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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 84 OF 2021

Feroze Mithiborwala ..Petitioner
Vs.
The State of Maharashtra & Ors. ..Respondents

**WITH
PUBLIC INTEREST LITIGATION NO. 85 OF 2021**

Yohan Tengra .. Petitioner
Vs.
The State of Maharashtra & Ors. .. Respondents

Mr. Nilesh Ojha i/b Adv. Abhishek N. Mishra a/w Adv Vijay Kurle, Adv Dipali N. Ojha, Adv. Awtar Singh, Adv Ishwarlal S. Aggarwal, Adv. Rajeshwar Panchal, Adv Partho Sarkar, Adv Sandeep Sheregar, Adv. Mita Rudani, Adv. Pratik Jain, Adv. Shivam Mehra, Adv. Deepika Jaiswal, Adv. Poonam Rajbhar, Adv. Nicky Pokar, Adv. Snehal Surve, Adv. Shivchand Mishra, Adv. Mangesh Mali, Adv. Siddhi Dhamnaskar, Adv. Pratik Sarkar, Adv. Vikas Pawar, Adv. Mayank Mishra, Adv Kajal Hindalekar, Adv. Aditya Parmar, Adv. Sarang Gundagwar, Adv. A.R. Kori, Adv. Mohan Rawat, Adv. Adarsh Diwani, Adv. Gopal Nirban, Adv. Mohan Rawat, adv. Aniruddh More for Petitioner in PIL No.85/2021.

Mr. Tanveer Nizam i/b Adv. Mangesh Bhimrao Dongre a/w Adv. Vijay Kurle, Adv. Dipali N. Ojha, Adv. Awtar Singh, Adv Ishwarlal S. Aggarwal, Adv. Mayank Mishra, Adv Kajal Hindalekar, Adv. Rajeshwar Panchal, Adv. Partho Sarkar, Adv. Sandeep Sheregar, Adv. Mita Rudani, Adv. Pratik Jain, Adv. Shivam Mehra, Adv. Deepika Jaiswal, Adv. Poonam Rajbhar, Adv. Nicky Pokar, Adv. Snehal Surve, Adv. Shivchand Mishra, Adv. Mangesh Mali, Adv. Siddhi Dhamnaskar, Adv. Pratik Sarkar, Adv. Vikas Pawar, Adv. Aditya Parmar, Adv. Sarang Gundagwar, Adv. A.R. Kori, Adv. Mohan Rawat, Adv. Mita Rudani, Adv. Adarsh Diwani, Adv. Gopal Nirban, Adv. Mohan

Rawat, Adv. Aniruddh More for Petitioner in PIL No.84 of 2021.

Mr. Anil Anturkar, Senior Advocate & Special Counsel a/w Mr. P. P. Kakade, Government Pleader a/w Ms. Reena A. Salunkhe, AGP for State.

Mr. Anil C. Singh, ASG a/w Mr. Aditya Thakkar a/w Mr. D. P. Singh for Respondent –Union of India.

Mr. T. J. Pandian with Mr. T. C. Subramanian for Respondent no.6.

Mr. Suresh Pakale a/w Mr. Om Suryawanshi for MCGM.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: FEBRUARY 22, 2022

PC:

1. Mr. Anturkar, learned senior counsel appearing for the State has submitted, on instructions, received from the Principal Secretary, Disaster Management, Relief & Rehabilitation, Government of Maharashtra, that a decision has been taken to withdraw the orders dated 15th July, 2021 and 11th August, 2021 as well as the Standard Operating Procedure dated 10th August, 2021. However, it is the further contention of Mr. Anturkar that the order dated 15th July, 2021 has since been superseded by an order dated 27th August, 2021; similarly, the order dated 11th August, 2021 has since been superseded by orders dated 8th October, 2021, 19th October, 2021 and 26th October, 2021 as well as other

subsequent orders dated 8th January, 2022, 9th January, 2022 and 31st January, 2022, which are now in force.

2. Mr. Anturkar also contends that having regard to the spirit of the observations that this Bench had the occasion to make in course of the proceedings in Court, it has since been decided by the State Executive Committee constituted under the Disaster Management Act, 2005 (hereafter "the Act", for short) to meet on 25th February, 2022 for reviewing all the orders in the light of the discussions in the Court as well as the factual status of Covid-19 pandemic and various directions, letters advisories, etc. received from the Government of India as well as the Task Force and to promulgate new comprehensive directives, if needed, in supersession of all the previous orders. According to Mr. Anturkar, the Principal Secretary is firmly of the belief that the fresh decision to be taken by the State Executive Committee on 25th February, 2022 would be in tune with the spirit of the observations of the Bench.

3. While we propose to adjourn hearing of these PIL petitions for a few days, it is necessary to briefly place on record what transpired in course of previous hearings. We had the occasion to consider the orders that were passed by the former Chief Secretary of the Government of Maharashtra. It was noticed and observed that the State Disaster Management Rules framed in terms of provisions contained in section 78 of the Act were observed in total breach. No

decision was taken by the State Executive Committee. On the contrary, orders were issued from time to time by the former Chief Secretary, in the capacity of the Chairperson of the State Executive Committee, imposing restrictions to be adhered to during the second wave of the pandemic without there being any deliberation with the other members of the Committee, who happened to be bureaucrats having their offices in the same building where the Chief Secretary has his office. Since there were no meetings of the State Executive Committee, minutes of meetings though required to be recorded in terms of statutory rules were not recorded. Although at an earlier stage it was submitted that as the Chairperson of the Committee the former Chief Secretary had certain emergency powers and to take decisions all by himself, we have observed from the records produced yesterday by Mr. Anturkar that none of the orders recorded any emergent like situation warranting the Chairperson of the Committee to pass an order without waiting for deliberations with the other members. Satisfied that Fundamental Rights of citizens guaranteed under Article 19(1)(d) of the Constitution were abrogated without giving primacy to the rule of law, we had made certain critical oral observations in open Court wondering how an order passed by the Chairperson of the Committee, without following the relevant law, could be passed off as the decision of the State Government. Orders having been passed in clear violation of the prescribed procedure notwithstanding, we had granted time to the Government to take an informed decision on the aspect of

lifting the restrictions that were illegally imposed particularly giving due regard to the declining trend of infected cases as well as bearing in mind that earning a bad name at this stage would wash away the commendable work performed by officials/staff at all levels in Maharashtra to keep the citizens safe and secure as much as possible during the second wave.

4. Be that as it may, we hope and trust that in keeping with the present situation and the observations made above, the State Executive Committee will take an appropriate decision for lifting of restrictions considering all aspects of the matter including the particular circumstance that Fundamental Rights of a section of the citizens were abrogated because of certain illegal orders passed by the Chairperson of the State Executive Committee earlier. Although it is not the function of the Court to direct the State Executive Committee to take a decision in any particular direction, it would be eminently desirable if the State Executive Committee takes a decision on 25th February, 2022 which effectively puts a quietus to the issues raised in these PIL petitions.

5. We propose to take up these PIL petitions on **Monday next (28th February, 2022)** at **2.30 p.m.** when the decision of the State Executive Committee shall be placed before us by Mr. Anturkar.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)