P.) 484886		
	The Registrar, Hemawati Nandan Bahuguna Garhwal University, Srinagar-246174 Uttarakhand.		
	The Registrar, Central University of Tamil Nadu, C/o Collectorate Annexe, Tiruvarur-610 001		
	The Registrar, Central University of Rajasthan, J.L.N. Marg, Jaipur-302017. Rajasthan		
	The Registrar, Central University of Orissa, Bhubneswar-751017		
	The Registrar, Central University of Haryana, Narnaul (Distt. Mahendergarh) Haryana-123029 ...		
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	The Registrar, Central University of Kerala, P.O. Trivandrum-695017.		
	The Registrar, Dr. Harisingh Gour Vishwavidyalaya, Sagar (M.P.)- 470003		
	The Registrar, Guru Ghasidas Vishwavidyalaya, Bilaspur (Chhattisgarh)- 495009		
	The Registrar, Central University of Punjab, Bhatinda-151001.		
	The Registrar, Central University of Bihar, Patna – 800014		
	The Registrar Central University of Gujarat, Gandhinagar-382007		
	The Registrar, Central University of Himachal Pradesh, PO Box 21, Dharamshala District Kangra, Himachal Pradesh-176215		
	The Registrar, Central University of Jammu Jammu -180001		
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