

HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

WRIT PETITION No. 4610 OF 2024

ORDER :

This Writ Petition is filed to declare the action of the respondents in not considering letter No. 110-81/SJ/02/4, dated 03.02.2024 submitted by petitioner as illegal, arbitrary and in violation of principles of natural justice.

2. Petitioner No.3 claims to be one of the Directors and National President, Shia Civil Council for Social Justice registered under ROC U85190TG2022NPL 162482, operating from Hyderabad, Telangana. The Council aims to address the financial and equal opportunity challenges faced by Shia community across India. Despite promises from political leaders during elections, the communities lack representation in government bodies, claimed petitioners. The Council therefore, submitted representation before Government of Telangana and Her Excellency Governor on 03.02.2024 to consider the candidature of Mohammed Ali Hyder, a B.Sc. Computer Graduate, as a representative before the State Legislative Council seeking recognition from the Governor of Telangana, as he has the ability to communicate effectively and promote Shia community values peacefully. The Head of the Community

conducted voting among all other members who elected the said Hyder to become the first M.L.C. from Shia community in Telangana.

It is stated earlier, petitioners filed Writ Petition No. 7241 of 2023, wherein this Court directed the respondents to consider the Council's representation dated 27.12.2022. However, the said directive remained unimplemented by the 6th respondent.

Petitioners therefore, seek relief from the Court under Article 226 of the Constitution of India to consider the Letter dated 03.02.2024 addressed to Her Excellency Governor to look into the socio-economic, political and educational poor conditions of shia community and do the needful by nominating a Shia Muslim community member in Telangana Legislative Council under Governor's quota for the upliftment of their community, thus fulfilling the objectives and enactment of Article 171(5) of the Constitution which prescribes that members to be nominated by the Governor under sub-clause (e) of clause (3) shall have special knowledge or practical experience in respect of such matters viz. literature, science, art, co-operative movement and social service.

3. Heard Sri Venkat Raghu Mannepalli, learned counsel for petitioner, Sri A.Sudarshan Reddy, learned Advocate

General, Sri Gadi Praveen Kumar, learned Deputy Solicitor General, learned Government Pleader for Social Welfare for the 2nd respondent and learned Government Pleader for Municipal Administration and Urban Development on behalf of the 3rd respondent.

4. As regards the relief claimed against the 5th respondent, the issue is no more *res integra*. A Five-Judge Bench of the Hon'ble Supreme Court in ***Rameshwar Prasad (VI) v. Union of India***¹ held that the Court cannot implead or issue notices to the President or the Governor as they are not answerable to any Court for the exercise and performance of their powers and duties, as Article 361 of the Constitution confers immunity to the President and the Governor. The relevant paras are extracted below:

“ **Article 361(1) which grants protection to the President and the Governor reads as under:**

361. Protection of President and Governors and Rajpramukhs-(1) The President, or the Governor or Rajpramukh 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 that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under Article 61:

¹ (2006) 2 SCC 1

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) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office.

(3) No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any court during his term of office.

(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."

A plain reading of the aforesaid article shows that there is a complete bar to the impleading and issue of notice to the President or the Governor inasmuch as they are not answerable to any court for the exercise and performance of their powers and duties. Most of the actions are taken on the aid and advice of the Council of Ministers. The personal immunity from answerability provided in Article 361 does not bar the challenge that may be made to their actions. Under law, such actions including those actions where the challenge may be based on the allegations of mala fides are required to be defended by the Union of India or the State, as the case may be. Even in cases where personal mala fides are alleged and established, it would not be open to the Governments to urge that the same cannot be satisfactorily answered because of the immunity granted. In such an eventuality, it is for the respondent defending the action to satisfy the Court either on the basis of the material on record or even filing the affidavit of the person against whom such allegation of personal mala fides are made. Article 361 does

not bar filing of an affidavit if one wants to file on his own. The bar is only against the power of the Court to issue notice or making the President or the Governor answerable. In view of the bar, the Court cannot issue direction to the President or the Governor for even filing of affidavit to assist the Court. Filing of an affidavit on one's own volition is one thing than the issue of direction by the Court to file an affidavit. The personal immunity under Article 361(1) is complete and, therefore, there is no question of the President or the Governor being made answerable to the Court in respect of even charges of mala fides.

5. In **S. Nalini v. Governor of T.N.**,² a Division Bench of Madras High Court while deciding on maintainability of Writ Petition arraying the Governor as respondent, directing the governor to countersign the proposal submitted by the petitioner for her release. The Court dismissing the Writ Petition held that the Governor is protected under Article 361 of the Constitution of India and is not answerable to any Court with respect to discharge of his duties. The court held that,

" 17. Thus, in the light of the above discussions and decisions of the Supreme Court, it is abundantly clear that the Governor of the State is insulated from being questioned or made answerable to the Courts with respect to discharge of his constitutional functions and duties. The immunity so conferred on the Governor of the State is unfettered and it cannot be intruded by this Court in exercise of the power conferred under Article 226 of The Constitution of India. The personal immunity under Article 361 of the Constitution of India is clear and specific in not to proceed against the

² 2019 SCC On Line Mad 9086

President or a Governor of a State, and therefore, the present writ petition, arraying the Governor of the State as respondent No. 1 is not maintainable."

Hence, in view of the settled legal position, this Court cannot direct the 5th respondent – Personal Secretary to the Governor to consider the letter impugned.

6. However, as petitioners are also stated to have submitted the said letter to the Hon'ble Chief Minister, keeping in view the directions issued by this Court in earlier Writ Petition No. 7241 of 2023 and also percentage of population of Shia community, this Court deems it appropriate to direct the 2nd respondent to consider the letter dated 03.02.2024.

7. The Writ Petition is accordingly, disposed of directing the 2nd respondent to consider the letter dated 03.02.2024 submitted by the petitioners and take necessary steps in accordance with law. No costs.

8. Consequently, the miscellaneous Applications, if any shall stand closed.

NAGESH BHEEMAPAKA, J

01st April 2024

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