

Public Interest Litigation No. 34 of 2021

Osbert Khaling v. State of Manipur

2021 SCC OnLine Mani 234

In the High Court of Manipur at Imphal
(BEFORE SANJAY KUMAR, C.J. AND KH. NOBIN SINGH, J.)

Osbert Khaling ... Petitioner;

Versus

State of Manipur and Others ... Respondents.

Public Interest Litigation No. 34 of 2021

Decided on July 13, 2021

The Judgment of the Court was delivered by

SANJAY KUMAR, C.J.:— Heard Ms. Carolin Casar, learned counsel for the petitioner.

2. Notice before admission, returnable on 28.07.2021.

3. Mr. S. Rupachandra, learned Addl. Advocate General, Manipur, takes notice for the respondents and waives further notice. He seeks time to file a reply.

4. Needful shall be done by the next date of hearing with an advance copy to the counsel opposite.

5. Challenge is to the Notification dated 30th June, 2021, issued by the Home Department, Government of Manipur, and more particularly para 2 thereof, which states that the State Government proposes to relax curfew/containment zone orders in future in a calibrated manner by assessing the Covid infection scenario and while opening up, without compromising public health safety, the Government considered it prudent to prioritize opening of institutions, organizations, factories, shops, markets, private offices, etc., where employees and workers were Covid vaccinated. The Government further stated that this would also apply to NREGA job card holders and workers of Government/private projects.

6. *Prima facie*, the aforesaid prescriptions seem to make vaccination mandatory as they favour those who are vaccinated, not only in terms of prioritizing the opening up of their institutions, organizations, etc., but also by linking vaccination as a condition precedent for employment of NREGA job card holders and workers in Government and private projects.

7. The Government of Manipur apparently issued the impugned notification, in keeping with the policy of the Central Government, seeking to promote Covid vaccinations. The objective of the Government is to ensure a degree of immunity in the people, at least to the extent of preventing dire consequences, if infected. However, the ground reality is that there is abounding ignorance amongst the people as to the side effects, if any, of the vaccination and in consequence, apprehensions of the risks that may ensue upon being vaccinated. It is for the State Government to dispel such fears by educating people as to the advantages of getting vaccinated and erase their apprehension of the adverse consequences of getting vaccinated.

8. Without addressing this issue, the State cannot seek to impose conditions upon the citizens so as to compel them to get vaccinated, be it by holding out a threat or by putting them at a disadvantage for failing to get vaccinated. Restraining people who are yet to get vaccinated from opening institutions, organizations, factories, shops, etc., or denying them their livelihood by linking their employment, be it NREGA job card holders or workers in Government or private projects, to their getting vaccinated

would be illegal on the part of the State, if not unconstitutional. Such a measure would also trample upon the freedom of the individual to get vaccinated or choose not to do so.

9. While so, Mr. S. Rupachandra, learned Additional Advocate General, Manipur, would seek to impress upon this Court that the impugned notification is merely an expression of intention by the Government as to what it proposes to do once relaxation of the curfew/containment zone orders is resorted to. He would therefore assert that the voiced intention of the Government will not be acted upon till such event comes to pass and pray that he may be given an opportunity to file a reply properly explaining the situation.

10. The aforestated stand of the Government is taken on record. However, by way of abundant caution, it is made clear that paragraph 2 of the impugned notification shall not be given effect to, even if the State resorts to any further relaxations, until the next date of hearing.

11. Reply shall be filed in the Registry on or before 27.07.2021, after service of an advance copy thereof to the counsel opposite so as to enable filing of a rejoinder, if necessary.

12. Post on 28.07.2021.

13. A copy of this order shall be communicated online/through WhatsApp to both the learned counsel.

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