



ADV. TANVEER NIZAM

(LLM. ENVIRONMENT LAW)

ADVOCATE HIGH COURT

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MOST URGENT

Grievance Registration Number - PRSEC/E/2021/36114

Date: 22.12.2021.

To,

Hon'ble President of India

Hon'ble Chief Justice of India

Hon'ble Prime Minister of India

With copy to,

Hon'ble Chief Justice Bombay High Court.

- Sub:** (i) Immediate action as per '**In-House-Procedure**' against Justices Shri. Kathawalla and Shri. Abhay Ahuja for their act of (a) commission of offences against administration of Justice and/(b) omission affecting fundamental rights of the citizen and direction for withdrawal of their all judicial work.
- (ii) Action under **Section 219, 166, 192, 193, 466, 471, 474, 52, 409, 511, 120(B) and 34 of IPC and section 2(b), 2(c), 12 of Contempt of Court's Act, 1971** against Justice Shri. S. J. Kathawalla and Shri. Abhay Ahuja and Adv. Shiraz Rustomjee for conspiring with each other to create false and fabricated record of the court proceedings

and use the said forged evidences as genuine one in the unlawful order dated 21st December, 2021.

Respected Sir,

Under the authorization and instructions given by my client **Shri. Ambar H. Koiri, R/o B - 1501, Runwal Hts. L.B.S. Marg, Mulund (W) Mumbai – 400 080**. I am filing this complaint as under;

1. On **21st December, 2021** Bench of Justices S.J. Kathawalla & Abhay Ahuja (Vacation Court) passed an order dismissing the Writ Petition filed by the employees of **Maharashtra Port Trust (MPT)** observing that the condition put by the MPT to their employees to get RT-PCR Test done every 15 days is proper.

2. The rationale given by the said Bench in its order is that the vaccinated people **spread less transmission than that of unvaccinated.**

3. In support of said rationale the Bench relied upon three papers of which irrelevant part is taken and relevant part is ignored.

4. The Bench in para 10 of the order placed reliance on World Health Organization's Article dated **8th December, 2020** titled '**How do vaccines works?**'.

4.1. In fact said data is wrong and later corrected by the WHO on **4th January, 2021** observing that the 'Heard Immunity can be achieved either from vaccines or through natural immunity developed through previous infection.

Hence it is clear that, the Judge relied on outdated, overruled documents.

4.2. Judge relied on article dated **8th December, 2020** and WHO corrected its information on **4th January, 2021**. This also shows malafides of the Amicus in citing wrong information.

4.3. That in India, as per Sero-Survey more than two third (75%) of the population is having natural immunity. Hence the reference of the above article is unless.

4.4. In India now the comparison is in between vaccinated and persons with antibodies. But some intellectual dishonesty people are trying to misdirect the case and divest the attention to irrelevant things with only purpose to give wrongful profit to vaccine companies.

4.5. It is misappropriation of public funds and also an offence under **Section 409 of I.P.C.** on the part of conspirator Judges.

4.6. Furtherance, on **8th December, 2020** the vaccination was not started in India. In India it started on **16th January, 2021**. So that data is not of any use.

4.7. In fact India is not following WHO guidelines due to many reasons.

Government of India refused to follow the suggestion/warnings of WHO regarding use of **Ivermectin & Remdesivir**.

The article published by the WHO is also vague in nature and have no material data or research showing the conclusion for the same.

Moreover the recent data is exactly contrary and it falsifies the narratives set up by the WHO in the above said article.

5. Second paper relied by the bench is transcript of podcast of the WHO regarding efficacy of the vaccines. Which is not directly concerned with the issue.

6. Third document relied by the Bench is the 'Technical Paper' of the Department of Health and Family Welfare, Government of Kerala titled 'VACCINE BREAKTHROUGH SARS-CoV-2 INFECTIONS'.

6.1. This document is quite useful. But Justice Kathawalla conveniently ignored the relevant part of the said research paper.

In the said paper at **Page No. 12** the Chapter reads thus;

“Network analysis of a vaccine breakthrough infection cluster to understand transmission dynamics.

This network analysis clearly shows that persons with vaccine breakthrough infections can spread infection to others thereby highlighting the importance of masking, physical distancing and hand hygiene even for fully vaccinated persons.”

6.2. Justice Kathawalla did not mention the above crucial conclusion from the research paper and went on to analyse the other irrelevant paras which are basically regarding effectiveness of vaccines.

6.3. Hence, the observations in **Para 10** of the order are incorrect, wrong and vitiated.

In **Para 10** it is wrongly observed as under;

*“10. That in some of the decisions referred to by the Petitioners, the Courts have observed that there is no evidence that vaccinated persons cannot be carriers of Covid-19 and that insofar as the spread of Covid-19 is concerned, vaccinated and unvaccinated persons stand on the same footing. **These decisions, however, make no reference to any material on which these observations, which are general in nature, are based. However, these observations appear to have been arrived at without considering the medical material placed before us by the Ld. Amicus.**”*

6.4. Hon’ble Supreme Court in the case of **Harshit Agarwal Vs. Union of India (2021) 2 SCC 710 & in Vijay Shekhar Vs. Union of India (2004) 4 SCC 670** has ruled that, if the Court passes any order by ignoring material on record or

considering extraneous materials or by misdirecting itself from the main issue then such order is vitiated.

6.5. In **Harshit Agarwal Vs. Union of India (2021) 2 SCC 710** it is ruled as under;

*“10. Judicial review of administrative action is permissible on grounds of illegality, irrationality and procedural impropriety. An administrative decision is flawed if it is illegal. A decision is illegal if it pursues an objective other than that for which the power to make the decision was conferred [De Smith's Judicial Review, (6th Edn., p. 225)] . There is no unfettered discretion in public law [Food Corpn. of India v. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71] . Discretion conferred on an authority has to be necessarily exercised only for the purpose provided in a statute. The discretion exercised by the decision maker is subject to judicial scrutiny if a purpose other than a specified purpose is pursued. **If the authority pursues unauthorised purposes, its decision is rendered illegal. If irrelevant considerations are taken into account for reaching the decision or relevant considerations have been ignored, the decision stands vitiated as the decision maker has misdirected himself in law.** It is useful to refer to R. v. Vestry of St. Pancras [R. v. Vestry of St. Pancras, (1890) LR 24 QBD 371 (CA)] in which it was held: (QBD pp. 375-76)*

“...If people who have to exercise a public duty by exercising their discretion take into account matters which the courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion.”

6.6. In Vijay Shekhar Vs. Union of India (2004) 4 SCC 666 it is ruled as under;

“A) FRAUD ON POWER – MISUSE OF POWER BY THE MAGISTRATE - magistrate issued process and bailable warrants on a fraud complaint - the complaint in question is a product of fraud and a total abuse of the process of court. there is also serious doubt whether the procedure required under the code of criminal procedure was really followed by the magistrate at all while taking cognizance of the offence alleged. - the same is liable to be quashed based on the legal principle that an act in fraud is ab initio void.- this principle applies to judicial acts also.

9. This Court in *Express Newspapers (P) Ltd. v. Union of India [(1986) 1 SCC 133 : AIR 1986 SC 872]*, AIR at para 118 has held thus: (SCC pp. 219-20, para 119)

*“119. Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in *S. Partap Singh v. State of Punjab [AIR 1964 SC 72 : (1964) 4 SCR 733]*. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an ‘alien’ purpose other than the*

one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in General Assembly of Free Church of Scotland v. Overtoun [1904 AC 515 : (1904-07) All ER Rep Ext 1448 (HL)] , ‘that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bona fide for the purpose for which they are conferred’. It was said by Warrington, C.J. in Short v. Poole Corpn. [1926 Ch 66 : 1925 All ER Rep 74 (CA)] that:

‘No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative.’

In Lazarus Estates Ltd. v. Beasley [(1956) 1 QB 702 : (1956) 1 All ER 341 : (1956) 2 WLR 502 (CA)] (QB at pp. 712-13) Lord Denning, L.J. said:

‘No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.’

See also, in Lazarus case [(1956) 1 QB 702 : (1956) 1 All ER 341 : (1956) 2 WLR 502 (CA)] at p. 722 per Lord Parker, C.J.:

‘ “Fraud” vitiates all transactions known to the law of however high a degree of solemnity.’

All these three English decisions have been cited with approval by this Court in Partap Singh case [AIR 1964 SC 72 : (1964) 4 SCR 733] .”

(emphasis supplied)

10. Similar is the view taken by this Court in the case of Ram Chandra Singh v. Savitri Devi [(2003) 8 SCC 319] wherein this Court speaking through one of us (Sinha, J.) held thus: (SCC pp. 327, 328 & 329, paras 15-18, 23 & 25)

Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata.

11. Thus, it is clear that a fraudulent act even in judicial proceedings cannot be allowed to stand.”

7. Justice Shri. S.J. Kathawalla is in habit of committing Contempt of Supreme Court and Bombay High Court. He is also in habit of passing unlawful orders by committing fraud on power, creating false records of the court proceedings. We are having a sting operation of his misdeeds where he forged the court records. Already sanction to prosecute him is with the complainant.

8. Division Bench of Bombay High Court in the case of **Trident Steel and Engineering Co. 2018 SCC OnLine Bom 4060**, has observed that Justice Shri. S.J. Kathawalla is not having the basic knowledge of Cr.P.C. and he usurped/snatched the jurisdiction which was not assigned to him. His illegal order is set aside.

9. Justice Kathawalla conveniently ignored the letter dated 21st October, 2021 issued by Shri. Dr. Annadurai Annavi, Chief Medical Officer, where it is clearly mentioned that all the employees (including the vaccinated) people should also get RT-PCR Test regularly as spread of infection can be done by the vaccinated. Relevant Para reads thus:

“Sir / Madam,

In view of suspected and expected third wave of Covid- 19, and the relaxation in the restrictions, Covid-19 Testing has to be implemented all over Mumbai strictly. A new and slightly changed version of Delta Corona Virus variant has already spread to 11 countries so far, including India, raising fears that it could drive the next wave of infection across the world. The progression of illness seems to be prevented by vaccination. As the vast majority of break through cases are mild or A-symptomatic people with break through infections, may not even know to get tested and could thus transmit the virus

unknowingly. Hence, early diagnosis is the key to prevent the spread of the diseases as well as for the recovery of the patients.

10. Such casual approach of High Court Judges in passing arbitrary and whimsical orders in cavalier fashion is deprecated by the Hon'ble Supreme Court in catena of decisions. Supreme Court asked the Judges to give intelligent reasons and not the rubber stamp reasons. [**Neeharika Infrastructure Pvt. Ltd vs. State of Maharashtra 2021 SCC OnLine SC 315, Dhanuben Lallubhai Patel Vs. Oil And Natural Gas Corporation Of India 2014 SCC Online Guj 15949**].

11. In the case of **Raman Lal Vs. State of Rajasthan 2000 SCC OnLine Raj 226** it is ruled as under;

“Conspiracy – I.P.C. Sec. 120(B) – Apex court made it clear that an inference of conspiracy has to be drawn on the basis of circumstantial evidence only because it becomes difficult to get direct evidence on such issue – The offence can only be proved largely from the inference drawn from acts or illegal omission committed by them in furtherance of a common design – Once such a conspiracy is proved, act of one conspirator becomes the act of the others – A Co-conspirator High Court Judge who joins subsequently and commits overt acts in furtherance of the conspiracy must also be held liable – Proceeding against accused cannot be quashed.”

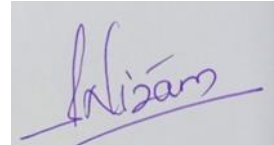
12. Request: (i) Immediate action as per ‘**In-House-Procedure**’ against Justices Shri. Kathawalla and Shri. Abhay Ahuja for their act of (a) commission of offences against administration of Justice and/(b) omission affecting fundamental rights of the citizen and direction for withdrawal of their all judicial work.

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Place: Mumbai

Date: 22.12.2021.

Sincerely



Adv. Tanveer Nizam