



ADV. ABHISHEK MISHRA

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Date: 25.12.2021

To,

1. National Disaster Management Authority

Through its Chairman,
Shri. Narendra Modi,
Prime Minister of India,
(Respondent No. 8)

2. Adv. D. P. Singh,

Advocate for Union of India
(Respondent No.7)

Ref: IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL PUBLIC INTEREST LITIGATION NO. 84 OF 2021

Feroze Mithiborwala

....Petitioner

Vs.

State of Maharashtra & Ors.

...Respondents

WITH

CIVIL PUBLIC INTEREST LITIGATION NO. 85 OF 2021

Yohan Tengra

....Petitioner

Vs.

State of Maharashtra & Ors.

...Respondents

Sub: Clarification sought by the Hon'ble High Court regarding the stand of National Authority under **Disaster Management Act, 2005**, on the issue that, whether the views of National Authority are the same as that of Health Ministry of Union of India regarding no discrimination on the basis of vaccination status of a person.

Sirs,

1. As per order dated **22.12.2021** Hon'ble High Court of Bombay, the National Disaster Management Authority is added as **Respondent No. 03**. The said order reads thus;

“2. List the PIL petitions ‘First on Board’ on January 3, 2022.

3. On the oral prayer of the learned advocates for the petitioners, National Disaster Management Authority (NDMA) is impleaded as a respondent in the PIL petitions. Service be effected on the NDMA with an intimation of the next date.

4. We are conscious of the fact that although no relief has been claimed against it, the presence of the NDMA could be of assistance for us to decide the PIL petitions finally on merits.”

2. Please find enclosed herewith, the copy of the Petition and Additional Affidavit filed by the Petitioner, as and by way of service upon you.

3. In the abovesaid matter, the Petitioner in his additional Affidavit dated **22.11.2021** have relied on the stand taken by **Sh. Satyandra Singh**, Under Secretary, Health Ministry of India before Hon'ble Bombay High Court, Bench at Goa in **W.P.No. 1820 of 2021** in their affidavit dated **8.10.2021**. [**Exhibit- AA1 to the Additional Affidavit at Pg. No. 1014**]

It is a clear stand of Government of India and Ministry of Health and Family Welfare that COVID-19 vaccination is completely voluntary for all citizens of India. Government of India has not formulated or suggested any policies for discrimination between citizens of India on the basis of their vaccination status.

Excerpts the relevant Para are as under;

“9. That, it is further humbly submitted that the directions and guidelines released by Government of India and Ministry of Health and family Welfare, do not entail compulsory or forcible vaccination against COVID-19 disease implying that COVID-19 vaccination is completely voluntary for all citizens of India. Ministry of Health and Family Welfare, Government of India has not formulated or suggested any policies for discrimination between citizens of India on the basis of their vaccination status.

10. That, it is duly advised, advertised and communicated by MoHFW through various print and social media platforms that all citizens should get vaccinated, but this in no way implies that any person can be forced to be vaccinated against her / his wishes.

11. That, as per the existing guidelines, there is no provisions for forcing any citizen to book appointment for Covid

Vaccination on Co-WIN or visiting Covid Vaccination Centre for vaccination if a person above the age of 18 years visits a Covid Vaccination Centre by her / his choice for vaccination and asks for the same, it implies that she / he is voluntarily coming to the center to get the benefit of Covid Vaccination.”

4. Furthermore, the Counsel for the petitioner relied on the judgment of **Madan Milli Vs. UOI 2021 SCC OnLine Gau 1503** where in para 3 it is also mentioned that, the Union of India in Loksabha made it clear that, the vaccination is voluntary and not mandatory. The relevant para reads thus;

“3. The petitioner contends that as per the RTI Information furnished by the Ministry of Health & Family Welfare, which is available in the website of the Ministry of Health and Family Welfare, Government of India, Covid-19 vaccination is not a mandatory but a voluntary. A copy of the RTI Information available in the website of the Ministry of Health & Family Welfare, Government of India, has been annexed by the petitioner as Annexure 3 to the petition. The petitioner also refers to an answer given on 19.03.2021 in the Lok Sabha to an Unstarred Question No. 3976 by the Minister of State in the Ministry of Health & Family Welfare, Government of India (Annexure 4 to the petition) stating that there is no provision of compensation for recipients of Covid-19 Vaccination against any kind of side effects or medical complication that may arise due to inoculation. The Covid-19 Vaccination is entirely voluntary for the beneficiaries.”

5. That the Petitioner in **Para No. 32** of his Additional Affidavit at **Page No. 953 & 954** has also reproduced the reply given by the Health Ministry as under;

“3.2. That in the reply under RTI given by the Health Ministry on 01.03.2021 makes it abundantly clear that the various facilities such as train travels, salary etc. cannot be connected with the vaccination status of a person.

The relevant Question & Answer are reproduced as under;

The Central Government's reply dated 01.03.2021 to an application under RTI is as under;

“RTI reply by Government of India's Health Ministry on 1.03.2021 to Shri. Anurag Sinha

प्रश्न १: कोरोना वैक्सीन लेना स्वैच्छिक है या अनिवार्य, जबरदस्ती?

उत्तर: कोरोना वैक्सीन लेना स्वैच्छिक है।

प्रश्न २ : क्या वैक्सीन नहीं लेने पर सारी सरकारी सुविधाएँ बंद कर दी जायगी, सरकारी योजना पेंशन ?

उत्तर : आवेदन में लिखी बातें निराधार हैं। किसी भी सरकारी सुविधा, नागरिकता, नौकरी इत्यादि से वैक्सीन का कोई सम्बन्ध नहीं है।

प्रश्न ३ : क्या वैक्सीन नहीं लेने पर नौकरी नहीं मिलेगा, ट्रेन, बस, मेट्रो में चढ़ने नहीं मिलेगी?

उत्तर : आवेदन में लिखी बातें निराधार हैं। किसी भी सरकारी सुविधा, नागरिकता, नौकरी इत्यादि से वैक्सीन का कोई सम्बन्ध नहीं है।

प्रश्न ४: यदि कोई IAS, IPS स्वास्थ्य या पुलिस कर्मचारी नागरिक को धमकी दे की वैक्सीन ले नहीं तो ये कर देगे तो नागरिक क्या कर सकती क्या कोर्ट जा सकते हैं?

उत्तर : आवेदन में लिखी बातें निराधार है। किसी भी सरकारी सुविधा, नागरिकता, नौकरी इत्यादि से वैक्सीन का कोई सम्बन्ध नहीं है।

प्रश्न ५: क्या वैक्सीन नहीं लेने पर स्कूलों, कॉलेज, विश्वविद्यालय, गैस कनेक्शन, पानी, बिजली कनेक्शन, राशन आदि के लिए क्या वैक्सीन नहीं मिलेगे ?

उत्तर : आवेदन में लिखी बातें निराधार है। किसी भी सरकारी सुविधा, नागरिकता, नौकरी इत्यादि से वैक्सीन का कोई सम्बन्ध नहीं है।

प्रश्न ६ : क्या वैक्सीन नहीं लेने पर नौकरी से निकला जा सकता है वेतन रोका जा सकत है, निजी और सरकारी विभाग दोनों में?

उत्तर : आवेदन में लिखी बातें निराधार है। किसी भी सरकारी सुविधा, नागरिकता, नौकरी इत्यादि से वैक्सीन का कोई सम्बन्ध नहीं है।”

A copy of said reply by Health Ministry is at **Exhibit – “AA-2”of the Additional Affidavit [Page No. 954 & 955]**

6. That, recently on 28th November, 2021 in a Counter Affidavit is filed before Hon’ble Supreme Court by Dr. P.B.N. Prasad, working as **Joint Drugs Controller (India), Central Drugs Standard Control Organisation, Directorate General of Health Services, Ministry of Health and Family**

Welfare, Government of India, it is once again reiterated that vaccination is not linked to any benefits or services. The relevant paragraph reads as under;

*“64. In so far as the Petitioner's submissions regarding Covid 19 vaccine being mandatory, **as per the Operational Guidelines document, COVID-19 vaccination is voluntary.** However, it is emphasised and encouraged that all individuals take vaccination for public health and in his/ her interest as well as public interest since in case of pandemic, an individual's ill health has a direct effect on the society. **Covid-19 vaccination is also not linked to any benefits or services.** Therefore, any submissions made by the Petitioner to the contrary, in so far as the Answering Respondents are concerned, is denied.”*

7. That, in the abovesaid background, the next submission of the Counsel for the Petitioner was that in view of Section 38(1) & 39(a) of Disaster Management Act, 2005 the State or District Authorities cannot bring any rules or pass any orders which are contrary to the policy decision of the National Authority.

8. However, the Hon'ble High Court put a query seeking clarification, as to, if any specific order is passed by the National Authority stating that no force or coercion in vaccination.

9. The submission of the Counsel for the Petitioner is that the policy decision of Union of India's Health Ministry in their affidavits before Bombay High Court & Supreme Court and the policy decision of the Union of India as answered in Lok Sabha is the stand of National Disaster Management Authority and they are not having any contrary stand on it. Because Hon'ble Prime Minister of India himself is the Chairman of the National Disaster Management Authority (NDMA).

10. In this regard already a notice is served by us, upon the advocate for Union of India, on 20.12.2021 requesting them to throw light on the controversy. Thereafter, on 22.12.2021 as per the request of counsel for petitioner the **National Disaster Management Authority** is added as a party respondent.

11. Hence, you are requested to forthwith get explanation from the concerned department and provide us a written reply at the earliest through person appointed for representing the case before Hon'ble High Court.

12. Needless to remind you that the issue involved is regarding the violation of fundamental Constitutional rights of the Crores of people due to such unlawful mandates including the recent mandate dated **27.11.2021** issued by the Chief Secretary of the Maharashtra State.

13. Worth to mention that, Hon'ble High Court has also taken a note of the seriousness of the issue in order dated **15.12.2021** as under;

“3. These are technical objections to the maintainability of the writ petitions; however, keeping in mind the broader issue of curtailment of the Fundamental Rights of nonvaccinated citizens to avail suburban rail services, the rationale therefor needs to be presented before the Court either by the State Government or by the State Disaster Management Authority/the State Executive Committee. We find that the Chief Secretary to the Government of 7. pil 84-21 & anr. 3/3 Maharashtra is the ex-officio Chairperson of the State Executive Committee as well as a member of the State Disaster Management Authority. We, therefore, invite the Chief Secretary to file an affidavit by Tuesday next (December 21, 2021), with copies to the learned advocates for the petitioners, putting forth the rationale for making

classification between vaccinated and non-vaccinated citizens to avail suburban train services, which is mainly the subject matter of concern expressed in the writ petitions. We are of the opinion that though the writ petitions are not in proper form, we could take cognizance even suo motu since the above issue is in the larger public interest. We hope and trust that the State would file the requisite affidavit despite the State Disaster Management Authority or the State Executive Committee not being on record.”

14. Needless to point out that, recently, **Rajesh Bhushan**, the Secretary of Health Ministry, Union of India has sent a letter to **Dr. Pradeep Kumar Vyas**, Additional Chief Secretary, Department of Health & family Welfare, Government of Maharashtra asking him to not to frame any policies against the policies framed by the Union of India.

The relevant Para reads thus;

“D.O.No.01/S(HFW)/Omicron/Maha/2021 01 December, 2021

Dear Dr. Vyas

This is with reference to the Govt. Of Maharashtra Order No. DMU/2020/CR.92/DisM 1 dated 30th Nov. 2020, vide which the following restrictions have been imposed:

- i. Mandatory RTPCR testing of all international travellers at the Mumbai airport, irrespective of country of origin*

ii. *Mandatory 14-day home quarantine for all international passengers, despite being tested RTPCR Negative upon arrival*

iii. *Mandatory RTPCR test for passengers planning to undertake connecting flights after disembarking at Mumbai and further travel subject to a negative RTPCR result*

iv. *Requirement of negative RTPCR test 48 hours prior to date of journey, for domestic passengers travelling from other States to Maharashtra*

2. This is in divergence with the SoPs & Guidelines issued by Ministry of Health & Family Welfare, Govt. of India. I would, therefore, urge you to align the Orders issued by the State with the Guidelines issued by the Ministry of Health & Family Welfare, Govt. Of India, so that uniform implementation of the guidelines may be ensured across all States/UTS. I would also advise that such modified orders of the State Government are given wide publicity to obviate any inconvenience to travellers.

Warm Regards.

Yours sincerely

(Rajesh Bhushan)”

15. That, recently the Health Ministry of Japan has made Following declaration/orders on their website:

“Consent to vaccination

Although we encourage all citizens to receive the COVID-19 vaccination, it is not compulsory or mandatory. Vaccination will be given only with the consent of the person to be vaccinated after the information provided. Please get vaccinated of your own decision, understanding both the effectiveness in preventing infectious diseases and the risk of side effects. No vaccination will be given without consent. Please do not force anyone in your workplace or those who around you to be vaccinated, and do not discriminate against those who have not been vaccinated.”

16. Furthermore the Government of Japan also asked the citizens to make complain to Human Rights Division if there is any discrimination on the basis of vaccination status.

17. The government made companies of Covid “vaccines” to warn of dangerous and potentially deadly side effects such as myocarditis. In addition, the country is reaffirming its commitment to adverse event reporting requirements to ensure all possible side effects are documented.

For more details read the article:

<https://rairfoundation.com/alert-japan-places-myocarditis-warning-on-vaccines- requires-informed-consent/>

Alert: Japan Places Myocarditis Warning on 'Vaccines' - Requires Informed Consent Amy Mek.

18. That the above declaration is mandatory to all countries across the world because of **Universal Declaration on Bioethics & Human Rights, 2005** and also as per law laid down in **Montgomery’s case [2015] UKSC 11, Airdale NHS Trust Vs. Bland (1993) 1 All ER 821, Common Cause Vs. Union of**

India (2018) 5SCC 1, Registrar General Vs. State of Meghalaya 2021 SCC OnLine Megh 130.

19. It applies with much more rigour and force in India because neither State nor Central Government is going to grant any compensation to the victim of side effects of vaccines including deaths.

20. Needless to mention here that, in a recent case of vaccine injury the Government of Singapore granted a compensation of **Rs. 1 Crore 78 Las** to the victim as vaccine cause increase in heart beats.

Link :- <https://greatgameindia.com/pfizer-heart-attack-compensation/>

21. That, in a case of side effects of vaccines, the United States Government has set up the ‘**National Vaccine Injury Compensation Program**’. In a case of side effects of MMR vaccines the court granted a settlement of 101 Million U.S Dollars (**Rupees 7,50,34,31,400 Crores**).

22. That, in another case related with misrepresentation by pharma companies by suppressing the side effects of medicines. The companies failure to report certain safety data was also taken into consideration. The investigating agency of US at their own investigated and recovered an amount 10.2 Billion U.S. Around 7,57,71,92,40,000 Crore Rupees. The excerpts from the news published on July 2, 2012 in The United State’ Department of Justice.

“The company’s unlawful promotion of certain prescription drugs, its failure to report certain safety data, and its civil liability for alleged false price reporting practices.

GSK did not make available data from two other studies in which Paxil also failed to demonstrate

efficacy in treating depression in patients under 18. The United States further alleges that GSK sponsored dinner programs, lunch programs, spa programs and similar activities to promote the use of Paxil in children and adolescents. GSK paid a speaker to talk to an audience of doctors and paid for the meal or spa treatment for the doctors who attended.

Between 2001 and 2007, GSK failed to include certain safety data about Avandia, a diabetes drug.

The missing information included data regarding certain post-marketing studies, as well as data regarding two studies undertaken in response to European regulators' concerns about the cardiovascular safety of Avandia. Since 2007, the FDA has added two black box warnings to the Avandia label to alert physicians about the potential increased risk of (1) congestive heart failure, and (2) myocardial infarction (heart attack).

GSK has agreed to plead guilty to failing to report data to the FDA and has agreed to pay a criminal fine in the amount of \$242,612,800 for its unlawful conduct concerning Avandia.

It also includes allegations that GSK paid kickbacks to health care professionals to induce them to promote and prescribe these drugs as well as the drugs Imitrex, Lotronex, Flovent and Valtrex. The

United States alleges that this conduct caused false claims to be submitted to federal health care programs.

GSK has agreed to pay \$1.043 billion relating to false claims arising from this alleged conduct. The federal share of this settlement is \$832 million and the state share is \$210 million.”

23. Constitution Bench of Hon’ble Supreme Court in the case of Anita Kushwaha Vs. Pushap Sadan (2016) 8 SCC 509, has ruled that the life of Indian Citizen is not less pricy than the life of people in England or anywhere. But in India the rights are more precious.

It is ruled that;

“18... Bose, J. emphasised the importance of the right of any person to apply to the court and demand that he be dealt with according to law. He said: (Prabhakar Kesheo case [Prabhakar Kesheo Tare v. Emperor, AIR 1943 Nag 26 : 1942 SCC OnLine MP 78] , SCC OnLine MP para 1)

“1. ... The right is prized in India no less highly than in England, or indeed any other part of the Empire, perhaps even more highly here than elsewhere; and it is zealously guarded by the courts.”

24. That as pointed out during the hearing of the case, the WHO has warned the people getting CoviShield (AstraZeneca) vaccines to be careful as it is causing a serious paralytic disease **GBS (Guillain Barre Syndrome)**.

Link: <https://www.who.int/news/item/26-07-2021-statement-of-the-who-gacvs-covid-19-subcommittee-on-gbs>

25. Needless to mention that, as pointed out in **Para 9.1** of the Additional Affidavit at **Page no. 970**, the AEFI Committee admitted that the death of Dr. Snehal Lunawat was due to side-effects of CoviShield.

26. That, in India, there are Lacs of such cases and more than **10,700** vaccine deaths are reported in media. But AEFI committee is not working fairly and properly.

27. That, as mentioned in **Para 18.2** at **Page No. 1000** the CoviShield vaccine are banned in 11 European Countries. Only because of 1 death connected to vaccines.

The said number is now increased as on today around 18 European Countries banned the use of CoviShield.

Link: <https://www.aljazeera.com/news/2021/3/15/which-countries-have-halted-use-of-astrazenecas-covid-vaccine>

28. Under these circumstances it is requested that, Your Goodself be pleased to tell the concerned officials to forthwith upload on website the warning as done by the Japan Governments about side-effects of vaccines and making it clear that there cannot be any discrimination on the basis of vaccination status of a person. And if done then special officials be assigned to deal with the issue.

29. Needless to mention here that, as per law laid down in various judgments and more particularly in the case of **Registrar General Vs. State of Meghalaya 2021 SCC OnLine Megh 130, Montgomery v Lanarkshire Health Board [2015] UKSC 11**, if complete information is not given to the public and if any citizen tooks the vaccines by relying on the statements of the authorities of the ministry that the vaccines are completely safe then the person can file the Criminal case of

cheating and can also claim compensation from state in addition to the compensation from the vaccine companies.

30. That, your goodself are requested to point out the concerned officials that as per law laid down by Hon'ble Supreme court in the case of **State of Odisha Vs. Partima Mohanty 2021 SCC OnLine SC 1222**, the public servant more particularly from the office of Health Ministry if failed to take action as expected then he/she will be liable for prosecution. Under section **218, 201, 202, 120(B), 34, 109 etc. of Indian Penal Code**. It is ruled that;

*“20. It is further observed after referring to the decision of this Court in the case of Common Cause, A Registered Society (supra) that **if a public servant abuses his office whether by his act of omission or commission, and the consequence of that is injury to an individual or loss of public property, an action may be maintained against such public servant.** It is further observed that no public servant can arrogate to himself powers in a manner which is arbitrary. In this regard we wish to recall the observations of this Court as under:*

“The concept of public accountability and performance of functions takes in its ambit, proper and timely action in accordance with law. Public duty and public obligation both are essentials of good administration whether by the State or its instrumentalities.” [See Delhi Airtech Services (P) Ltd. v. State of U.P., (2011) 9 SCC 354]

“The higher the public office held by a person the greater is the demand for rectitude on his part.”[See Charanjit Lamba v. Army Southern Command, (2010) 11 SCC 314]

“The holder of every public office holds a trust for public good and therefore his actions should all be above board.”
[See Padma v. Hiralal Motilal Desarda, (2002) 7 SCC 564]

“Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. This is equally true of all actions even in the field of contract. Thus, every holder of a public office is a trustee whose highest duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of public duty meant ultimately for public good.”
[See Shrilekha Vidyarthi (Kumari) v. State of U.P., (1991) 1 SCC 212]

“Public authorities should realise that in an era of transparency, previous practices of unwarranted secrecy have no longer a place. Accountability and prevention of corruption is possible only through transparency.”
[See ICAI v. Shaunak H. Satya, (2011) 8 SCC 781]”

31. Hence, you are requested to do the needful as per the preceding paras of the notice and more particularly to:

- (a) Clarify the stand of **National Disaster Management Authority** regarding policies of discriminating citizen on the basis of their vaccination status;
- (b) Course of action taken or being taken under section **51(b) & 55 of National Disaster Management Act, 2005** against state authorities

including District Collectors who are acting contrary to the policy decisions and directives of **National Disaster Management Authority**.

(c) Direction to Ministry of Health & Welfare to update their website and give the correct and proper information about side effects of vaccines which is mandatory as per Good Clinical Practices of ‘**informed consent**’ laid down under **Drugs & Cosmetics Act, 1940** and also as per **Universal Declaration on Bioethics & Human Rights, 2005** and law laid down in **Montgomery’s case [2015] UKSC 11**.

32. Please note that the next date fixed for hearing is 3rd January, 2022 and it is expected that the written reply be forwarded to us in advance.

Thanking you in anticipation.

Sincerely,

Adv. Abhishek Mishra

Enclosure:

1. Copy of order dated **22.12.2021** passed by the Hon’ble Bombay High Court.
2. Copy of **Public Interest Litigation (C) 85 of 2021**.
3. Copy of Additional Affidavit dated **20.11.2021** filed by the Petitioner.