



THE LAW LEDGER

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Protocols for Summoning Government Officials

THE STATE OF UTTAR PRADESH & OTHERS **VS**
ASSOCIATION OF RETIRED SUPREME COURT
AND HIGH COURT JUDGES AT ALLAHABAD & OTHERS

Protocols for Summoning Government Officials

The State of Uttar Pradesh & Others Vs. Association of Retired Supreme Court and High Court Judges at Allahabad & Others

BRIEF OF THE JUDGEMENT



(SPECIAL LEAVE TO APPEAL (C) NO.S 8575-8576 OF 2023)
Judgement Date: 3 January, 2024



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Facts of the Case

A plea was filed in the Hon'ble Supreme court by the Uttar Pradesh government challenging orders from the Allahabad High Court to summon two senior government officers, with the additional directive of arrest.

Issues Advanced

The Hon'ble Supreme Court considered the plea of Uttar Pradesh Government with regard to the issue of summoning of government officials in the courts.

Judgement

The Supreme Court of India, recognizing the potential for undue harassment, introduced certain guidelines, setting them as a Standard Operating Procedure (SOP) for the courts, outlining the proper protocols for summoning government officials. This SOP aims to ensure that summoning is done judiciously and respectfully, with a preference for virtual appearances and clear justifications for in-person requirements, thereby maintaining the integrity of court processes while safeguarding officials from arbitrary summons.

STANDARD OPERATING PROCEDURE (SOP) ON PERSONAL APPEARANCE OF GOVERNMENT OFFICIALS IN COURT PROCEEDINGS

This Standard Operating Procedure is applicable to all court proceedings involving the government in cases before the Supreme Court, High Courts and all other courts acting under their respective appellate and/or original jurisdiction or proceedings related to contempt of court.

1. Personal presence pending adjudication of a dispute

1.1 Based on the nature of the evidence taken on record, proceedings may broadly be classified into three categories:

- a. Evidence-based Adjudication:** These proceedings involve evidence such as documents or oral statements. In these proceedings, a government official may be required to be physically present for testimony or to present relevant documents. Rules of procedure, such as the Code of Civil Procedure, 1908, or Criminal Procedure Code 1973, govern these proceedings.
- b. Summary Proceedings:** These proceedings, often called summary proceedings, rely on affidavits, documents, or reports. They are typically governed by the Rules of the Court set by the High Court and principles of Natural Justice.
- c. Non-adversarial Proceedings:** While hearing non-adversarial proceedings, the court may require the presence of government officials to understand a complex policy or technical matter that the law officers of the government may not be able to address.

1.2 Other than in cases falling under para 1.1(a) above, ***if the issue can be addressed through affidavits and other documents, physical presence may not be necessary and should not be directed as a routine measure.***

1.3 The presence of a government official may be directed, inter alia, in cases where the court is prima facie satisfied that specific information is not being provided or is intentionally withheld, or if the correct position is being suppressed or misrepresented.

1.4 ***The court should not direct the presence of an official solely because the official's stance in the affidavit differs from the court's view.*** In such cases, if the matter can be resolved based on existing records, it should be decided on merits accordingly.

2. Procedure prior to directing personal presence

2.1 In exceptional cases wherein the in-person appearance of a government official is called for

by the court, ***the court should allow as a first option, the officer to appear before it through video conferencing.***

2.2 The Invitation Link for VC appearance and viewing, as the case may be, must be sent by the Registry of the court to the given mobile no(s)/e-mail id(s) by SMS/email/WhatsApp of the concerned official ***at least one day before the scheduled hearing.***

2.3 When the personal presence of an official is directed, reasons should be recorded as to why such presence is required.

2.4 Due notice for in-person appearance, giving sufficient time for such appearance, must be served in advance to the official. This would enable the official to come prepared and render due assistance to the court for proper adjudication of the matter for which they have been summoned.

3. Procedure during the personal presence of government officials:

In instances where the court directs the personal presence of an official or a party, the following procedures are recommended:

3.1 Scheduled Time Slot: The court should, to the extent possible, designate a specific time slot for addressing matters where the personal presence of an official or a party is mandated.

3.2 The conduct of officials: *Government officials participating in the proceedings need not stand throughout the hearing.* Standing should be required only when the official is responding to or making statements in court.

3.3 During the course of proceedings, ***oral remarks with the potential to humiliate the official should be avoided.***

3.4 The court must refrain from making comments on the physical appearance, educational background, or social standing of the official appearing before it.

3.5 Courts must cultivate an environment of respect and professionalism. Comments on the dress of the official appearing before the court should be avoided unless there is a violation of the specified dress code applicable to their office.

4. Time Period for compliance with judicial orders by the Government

4.1 Ensuring compliance with judicial orders involving intricate policy matters necessitates navigating various levels of decision making by the Government. The court must consider these complexities before establishing specific timelines for compliance with its orders. The court should acknowledge and accommodate a reasonable timeframe, as per the specifics of the case.

4.2 If an order has already been passed, and the government seeks a revision of the specified timeframe, the court may entertain such requests and permit a revised, reasonable timeframe for the compliance of judicial orders, allowing for a hearing to consider modifications.

5. Personal presence for enforcement/contempt of court proceedings

5.1 The court should exercise caution and restraint when initiating contempt proceedings, ensuring a judicious and fair process.

5.2 Preliminary Determination of Contempt: In a proceeding instituted for contempt by willful disobedience of its order, ***the court should ordinarily issue a notice to the alleged contemnor, seeking an explanation for their actions, instead of immediately directing personal presence.***

5.3 Notice and Subsequent Actions: Following the issuance of the notice, the court should carefully consider the response from the alleged contemnor. Based on their response or absence thereof, it should decide on the appropriate course of action. Depending on the severity of the allegation, the court may direct the personal presence of the contemnor.

5.4 Procedure when personal presence is directed: In cases requiring the physical presence of a government official, it should provide advance notice for an in-person appearance, allowing ample time for preparation. However, ***the court should allow the officer as a first option, to appear before it through video conferencing.***

5.5 Addressing Non-Compliance: The court should evaluate instances of non-compliance, taking into account procedural delays or technical reasons. ***If the original order lacks a specified compliance timeframe, it should consider granting an appropriate extension to facilitate compliance.***

5.6 When the order specifies a compliance deadline and difficulties arise, the court should permit the contemnor to submit an application for an extension or stay before the issuing court or the relevant appellate/higher court.