

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 20TH DAY OF OCTOBER 2021 / 28TH ASWINA,

1943

WP(C) NO. 21120 OF 2021

PETITIONERS:

- 1 SANIL NARAYANAN, AGED 48 YEARS, S/O.NARAYANAN NAMBOOTHIRI, RESIDING AT PERIYAMANA PUTHAN MADHOM, KAIPPUZHA, KULANADA (PO), PATHANAMTHITTA DISTRICT, PIN-689 503.
- 2 DR.V.ABDUL JALEEL, AGED 49 YEARS, S/O.V.KUNHAHAMAD, RESIDING AT VALAN HOUSE, PAITHINIPARAMBU, DOWNHILL (PO), MALAPPURAM DISTRICT, PIN-676 519.
- 3 K.SANTHA KUMARI, AGED 49 YEARS, RESIDING AT PALAZHI HOUSE, CHALA 2ND CROSS ROAD, VIDYANAGAR, KASARGODE DISTRICT, PIN-671 123.
- 4 ABDUL LATHEEF.P., AGED 44 YEARS, S/O.ABDUL KHADER HAJI, RESIDING AT PARAMBAYIL HOUSE, KAKKATTUPARA, THOZHUVANUR (PO), VALANCHERY, MALAPPURAM DISTRICT, PIN-676 552.
- 5 MUHAMMED ASHRAF, AGED 53 YEARS, S/O.MAHAMOOD, RESIDING AT CHALLAKKARA HOUSE, (CRYSTAL VILLA), KALIKKAL ROAD, PAYANGADI (RS) (PO), KANNUR DISTRICT, PIN-670 358.
- 6 C.P.ABDUL WAHAB, AGED 50 YEARS, S/O.MOHAMMED KUTTY, RESIDING AT CHOLAYIL PARAMBIL HOUSE, RANDATHANI, RANDATHANI (PO), MALAPPURAM DISTRICT, PIN-676 510.
- 7 RASIYA, AGED 42 YEARS, D/O.ABDUL KAREEM, RESIDING AT PARAPPAN HOUSE, KALLIDUMBU, EDAVANNA POST, MALAPPURAM DISTRICT, PIN-676 541.

BY ADVS.
R.O.MUHAMED SHEMEEM
NASEEHA BEEGUM P.S.

RESPONDENT/S :

- 1 THE STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001.
- 2 THE CHAIRMAN,
STATE EXECUTIVE COMMITTEE, KERALA STATE DISASTER MANAGEMENT AUTHORITY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001.
- 3 THE PRINCIPAL SECRETARY,
EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001.
- 4 THE SECRETARY, DEPARTMENT OF HEALTH AND FAMILY WELFARE, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001.
- 5 THE SECRETARY,
DEPARTMENT OF AYUSH, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001.
- 6 THE DIRECTOR OF GENERAL EDUCATION,
DIRECTORATE OF GENERAL EDUCATION, JAGATHI, THIRUVANANTHAPURAM, PIN-695 014.
- 7 UNION OF INDIA,
REPRESENTED BY THE SECRETARY, MINISTRY OF AYUSH, AYUSH BHAVAN, B BLOCK, GPO COMPLEX, INA, NEW DELHI, PIN-110 023.

ASG.P.VIJAYAKUMAR

SRI.V.MANU SPL GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20.10.2021, ALONG WITH WP(C).21463/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 20TH DAY OF OCTOBER 2021 / 28TH ASWINA,

1943

WP(C) NO. 21463 OF 2021

PETITIONER/S:

- 1 RIDHA FATHIMA
AGED 19 YEARS
D/O. MUJEEB RAHMAN, RESIDING AT
KANICHATHVALAPPIL HOUSE, POST KOKKUR,
MALAPPURAM DISTRICT, PIN-679 591.
- 2 ABHISHEK V.S.
AGED 19 YEARS
S/O. SANIL KUMAR, RESIDING AT VALIYAVEETIL
THEKKETHIL, MANALVAYAL (PO), PULPALLY, (VIA),
IRULAM, WAYANAD DISTRICT, PIN-673 579.
- 3 NAJA JAHAN V.
AGED 21 YEARS
D/O. V.ABDUL JALEEL, RESIDING AT VALAN HOUSE,
PAITHINIPARAMBU, DOWN HILL, MALAPPURAM,
MALAPPURAM DISTRICT, PIN-676 519.
- 4 NAJDA ANWAR T.
AGED 19 YEARS
D/O ANVARTHOTTATHIL, RESIDING AT THOTTATHIL
HOUSE, CHELARI, THENHIPALAM POST, MALAPPURAM
DISTRICT, PIN-673 636.
- 5 SHIRIN SHAHANA B.V.
AGED 22 YEARS, D/O. MOHAMMED ASHRAF C., RESIDING
AT CRYSTAL VILLA, KALIKKAL ROAD, PAYANGADI (RS)
POST, KANNUR DISTRICT, PIN-670 358.

- 6 FATHIMATHU ZAHRA V.M.
AGED 19 YEARS, D/O. MUHAMMED ASHARAF VK,
RESIDING AT VADAVANAKUDY HOUSE, PONJASSERY (PO),
ERNAKULAM DISTRICT, PIN-683 547.
- 7 NAJIHA
AGED 19 YEARS, S/O. ABOOBACKER, RESIDING AT
KOORITHODI HOUSE, KURUVAMBALAM (PO), MALAPPURAM
DISTRICT, PIN-679 338.
- 8 ARYA CHANDRAN
AGED 18 YEARS
D/O. CHANDRAN, K.S. RESIDING AT KEEZHETHUPARAYIL
HOUSE, KEERAMPARA, KEERAMPARA POST, PUNNEKKADU,
ERNAKULAM DISTRICT, PIN-686 681
- BY ADVS.
R.O.MUHAMED SHEMEEM
NASEEHA BEEGUM P.S.

RESPONDENT/S:

- 1 THE DIRECTOR,
DIRECTORATE OF COLLEGIATE EDUCATION 6TH FLOOR,
VIKAS BHAVAN, PALAYAM, THIRUVANANTHAPURAM, PIN-
695 033.
- 2 THE CHAIRMAN
STATE EXECUTIVE COMMITTEE, KERALA STATE DISASTER
MANAGEMENT AUTHORITY, GOVERNMENT STATE
SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001.
- 3 THE PRINCIPAL SECRETARY
HIGHER EDUCATION DEPARTMENT, GOVERNMENT STATE
SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001.
- 4 THE SECRETARY
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
GOVERNMENT STATE SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695 001.

- 5 THE SECRETARY
DEPARTMENT OF AYUSH, GOVERNMENT STATE
SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001.
- 6 THE STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY TO
GOVERNMENT, GOVERNMENT STATE SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695 001.
- 7 UNION OF INDIA REPRESENTED BY THE SECRETARY,
MINISTRY OF AYUSH, AYUSH BHAVAN, B-BLOCK, GPO
COMPLEX, INA, NEW DELHI, PIN-110 023.
- ASG.P.VIJAYAKUMAR
SRI.V.MANU SPL GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 20.10.2021, ALONG WITH WP(C).21120/2021,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

W.P.(C) Nos.21120 and 21463 of 2021

Dated this the 20th day of October, 2021

J U D G M E N T

The questions involved in these writ petitions are identical and they are, therefore, disposed of by this common judgment. Parties and documents are referred to in this judgment, unless otherwise mentioned, as they appear in W.P. (C) No.21463 of 2021.

2. On 17.09.2021, the Government in the Higher Education Department, having regard to the fact that the restrictions imposed in connection with the prevention of Covid-19 pandemic have been substantially relaxed, ordered to open the higher education institutions including professional colleges in the State with effect from 04.10.2021 for the final

year graduate students and post graduate students subject to the conditions stipulated therein. In the light of the said Government Order, the Director of Collegiate Education, the first respondent, issued Ext.P1 circular on 01.10.2021 directing that students, teachers and other staff members who have taken two doses of Covid-19 vaccine or one dose of the vaccine before two weeks and those who have recovered from Covid-19 infection within the previous 90 days, shall be permitted to enter the educational institutions and their hostels. It is clarified, however, in Ext.P1 circular that those who are unable to take the vaccine on account of the health issues can also enter the educational institutions and their hostels on production of medical certificates, indicating their inability to take the vaccine.

3. On 02.10.2021, the second respondent, the Chairman of the Executive Committee of the State Disaster Management Authority issued Ext.P2 order in exercise of the powers under Section 20(3) of the Disaster Management Act,

2005 directing, among others, that regular classes in colleges and training institutions can be commenced with effect from 18.10.2021 for students who have taken two doses of the vaccine by engaging teachers/trainers/other staff who have taken two doses of the vaccine.

4. The petitioners are students undergoing education in various colleges in the State. They have taken an informed decision not to take the vaccine fearing adverse side effects. It is stated by the petitioners that the vaccine is not compulsory and the right to life guaranteed to them under Article 21 of the Constitution of India, especially the right to privacy available to the petitioners also gives them freedom to abstain from taking the vaccine. In the circumstances, according to the petitioners, Ext.P1 circular of the first respondent and Ext.P2 order of the second respondent are illegal and unconstitutional. The petitioners, therefore, seek orders quashing Ext.P1 circular and Ext.P2 order to the extent they restrict the students from continuing their education in the

colleges, when the colleges reopen.

5. W.P.(C) No.21120 of 2021 is a writ petition instituted by a few school teachers in the State challenging a circular issued by the Director of General Education, the sixth respondent in the said writ petition, identical to Ext.P1 circular, insisting the teachers and other staff members of the schools in the State to take two doses or at least one dose of the vaccine on or before 16.09.2021. The grounds urged by the petitioners in this writ petition are identical to the grounds urged by the petitioners in W.P.(C) No.21463 of 2021. In addition, the petitioners in this case also allege that the said circular of the sixth respondent infringes the fundamental right guaranteed to the petitioners under Article 19(1)(g) of the Constitution.

6. Heard the learned counsel for the petitioners as also the learned Government Pleader.

7. The learned counsel for the petitioners reiterated the case in the writ petitions and relied on the decisions of the Apex Court in **K.S. Puttaswamy v. Union of**

India, (2017) 10 SCC 1 and **Aruna Ramachandra Shanbaug v. Union of India**, (2011) 4 SCC 454, in support of the same.

8. Per contra, the learned Government Pleader contended at the outset that the questions raised by the petitioners in the writ petitions are covered against them by the decision of the Division Bench of this Court in W.P.(C) Nos.16614 of 2021 and 17274 of 2021. As regards the merits of the matter, it was argued by the learned Government Pleader that no fundamental right is absolute and in the interest of general public, reasonable restrictions can be imposed by the Government. According to the learned Government Pleader, the measures taken in terms of the impugned order and circulars are only those taken in public interest to suppress the spread of Covid-19. It was also argued by the learned Government Pleader that the rights of individuals are always subservient to public interest and the directions contained in the impugned order and circulars being directions issued in public interest, they cannot be impugned on the ground of

violation of fundamental rights of the individuals.

9. I have considered the arguments of the learned counsel for the parties on either side.

10. The decision of the Division Bench of this Court cited by the learned Government Pleader is a decision on two writ petitions instituted challenging, among others, the decisions of the competent authorities permitting entry in public places for those who have taken the vaccine. The case of the petitioners in the said writ petitions was that the impugned decisions are discriminatory and that persons who are vaccinated and unvaccinated are to be treated alike. Prayers (i), (ii) and (vii) in W.P.(C) No.16614 of 2021 read thus :

“(i) Issue a writ of mandamus or any appropriate writ or direction or an order to the State of Kerala, Represented by Secretary, Health & Family Welfare Department, Secretariat, Thiruvananthapuram, (respondent No.2), and/or other appropriate authorities, to amend the guidelines issued by the 2nd respondent dated 4.8.2021 in G.O.(Rt.) No. 567/2021/DMD, *inter alia*, removing the following paragraphs:

(4) a person (workers/visitor) can enter shops, markets, banks, public and private offices,

financial institutions, industries, factories, open tourist places, and all other institutions only if he/she is vaccinated with the first dose of Covid vaccine at least two weeks before or shall have an RTPCR negative certificate taken within 72 hours or he/she has been recovered from Covid 19 illness a month before.”

(ii) To issue a writ of mandamus or any appropriate writ or direction or order to the respondents and/or other relevant authorities not to discriminate citizens between vaccinated and not vaccinated as Government cannot compel a citizen to get vaccinated, in violation of the fundamental rights guaranteed under the Constitution.

(vii) Issue a writ of certiorari or such other appropriate writ, order or direction to set aside Exhibit-P1 guidelines/ order, as it violates Right to Life, Right to Livelihood and Freedom of Profession of the citizens.

Similarly, prayers (i), (iii) and (vi) in W.P.(C) No.17274 of 2021 read thus :

“(i) Issue a writ of certiorari, or any other appropriate writ calling for the records leading to Exhibit-P2 Government order and clause (iv) thereof, insofar as it is violative of Article 14, 19 and 21 of the Constitution of India.

(iii) Declare that clause (iv) of Exhibit-P2 Government order dated 10.08.2021 takes away the fundamental rights of the citizens, including the right to life, personal liberty and livelihood, in as much as the rider to clause (iv) virtually means that a person cannot move out of his abode even for his livelihood, unless he/she satisfies any one of those requirements.

(vi) Declare further that the welfare policy for vaccination can never affect a fundamental right, particularly when there exists no reasonable nexus between vaccination and prohibition of continuation of occupation/ profession/trade or even going out for essentials.

A reading of the judgment of the Division Bench reveals that the contentions raised by the petitioners in those writ petitions are identical to the contentions raised by the petitioners herein. It is seen that on an elaborate consideration of the contentions advanced by the parties, the Division Bench repelled the contentions of the petitioners therein and dismissed the writ petitions. The relevant extracts of the judgment read thus :

31. Even though, contentions are raised by the petitioners, that their fundamental rights are affected, on an analysis of the pleadings put forth by them, we have no doubt in

our mind to say that the petitioners are self- centric and are concerned only with their fundamental rights guaranteed under Part III of the Constitution of India. The State Government, as a trustee of the public affairs, is duty bound to consider and view the issues due to the pandemic, in a broader and larger canvas, and should be concerned more with the interest of the public, rather than individual's interest.

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38.The grievance raised by the petitioners, who are seeking to quash certain clauses of the Government orders dated 4.8.2021 and 10.8.2021 is that the clauses violate their fundamental rights conferred under Articles 14, 19 and 21 of the Constitution of India and if the said provisions are implemented, the fundamental rights of the citizens along with the rights enjoyed by the petitioners, would be infringed.

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40. Therefore, the rights enjoyed by a citizen under Article 19(1) of the Constitution is not an absolute right, in order to enjoy the same unmindful, ignorant, and negligent to the realities, taking place in the nation that are likely to affect the larger public, so as to create devastating effect in the public at large.

41.One of the contentions raised by the petitioners is that going by the provisions of the objectionable clause of the orders dated 4.8.2021 and 10.08.2021, extracted

above, the authority constituted under the District Management Act, 2005 is not entitled to compel the citizens, to take COVID-19 vaccination and wear mask, since the restrictions so imposed are violative of the fundamental rights guaranteed under Articles 19 and 21 of the Constitution of India. However, we are of the considered opinion that the restrictions are imposed by the State Government and the authority under the Disaster Management Act, 2005, after conducting in-depth study from time-to-time, with the aid and assistance of experts, in the field, and the orders/guidelines are issued, taking into account the specific requirements of the prevailing situation, so as to ensure safety and welfare of the public at large.

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45. When action is taken by the State Government, in the larger interest of the citizens, it can never be said that the fundamental rights of the citizens guaranteed under Articles 19 and 21 of the Constitution of India are violated. This we say because, there is a clear empowerment under clause (2) of Article 19, to make reasonable restrictions by introducing law in the larger interest of the public, and further, Article 21 of the Constitution makes it clear that no person shall be deprived of his life or personal liberty except according to the procedure established by law, which also means, when the larger interest of the citizens is a concern for the State and authority under the Act, 2005, it is

imperative on the part of the State Government to ensure that appropriate orders/ guidelines are put in place, in order to protect the life and personal liberty of the citizens, rather than making individualistic approach, which if done, in our opinion, would be detrimental to the interest of the citizens at large.

46. Now, looking at the alleged objectionable clause of the Government order dated 10.08.2021, we are of the view that it is not an absolute bar or prohibition, interfering with the freedom of movement of the citizens, but it is a reasonable restriction imposed by the State Government, for protecting the interest of larger community from COVID-19 pandemic.

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54. From the above, it is clear that what is paramount is the life of the citizens at large, rather than individual rights enjoyed by the citizens under Part III of the Constitution.

56. In **Dr. Raghavan Menon v. Health Inspector, Koduvayur**, reported in 1972 KLT 834, a learned single Judge of this Court had an occasion to consider the question of vaccination in rural areas and held that it is sufficient to say that a system of vaccination even if it infringes the conscientious objection of the petitioner, the State has authority to introduce legislation, in the interest of the people for the preservation of public health which

is a part the scheme of social welfare.

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58. In **Ritesh Sinha v. State of Uttar Pradesh and Another**, reported in (2019) 8 SCC 1, while considering the issue as to whether a Magistrate can authorise investigating agency to record voice sample of the accused, the Hon'ble Supreme Court, at paragraph (24), held thus:

“24. Would a judicial order compelling a person to give a sample of his voice violate the fundamental right to privacy Under Article 20(3) of the Constitution, is the next question. The issue is interesting and debatable but not having been argued before us it will suffice to note that in view of the opinion rendered by this Court in **Modern Dental College and Research Centre and Ors. v. State of Madhya Pradesh and Ors.** [(2016) 7 SCC 353], **Gobind v. State of Madhya Pradesh and Anr.** [(1975) 2 SCC 148] and the Nine Judge's Bench of this Court in **K.S. Puttaswamy and Anr. v. Union of India and Ors.** [(2017) 10 SCC 1] the fundamental right to privacy cannot be construed as absolute and but must bow down to compelling public interest. We refrain from any further discussion and consider it appropriate not to record any further observation on an issue not specifically

raised before us.”

59. The State Government is imposed with a duty under the Directive Principles of State Policy; Article 38 of the Constitution of India, which clearly specifies that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic, and political, shall inform all the institutions of the national life. Likewise, under Article 47, the State is endowed with the duty for raising the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. Similarly, Article 51A under Part IVA, inserted into the Constitution of India, as per Forty-second Amendment Act, 1976, which deals with the fundamental duties, makes it clear that it shall be the duty of every citizen of India to abide by the Constitution and respect its ideals and institutions, and also to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement.

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61. On an analysis of the discussions made above, it would be clear that interest of the State Government, in issuing the impugned Government orders, is only a collective interest, to protect the health, welfare, and interest of the citizens at large and, therefore, the action of the State in including the alleged objectionable clauses contained in the impugned Government orders, can never be said to

be arbitrary, illegal, irrational or unreasonable, and violative of the fundamental rights enjoyed by the petitioners or the citizens of the State under the Constitution of India.

62.Upshot of the above discussion is that the petitioners have not made out a case for interference with the action of the State Government in imposing the restrictive clauses contained in the Government orders dated 4.8.2021 and 10.08.2021.

As discernible from the extracted judgment, the same was rendered after referring to **K.S.Puttaswamy** as well. Needless to say, in the light of the decision of the Division Bench, this Court is precluded from taking a contrary view in the matter.

11. Further, in the context of the present cases, it is worth referring to a few paragraphs of the judgment of the Apex court in **In Re: Distribution of Essential Supplies and Services During Pandemic**, 2021 SCC Online SC 339 :

“15. We had clarified in our order dated 30th April 2021, that in the context of the public health emergency with which the country is currently grappling, this Court appreciates the dynamic nature of the measures. Across the globe, the executive has been given a wider margin in enacting measures which ordinarily may have violated the liberty of

individuals, but are now incumbent to curb the pandemic. Historically, the judiciary has also recognized that constitutional scrutiny is transformed during such public health emergencies, where the executive functions in rapid consultation with scientists and other experts. In 1905, the Supreme Court of the United States in **Jacobson v. Massachusetts** 197 U.S. 11 (1905), considered a constitutional liberty challenge to a compulsory vaccination law that was enacted to combat the smallpox epidemic. Justice Harlan had noted the complex role of the government in battling public health emergencies in the following terms:

“..the State may invest local bodies called into existence for purposes of local administration with authority in some appropriate way to safeguard the public health and the public safety... While this court should guard with firmness every right appertaining to life, liberty or property as secured to the individual by the Supreme Law of the Land, it is of the last importance that it should not invade the domain of local authority except when it is plainly necessary to do so in order to enforce that law. The safety and the health of the people of Massachusetts are, in the first instance, for that Commonwealth to guard and protect.....So far as they can be reached by any government, they depend, primarily, upon such action as the State in its wisdom may take, and we do not perceive that this legislation has invaded any right secured by the Federal Constitution.”

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16. Similarly, courts across the globe have responded to constitutional challenges to executive policies that have directly or indirectly violated rights and liberties of citizens. Courts have often reiterated the expertise of the executive in managing a public health crisis, but have also warned against arbitrary and irrational policies being excused in the garb of the “wide latitude” to the executive that is necessitated to battle a pandemic. This Court in Gujarat **Mazdoor Sabha v. State of Gujarat** [AIR 2020 SC 4601], albeit while speaking in the context of labour rights, had noted that policies to counteract a pandemic must continue to be evaluated from a threshold of proportionality to determine if they, inter alia, have a rational connection with the object that is sought to be achieved and are necessary to achieve them.

17. In grappling with the second wave of the pandemic, this Court does not intend to second-guess the wisdom of the executive when it chooses between two competing and efficacious policy measures. However, it continues to exercise jurisdiction to determine if the chosen policy measure conforms to the standards of reasonableness, militates against manifest arbitrariness and protects the right to life of all

persons. This Court is presently assuming a dialogic jurisdiction where various stakeholders are provided a forum to raise constitutional grievances with respect to the management of the pandemic. Hence, this Court would, under the auspices of an open court judicial process, conduct deliberations with the executive where justifications for existing policies would be elicited and evaluated to assess whether they survive constitutional scrutiny.”

The aforesaid observations have been made by the Apex Court in the context of the power of the executive to take appropriate measures during public health emergencies. The judgment of the Division Bench referred to above is one rendered having regard to the said judgment of the Apex Court also.

12. Further, it is now trite that where there is a clash of two fundamental rights, the right which would advance the public morality or public interest, would alone be enforced through the process of Court. This proposition has been endorsed by the Apex Court in **Mr ‘X’ v. Hospital ‘Z’**, (1998) 8 SCC 296. The relevant passages of the judgment read thus:

“27. In the face of these potentialities, and as

already held by this Court in its various decisions referred to above, the Right of Privacy is an essential component of right to life envisaged by Article 21. The right, however, is not absolute and may be lawfully restricted for the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others.

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43. Moreover, where there is a clash of two Fundamental Rights, as in the instant case, namely, the appellant's right to privacy as part of right to life and Ms. 'Y's right to lead a healthy life which is her Fundamental Right under Article 21, the RIGHT which would advance the public morality or public interest, would alone be enforced through the process of Court, for the reason that moral considerations cannot be kept at bay and the Judges are not expected to sit as mute structures of clay, in the Hall, known as Court Room, but have to be sensitive, "in the sense that they must keep their fingers firmly upon the pulse of the accepted morality of the day." (See Legal Duties: Allen)"

That apart, it is trite that larger public interest of the community should give way to individual apprehension of violation of human rights and right to life guaranteed under Article 21 [See **G. Sundarrajan v. Union of India**, (2013) 6 SCC 620]. No doubt, as held by the Apex Court in **Aruna**

Ramachandra Shanbaug, the right to life guaranteed under Article 21 of the Constitution includes the right to refuse medical treatment as well, but in the light of the decisions in **Mr.'X'** and **G.Sundarrajan**, I am of the view that the said right of individuals does not in any manner affect the authority of the executive to take measures like those impugned in the writ petitions to restore normalcy to life in times of pandemic, and merely for the reason that the same gives certain advantages to the vaccinated, such measures cannot be challenged as discriminatory by the unvaccinated.

In the aforesaid circumstances, I do not find any merit in the writ petitions and the same are, accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

YKB

APPENDIX OF WP(C) 21463/2021

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF CIRCULAR
NO.G4/81/2021/DCE, DATED 1.10.2021
ISSUED BY THE 1ST RESPONDENT.
- Exhibit P2 A TRUE COPY OF THE G.O.(RT)
NO.669/2021/DMD DATED 2.10.2021 ISSUED
BY THE 2ND RESPONDENT.
- Exhibit P3 A TRUE COPY OF TIME TABLE OF THE 1ST
SEMESTER EXAMINATION IS SCHEDULED TO
CONDUCT FROM 5.10.2021.
- Exhibit P4 A TRUE COPY OF POLICE MEETING HELD
ONLINE UPDATE ON 21.6.2021 VIOLATING
COVID PROTOCOL.
- Exhibit P5 A TRUE COPY OF THE ONLINE MATHRUBHUMI
REPORT DATED 11.5.2021 FUNERAL OF SMT.
GAOURIAMMA.
- Exhibit P6 A TRUE COPY OF THE FACT SHEET OF
COVISHIELD VACCINE OF SERUM INSTITUTE
OF INDIA PVT. LTD.
- Exhibit P7 A TRUE COPY OF THE FACT SHEET OF THE
COVAXIN VACCINE OF BHARAT BIOTECH.
- Exhibit P8 A TRUE COPY OF THE FACT SHEET OF THE
PFIZER VACCINE.
- Exhibit P9 A TRUE COPY OF THE DEATH REPORT NEWS
DATED 22.2.2021 IN ONLINE MANORAMA
NEWS.
- Exhibit P10 A TRUE COPY OF THE DEATH REPORT NEWS
DATED 25.8.2021 IN ONLINE DEEPIKA NEWS.
- Exhibit P11 A TRUE COPY OF THE DEATH REPORT NEWS
DATED 20.8.2021 IN ONLINE MANORAMA

NEWS.

- Exhibit P12 A TRUE COPY OF THE DEATH REPORT NEWS DATED 22.8.2021 IN ONLINE MANORAMA NEWS.
- Exhibit P13 A TRUE COPY OF NEWS DATED 25.6.2021 IN ONLINE DECCAN HERALD NEWS PERTAINS TO NEURO DISORDER TO COVISHIELD RECIPIENTS.
- Exhibit P14 A TRUE COPY OF THE NEWS DATED 21.1.2021 IN ONLINE INDIAN EXPRESS RELATING SHIVAMOGGA DOCTOR'S DEATH REPORT.
- Exhibit P15 A TRUE COPY OF STUDY REPORT DATED 3.6.2021 IN ONLINE MEDIA MALAYALAM NEWS, RELATING 2000 POLICE PERSONAL REPORTED COVID POSITIVE IN UTTARAKANDU AFTER TAKING TWO-DOSE VACCINES.
- Exhibit P16 A TRUE COPY OF ONLINE MATHRUBHUMI NEWS DATED 24.5.2021.
- Exhibit P17 A TRUE COPY OF THE ANSWERS TO THE FREQUENT QUESTION ANSWERED BY THE UNION MINISTRY OF HEALTH UPLOADED ON THEIR WEBSITE THAT VACCINATION IS NOT MANDATORY.
- Exhibit P18 A TRUE COPY OF THE RTI ONLINE UPLOADS OF GOVT, THE ANSWER STATING THE VACCINATION FOR COVID-19 IS VOLUNTARY.
- Exhibit P19 A TRUE COPY OF THE ANSWER ISSUED UNDER RTI APPLICATION TO ONE SRI. MUJEEB KOKKUR, ANSWERING THE VACCINATION IS NOT LEGALLY MANDATORY ISSUED BY THE OFFICE HEALTH DEPARTMENT.
- Exhibit P20 A TRUE COPY OF GOVERNMENT TOTAL DEATH STATISTICS REPORT UPLOADED IN GOVERNMENT WEBSITE.

Exhibit P21 **A TRUE COY OF THE PRESS RELEASE DATED
25.9.2021 IN MATHRUBHUMI ONLINE NEWS OF
THE CHIEF MINISTER OF STATE.**

Exhibit P22 **A TRUE COPY OF G.O. (RT)
NO.659/2021/DMD, DATED 25.9.2021.**

APPENDIX OF WP (C) 21120/2021

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF CIRCULAR NO.QIP (2) 273133/2021/DGE. DATED 09.09.2021 ISSUED BY THE 6TH RESPONDENT.
- Exhibit P2 A TRUE COPY OF WATTS APP MESSAGE SENT BY THE DEO, KASARGODE.
- Exhibit P3 A TRUE COPY OF FACT SHEET OF COVISHIED VACCINE OF SERUM INSTITUTE OF INDIA PVT.LTD.
- Exhibit P4 A TRUE COPY OF FACT SHEET OF THE CAVAXIN VACCINE OF BHARAT BIOTECH.
- Exhibit P5 A TRUE COPY OF THE FACT SHEET OF PFIZER VACCINE.
- Exhibit P6 A TRUE COPY OF THE DEATH REPORT NEWS DATED 22.02.2021 IN ONLINE MANORAMA NEWS.
- Exhibit P7 A TRUE COPY OF DEATH REPORT NEWS DATED 25.08.2021 IN ONLINE DEEPIKA NEWS.
- Exhibit P8 A TRUE COPY OF THE DEATH REPORT NEWS DATED 20.08.2021 IN ONLINE MANORAMA NEWS.
- Exhibit P9 A TRUE COPY OF THE DEATH REPORT NEWS DATED 22.08.2021 IN ONLINE MANORAMA NEWS.
- Exhibit P10 A TRUE COPY OF THE NEWS DATED 25.06.2021 IN ONLINE DECCAN HERALD NEWS PERTAIN TO NEURO DISORDER TO COVISHIED RECIPIENTS.
- Exhibit P11 A TRUE COPY OF THE NEWS DATED 21.01.2021 IN ONLINE INDIAN EXPRESS

RELATING SHIVAMOGGA DOCTOR'S DEATH REPORT.

- Exhibit P12 A TRUE COPY OF RISK OF HEARTBURN VACCINATION OF PFIZER AND MODENA VACCINATE DATED 27.06.2021 IN ONLINE ASIANET NEWS.
- Exhibit P13 A TRUE COPY OF STUDY REPORT DATED 03.06.2021 IN ONLINE MEDIA MALAYALAM NEWS, RELATING 2000 POLICE PERSONAL REPORTED COVID POSITIVE IN UTTARAKANDU AFTER TAKING TWO DOSE VACCINES.
- Exhibit P14 A TRUE COPY OF ONLINE MATHURBHUMI NEWS DATED 24.05.2021 IN ONLINE MANORAMA NEWS.
- Exhibit P15 A TRUE COPY OF THE ANSWERS TO THE FREQUENTLY ASKED QUESTION ANSWERED BY THE UNION MINISTRY OF HEALTH UPLOADED ON THEIR WEBSITE THAT THE VACCINATION IS NOT MANDATORY.
- Exhibit P16 A TRUE COPY OF THE RTI ONLINE UPLOADS OF GOVT. THE ANSWER STATING THE VACCINATION FOR COVID 19 IS VOLUNTARY.
- Exhibit P17 A TRUE COPY OF THE ANSWER ISSUED UNDER RTI APPLICATION TO ONE SRI, MUJEEB KOKKUR, ANSWERING THE VACCINATION IS NOT LEGALLY MANDATORY ISSUED BY THE OFFICE HEALTH DEPARTMENT.
- Exhibit P18 A TRUE COPY OF THE OPEN LETTER TO HON'BLE PRIME MINISTER WITH THE CONSENT OF 161 DOCTORS FROM PAN INDIA TO STOP THE SPREAD OF MISINFORMATION AND FEAR AMONGST THE CITIZEN IN ABSENCE OF ANY EVIDENCE OF DEATHS DUE TO NOVEL CORONAVIRUS.
- Exhibit P19 A TRUE COPY OF GOVERNMENT TOTAL DEATH

STATISTICS REPORT UPLOADED IN
GOVERNMENT WEBSITE.

Exhibit P20

A TRUE COPY OF THE PRESS RELEASE DATED
25.09.2021 IN MATHURBHUMI ONLINE NEWS
OF THE CHIEF MINISTER OF STATE.

Exhibit P21

A TRUE COPY OF GO9RT) NO.659/2021/DMD
DATED 25.09.2021.