



2026:CGHC:21014



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NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPS No. 3862 of 2026**

Rajesh Kumar Shukla S/olate Dayanand Shukla Aged About 60 Years R/o
Shankari Sadan, Tiwari Chal Rajendra Nagar District Bilaspur (C.G.)

... Petitioner**versus**

1 - The Chancellor Atal Bihari Vajpayee Vishwavidyalaya, Through Secretary
Governor Secretariat, Raj Bhavan, Raipur (C.G.)

2 - Atal Bihari Vajpayee Vishwavidyalaya Through Registrar Atal Bihari
Vijpayee Vishwavidyalaya Ratanpur Road In Frant Of Koni Police Station,
Bilaspur (C.G.)

3 - Vice Chancellor Atal Bihari Vajpayee University, Ratanpur Road In Front
Of Koni Police Station Bilaspur (C.G.)

4 - Commissioner Bilaspur Division District Bilaspur (C.G.)

5 - Dr. Atul Dubey S/o D. P. Dubey Aged About 56 Years Professor
(Commerce) Atal Bahari Vajpayee University, Ratanpur Road In Front Of
Koni Police Station, Bilaspur (C.G.)

... Respondents

For Petitioner	:	Mr. Chandresh Shrivastava, Advocate
For State	:	Mr. Ajay Kumrani, Panel lawyer
For Respondent no. 2	:	Mr. Neeraj Choubey, Advocate



Hon'ble Shri Justice Parth Prateem Sahu
Order On Board

05.05.2026

1. Petitioner has filed this writ petition seeking following reliefs:-

“10.1 That the Hon'ble Court may be pleased to call for the entire records pertaining to selection and appointment to the post of the professor commerce as initiated vide advertisement dated 14.06.2024.

10.2 That, the Hon'ble Court may kindly be pleased to quash the selection and appointment of respondent no. 5 made vide order dated 24.03.2025 (Annexure P-1) to the post of Professor (Commerce).

10.3 That, the Hon'ble Court may kindly be pleased to direct the respondent no. 2 and 3 to make appointment of the petitioner being the candidate selected in the interview securing highest marks.

10.4 That the Hon'ble Court may be pleased to direct the respondent no. 1 to take action on the complaint of petitioner in terms of the enquiry report received on 21.05.2025 and direct for appointment of the petitioner in place of respondent no. 5.

10.5 Any other relief(s), direction(s), which Hon'ble Court deems fit, and proper, in the circumstances of the case.”

2. Today, the case is listed in default, as pointed out by the Registry that respondent no. 1 has been impleaded erroneously as party respondent.

3. Learned counsel for petitioner submits that in the case at hand a complaint was lodged by petitioner which was forwarded to the Governor. On the complaint, enquiry was directed and three member



committee after conducting enquiry submitted its report on 20.05.2025 before the Commissioner, Bilaspur, Division- Bilaspur and vide memo dated 25.05.2025 it was forwarded to the Governor. It is the Governor who has to take decision. He also submits that Division Bench of High Court of Madhya Pradesh in case of **Dr. S.C. Barat and Another Vs. Hari Vinayak Pataskar and Other** reported in **AIR 1962 Madhya Pradesh 73** has considered the issue with regard to the immunity of the Governor and has held that no immunity was necessary in respect of acts done by the Governor in his public capacity other than that as a Governor and therefore, the objection raised by the Registry may be over ruled.

4. High Court of Madhya Pradesh in case of **Dr. S.C. Barat (supra)** has considered the similar issue and observed as under:-

“3. The argument of Shri Chitale was that Article 361 gave absolute personal immunity to the Governor for all his public acts and partial immunity for all private acts; that the immunity under clause (1) of Article 361 was not only in respect of the exercise and performance of the powers and duties under the Constitution of his office by the Governor or for any act done or purported to be done by him in exercise of those powers and duties but also in respect of the exercise and performance of the powers and duties conferred on the Governor under any Act or rule and for any acts done or purported to be done in exercise of those powers; and that there were in clause (1) no words to limit the protection given by that clause to the exercise and performance of the powers and duties under the Constitution of his office by the Governor or to acts done in the exercise of those powers. It was said that Section 9 of the Jabalpur University made the Governor the Chancellor of the University by virtue of his office as Governor and the powers which the Act conferred on the Chancellor were thus the powers conferred on the Governor, and that, therefore, under clause (1) of Article 361 the Chancellor of the University was not answerable to any Court for the exercise and performance of the powers and duties of his office as Chancellor or for any act done or



purported to be done by him in the exercise and performance of those powers and duties.

Learned counsel submitted in the alternative that if the immunity under clause (1) was held as not extending to the exercise and performance of the powers and duties conferred under any Act on the Governor not qua Governor but in any other public capacity such as that of Chancellor of an University, and if section 9 of the Jabalpur University Act were to be construed so as to mean that the Governor held the office of the Chancellor not by virtue of his office as Governor but because of the prestige and eminence attached to his personality by the very fact of holding the office, then the Chancellor's acts under the Jabalpur University Act were acts done or purported to be done by the Governor in his personal capacity within the meaning of clause (4) of Article 361 and no proceeding could be instituted against the Chancellor without giving two months' notice which was not done in the present case.

According to the learned counsel, the words 'personal capacity' must be read as meaning 'private capacity' as well as 'public capacity' other than that of Governor. He proceeded to say that if clause (1) was limited in its application to official acts of the Governor whether under the Constitution or under any Act conferring powers on the Governor qua Governor, then the words "personal capacity" occurring in clause (4) must be construed widely as the object of Article 361 was to uphold the dignity and prestige of the office of the Governor and to afford protection to the Head of the State for all acts, whether official or non-official, public or private. Learned counsel referred to the marginal note of Article 361 as indicative of the extent of protection given to the Heads of States. It was said that the framers of the Constitution could not have intended to give protection to the Governor solely for acts done in his public capacity as Governor or for acts done in his private capacity leaving his acts done in other public capacity unprotected.

5. The answer to the question raised by the preliminary objection turns solely on the true construction of Article 361. A consideration of that article must be prefaced by the observation that the provision has to be construed in the same manner as the provisions of any other statute by applying the cardinal rules of construction. The intention of the Constitution-makers must be ascertained from the language of the provision and its construction must be by reference to its terms and language and these alone.

A constitutional provision has the greatest claim to be construed 'ut res magis valeat, quam pereat', and it is the duty of the Court to see that as far as possible the intention



of the makers of the Constitution is effectuated to the fullest extent (see M.S.M. Sharma v. Sri Krishna Sinha, AIR 1959 SC 395 at p.410). To arrive at the real meaning of the provision it is also legitimate to consider how the law on the subject stood immediately before the Constitution and the defect which the old law contained and the remedy provided by the Constitution to remove that defect (see Bengal Immunity Co., Ltd. v. State of Bihar, (S) AIR 1955 SC 661 at p.674). Article 361, so far as is material here, is as follows:

"361. (1) The President, or the Governor of a State, 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:

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State.

(2).....

(3).....

(4) No civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims."

Taking clause (1) first, it in plain terms gives complete immunity to the Governor in respect of the exercise and performance of the powers and duties of his office and for any act done or purporting to be done by him in the exercise and performance of those powers and duties. The immunity is not restricted during his term of the office but continues even after the Governor ceases to hold the office. It is thus personal. The extent of the immunity is to be found in the scope of the expression "the exercise and performance of the powers and duties of his office. On the very words of this expression, it is clear that the immunity is in respect of the exercise and performance of the powers and duties of the office of the Governor under the Constitution and for acts



done thereunder and not merely in respect of the powers and duties under the Constitution of the office.

It is important to note the distinction between the powers and duties under the Constitution of the office of the Governor and the powers and duties of the office under the Constitution. Now, the "powers and duties of the office" embrace the powers of the Governor expressly conferred by the Constitution as well as those conferred by any law or statutory rules. There are several articles in the Constitution conferring certain powers on the Governor. To name some, Article 161 dealing with the power of the Governor to grant pardons, reprieves etc., Article 164 under which the Chief Minister is appointed by the Governor, Article 165 giving to the Governor the power to appoint the Advocate-General, Article 166 (3) giving to the Governor the power to make rules for the more convenient transaction of the business of the Government of the State, Article 192 empowering the Governor to decide questions as to disqualifications of members of the Legislature, Article 200 dealing with the Governor's assent to a bill passed by the Legislature Article 213 concerning the power of the Governor to promulgate Ordinances, Article 309 giving to the Governor the power to make rules regulating the recruitment and conditions of service of persons serving the State, Article 316 which gives the Governor the power to appoint members of the State Public Service Commission. These are all powers expressly conferred by the Constitution. But besides these powers and duties of the office, there are some powers and duties of the office which though not expressly provided by any article of the Constitution, result from the working of several articles in the Constitution.

15. Shri Chitale's argument for attributing a wider meaning to the words 'personal capacity' really rests on certain general reflections which do not seem to us to make up into any legal principle of construction. If we understood his argument rightly, it contained the suggestion that Art.361 was inserted in the Constitution for maintaining the dignity and prestige of the person holding the office of the Governor and that if on a true construction of clause (1) no immunity could be afforded to the Chancellor for his acts as Chancellor, then clause (4) should be construed in the manner indicated by him so as to give partial immunity to the acts of the Governor done in his public capacity other than that as a Governor.

As to this, it is sufficient to say that the width or narrowness of the scope of immunity under clause (1) cannot touch the construction of clause.



(4) Further it was said that it would be altogether anomalous if the Governor enjoyed a qualified immunity under clause (4) in respect of his acts done in his personal capacity and was denied that immunity in respect of his acts done in public capacity other than that of a Governor.

It is no doubt anomalous. But these reflections must have occurred to the Constituent Assembly when it inserted Article 361 in the form it is to be found in the Constitution. It is reasonable to think so and also to think that the provisions of S.306 of the Government of India Act 1935, must have been before the framers of the Constitution when they considered the draft of Article 361.

In our judgment, these are reflections which cannot control the construction of Art.361 (4) when there is nothing in the text of the Constitution justifying the enlarged meaning of the expression 'personal capacity' sought for. Merely to say that the framers of the Constitution cannot be presumed to have intended to bring about the consequence which many people might think to be just or anomalous is not, in our opinion, a principle of construction.

We are quite conscious of the necessity and importance of maintaining the dignity and prestige of the Head of the State. It is trite to say that the authority and respect that the Government or a dignitary can command depends to a large extent on its prestige. But when by a deliberate choice of the language used Article 361 (4) does not afford immunity to the Head of the State while functioning in a public capacity other than that as a Governor, the intendment of the language used must prevail over general considerations about the maintenance of the prestige of the Head of the State.

It may well be that having regard to the fact that in our democratic set up the Head of the State is called upon to fill in a number of public capacities besides his capacity as a Governor, the Constitution-makers thought that while functioning in such public capacities the Head of the State should be susceptible and sensitive to public opinion in conducting himself and no immunity was necessary in respect of acts done by a Governor in his public capacity other than that as a Governor. We are clearly of the opinion that no immunity is attached under clause (4) of Article 361 to the respondent No.1 - Chancellor's acts.

16. For all these reasons, the preliminary objection raised on behalf of the Chancellor must be and is overruled."



5. Hon'ble Supreme Court in case of **Bhuri Nath and Others Vs. State of J&K and Others** reported in **(1997) 2 Supreme Court Cases 745** has considered the issue as to whether Mata Vaishno Devi Management Board is controlled corporation and whether the Governor exercises the powers under the Act of Executive Head of the State or in his official capacity as Governor of the State of Jammu and Kashmir and has observed as under:-

22. It would be clear that the legislature entrusted the powers under the Act to the Governor in his official capacity. It expressly states that he would preside over the meetings of the Board.....

.....Under Sections 9,11 and 12 of the Act, though the Governor acts as repository of the sovereign power of the State, the phraseology employed therein does not indicate that power is given to the Council of Ministers and the Governor is to act on its advice as executive head of the State. It is an admitted position that prior to the Act, Dharmarth Trust was in management and administration of the Shrine and the properties attached thereto.

24. Under Section 5 of the Act, the Board headed by the Governor as the ex-officio Chairman, shall administer, manage and govern Shri Mata Vaishno Devi Shrine and the Shrine Fund is vested in the Board as a body corporate with perpetual succession with common seal and it can sue and be sued in a court of law. The Board discharges the functions and duties under the Act in particular, as enumerated in Sections 14 to 18. It would, therefore, be apparent from the scheme of the Act that the legislature, though having been aware fo the executive functions of the Governor, in Part VI, Chapter II of the Constitution (Part VI of Jammu and Kashmir Constitution), as head of the State, did not entrust the power under the Act to the Governor under the mechanism of the of the cabinet system devised under the Constitution.....

.....Even in case of such necessity, the Governor as the repository of sovereign power, would always have the assistance, in any given situation or case, to get the matter examined by an appropriate authority or officer or collect necessary information or material etc. the same having been placed before him for his decision. The decision is his own decision on his personal satisfaction and not on the aid and advice of the Council of Ministers. The exercise of powers and functions under the Act is distinct and different from those exercised formally in his name



for which responsibility rests only with his Council of Ministers headed by the Chief Minister.

25. In *Hardwari Lal Case*, a Full Bench of the Punjab and Haryana High Court was to consider whether the Governor in his capacity as the Chancellor of Maharshi Dayanand University was to act under Maharishi Dayanand University Act, 1975 (Haryana Act No. 25 of 1975) in his official capacity as Chancellor or with aid and advice of the Council of Ministers. The Full Bench, after elaborate consideration of the provisions of the Act and the statutes, came to observe in para 121 at p. 476 that the Act and the a statutes intended that the State Government would not interfere in the affairs of the University. The State Government is an authority quite distinct from the authority of the Chancellor. The State Government cannot advise the Chancellor to act in a particular manner. The University, as a statutory body, autonomous in character, has been given certain powers exercisable by the Chancellor in his absolute discretion without any interference from any b quarter. In the appointment of the Vice-Chancellor or the Pro-Vice- Chancellor, the Chancellor is not required to consult the Council of Ministers. Though by virtue of his office as Governor, he becomes the Chancellor of the University, but while discharging the functions of his office, he does not perform any duty or exercise any power of the office of the Governor individually. However, while discharging the functions as a Chancellor, he does every act in his discretion as Chancellor and he does not act on the aid and advice of his Council of Ministers. The performance of the functions and duties under the Constitution with the aid and advice of the Council of Ministers is distinct and different from his discharge of the powers and duties of his office as Chancellor of the University. Under the Act and the statute, the Chancellor has independent existence and exercises his powers without any interference from any quarter. Therefore, the office as a Chancellor held by the Governor is a statutory office quite distinct from the office of the Governor. Same view was taken by the Andhra Pradesh High Court in *Kiran Babu case*.

6. In the aforementioned two decisions taken by Hon'ble Supreme Court as referred above, the objection raised by the Registry of this Court is over ruled.
7. Learned counsel for respondent no. 2 would submit that according to the pleadings made in writ petition complaint is submitted before respondent no. 1 and enquiry report is also to be submitted before respondent no. 1.



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8. In view of the facts and circumstances of the case, nature of grievances raised by the petitioner in this writ petition and further considering the fact that as earlier writ petition filed by the petitioner has already been withdrawn on 01.05.2026. As per the direction issued by respondent no. 1 an enquiry report is already submitted on 21.05.2025 on the complaint of petitioner hence it is expected from respondent no. 1 of taking decision on the complaint made by petitioner, in accordance with law, expeditiously.
9. With the aforesaid observation and direction, this writ petition stands disposed of.

Certified copy as per rules.

sd/-

Alfiza

(Parth Prateem Sahu)

Judge