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WP-32977-2026

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

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HON'BLE SHRI JUSTICE B. P. SHARMA

ON THE 15th OF SEPTEMBER, 2026WRIT PETITION No. 32977 of 2026*DR. M.A KHAN**Versus**SECRETARY TO THE PRESIDENT OF INDIA AND OTHERS*

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Appearance:

Shri Ajay Shankar Raizada with Shri Abhimanyu Singh - Advocates for petitioner.

Shri Suneel Jain - Additional S.G. with Shri S.M. Guru - Deputy S.G. assisted by Shri Kurian J. Verghese- Advocate for respondent nos. 1 and 2/Union of India.

Shri Abhijeet Awasthi - Deputy A.G. for respondent no.3/State.
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ORDER

Per. Justice Anand Pathak

Heard on admission.

2. Present writ petition in the nature of *pro bono publico* is preferred by petitioner representing himself to be a retired Professor of Jawahar Lal Nehru Krishi Vishwa Vidyalaya, Jabalpur, seeking following reliefs:-

"1. To direct respondents to appoint the Governor of Madhya Pradesh.

2. To pass any writ/order/or direction in the given or changed circumstances of the case in the interest of justice."



3 . Precisely stated facts of the case are that petitioner is a retired Professor of J.N.K.V.V., Jabalpur and seeking direction to the respondents to appoint Governor of Madhya Pradesh. While placing reliance over Articles 153, 154, 155, 156 and 160 of Constitution of India, prayer is made to the effect that present incumbent *adorns the Gubernatorial post* for more than five years, therefore, new Governor be appointed.

4. It is the submission of learned counsel for petitioner that Governor is an important functionary and is *Kuladhipati* of the University and also appellate authority for orders passed by the State Government. His term has expired on 07.07.2026. Therefore, he be removed and Chief Justice of M.P. High Court be made Governor.

5. Counsel for respondents opposed the submissions and while placing reliance on different provisions, submit that the Governor shall continue to hold office until his successor enters upon his office. Therefore, petition is not maintainable and apparently premature. Hence, respondents pray for dismissal of petition.

6. Heard counsel for the parties on admission and perused the documents appended thereto.

7. Instant petition is preferred as Public Interest Litigation by retired professor of J.N.K.V.V., Jabalpur. Petitioner has not disclosed his *bona fides* as a public spirited citizen, which is otherwise required to be disclosed as per Chapter 10 Rule 27 of The High Court of Madhya Pradesh Rules, 2008. Said Rule read as under:-

"Regular Public Interest Litigation

27. A writ petition filed in public interest, shall as far as possible be in Format No. 8 and disclose - (1) petitioner's



social public standing / professional status and public spirited antecedents; (2) facts constituting the cause; (3) nature of injury caused; and (4) nature and extent of the personal interest of the petitioner involved in the cause, if any".

8. Similarly, Chapter 13A Rule 13 of The High Court of Madhya Pradesh Rules, 2008 further elaborates regarding Regular Public Interest Litigation in following manner:-

"Regular Public Interest Litigation

13. Regular public interest litigation may be initiated by a registered or recognized social action group or an individual having social public standing/professional status and public spirited antecedents or any other person or a group acting pro bono publico."

9. On close scrutiny of the case, it appears that petitioner has not disclosed his *bona fides*.

10. Be that as it may.

11. On close scrutiny, it appears that petition is misconceived.

12. **Part VI** of the Constitution of India deals with "**The States**". Chapter II deals with "**The Executive**". Relevant provision is Article 156, which reads as under:-

"156. Term of Office of Governor -

(1) The Governor shall hold office during the pleasure of the President.

(2) The Governor may, by writing under his hand addressed to



the President, resign his office.

(3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office;

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office."

13. The said proviso itself mandates that Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office. The effect of expression "notwithstanding the expiration of his term" excludes all questions including Clause 3 of Article 156, which prescribes term of 5 years.

14. While considering this aspect, Hon'ble Supreme Court of India in the case of **Krishna Ballabh Sahay and others Versus Commission of Inquiry and Others**, AIR 1969 SC 258 discussed this issue, wherein one of the arguments was regarding tenure of Governor. As per the arguments of appellant of said case, continuance of Governor in office beyond the term of 5 years was illegal. While formulating question regarding tenure of office of Governor, Hon'ble Apex Court has discussed in following manner:-

"4. The arguments of the appellants in this Court were substantially the same as were urged in the High Court. They are really two in number. Shortly stated, they are: firstly, that the appointment of the Commissioner is a campaign of vilification for political gain by a party in opposition and is based on personal animus against those who kept the members of that party out of office. The argument thus attributes malice and mala fides to the Governor notification and abuse



of the powers under the Commission of Inquiry Act for an illegitimate purpose. Side by side there is the argument that a succeeding Ministry cannot inquire into the conduct of public and governmental affairs of the Ministry that goes out. The second argument is that the Governor's term having come to an end under the Constitution, he was functus officio and could not order the inquiry contemplated by the Government then in power.

5. The second argument goes to the root of the matter and may, therefore, be considered first. It was rejected by the High Court. Mr. M. A. Ayyangar, the Governor in whose regime the notification was issued, was sworn in as Governor of Bihar on May 6, 1962. Under Art. 156(3) he, could hold office for a term of five years from the date on which he entered upon the office, that is to say, till May 5, 1967. Therefore, the contention is that his continuance in office was illegal. The respondents rely upon the proviso to Art. 156 (3), which says:

"Provided that Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon office,"

and point out that there cannot be an interregnums in view of the provision of Art. 153 that there shall be a Governor for each State. In reply Mr. A. K. Sen refers to the provisions of Art. 160 which makes provision for contingencies by laying down :

"160. Discharge of the functions of the Governor in certain contingencies.

The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter."



His contention is that under the third clause of Art. 155 the Governor's term is a closed term and if the term comes to an end without the successor being named, the provisions of Art. 160 must be used. The proviso, according to him, covers only the time lag before the successor enters office and not a case where no successor is appointed before the term of the holder is over. To hold otherwise, he submits, might enable the appointing authority to set at naught the provisions of the main clause through the proviso. By way of analogy he refers to Arts. 56 and 62(1) in respect of the President and Arts. 67 and 68(1) about the Vice-President which enjoin that the election to fill the vacancies has to be completed in each case before the term ceases. He contends, that the same result is implicit in the scheme of things in relation to the Governor because of the distinction between "appointment" and "entering an office".

6. We are unable to accept the contention. There is no provision such as Art. 62(1) or 68(1) in the scheme of the Governor appointment. On the other hand, the proviso to Art. 156(3) contemplates that the Governor :is to continue to hold office [notwithstanding the expiration of his term'. The effect of these words is to exclude all questions of the legality of the holding of office by a Governor after the expiry of his term. There must always be a Governor under Art. 153 and the interregnum is avoided by the proviso. It is, of course, to be expected that a new Governor will be nominated betimes but circumstances may come into being which may take the holder beyond his five years' term without a successor being



named. It may not always be possible to appoint a Governor within the term of the incumbent.] Suppose, for instance, a person is designated within the five years and he intends joining after a few days. Mr. Sen concedes that the former Governor may continue to hold office till the new Governor assumes charge and this may take the former Governor beyond his term of five years. Suppose after that term is over the Governor designate declines the office. There will immediately be an interregnums. No doubt the provisions of Art. 160 may be resorted to but even that may not be sufficient to prevent an interregnums. Therefore, it is legitimate to hold that a person once appointed a Governor continue to hold that office till his successor enters upon his office. This successor may be appointed under Art.155 or an order may be made under Art.160. Whatever the position the former Governor continues to hold office till the new Governor enters his office. For these reasons we hold that Mr. M. A. Ayyangar acted validly as Governor on October 1, 1967. We may, however, say that there may be cases in which neglect to appoint a Governor soon may lead to an inference of failure to act under the Constitution and it may require further examination as to the remedy in such cases. As we do not view this case as satisfying the need for such examination we say nothing about it. No facts bearing upon the failure to designate a successor have been pleaded here."

15. This is a proviso, which ensures that there shall never be a Constitutional vacuum and the Governor shall continue to hold office until his successor entered upon his office. Therefore, vacuum over *Gubernatorial post* is not contemplated under Constitution.



16. When the Proviso of Article 156(3) of the Constitution of India, itself explains the term of office in a particular manner, then arguments raised by petitioner pale into oblivion and deserve to be rejected.

17. In view of the discussion made above, it appears that petition is misconceived and is **hereby dismissed**.

(ANAND PATHAK)
JUDGE

(B. P. SHARMA)
JUDGE

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