

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 1770 OF 2021 (FILING)
AND
WRIT PETITION NO. 1820 OF 2021 (FILING)**

WRIT PETITION NO. 1770 OF 2021 (FILING)

1. Mr. Oscar De Noronha, Aged 56,
Indian National, Associate Professor of
English, Sant Sohirobanath Ambiye,
Government College of Arts and
Commerce, Virnoda, Pernem, Goa.

2. Mr. Xavier M Martins, Aged 55,
Indian National, Associate Professor,
English Sant Sohirobanath Ambiye,
Government College of Arts and
Commerce, Virnoda, Pernem, Goa.

3. Ms. Elsa Fernandes, Lecturer in
Arch. Assistantship Department of
Arch, Asstt. Government Polytechnic,
Panaji, Goa.

...Petitioners

V e r s u s

1. The State of Goa, Through its Chief
Secretary, Secretariat, Porvorim,
Bardez-Goa.

2. The Director, Directorate of Higher
Education, Government of Goa, New
SCERT Building, Alto, Porvorim, Goa.

3. The Director, Directorate of
Technical Education, Administration
Section, Government of Goa.

4. The Principal, Sant Sohirobanath
Ambiye, Government College of Arts

and Commerce Virnoda-Pernem.

5. The Principal, Government Polytechnic Panaji, Panaji, Goa.

6. The Director, Directorate Health Services Having an office at Campal, Panaji-Goa.

7. The Union of India, Through the Ministry of Health and Family Welfare, New Delhi.

8. Indian Council of Medical Research, Ramalinga Swami Bhawan, P. O. Box No. 4911, Ansari Nagar, New Delhi – 110029.

...Respondents

A N D

WRIT PETITION NO. 1820 OF 2021 (FILING)

1. Mr. Nelson Paulo Fernandes, Aged 52 years, Indian National, Physical Education Teacher, Little Flower of Jesus, High School, Naika Vaddo Calangute, Bardez-Goa, Resident of H. No. 570, Badem, Assagao, P.O. Anjuna Bardez-Goa.

2. Ms. Libia Lucia Fernandes, Aged 48 Indian National, Vocational Teacher, St. Andrews Higher Secondary School, Vaddem Vasco da Gama, Mormugao Goa, Resident of H. No. 2/250B/BG-3, Sabnis Meadows, Naika Waddo, Caloangute, Bardez, Goa.

...Petitioners

V e r s u s

1. The State of Goa, Through its Chief Secretary, Secretariat, Porvorim, Bardez, Goa.

2. The Director, Directorate of Education, Government of Goa, Alto Porvorim, Goa.

3. The Headmistress Little Flower of Jesus High School, Naika Vaddo, Calangute, Bardez, Goa,.

4. The Principal, St Andrews Higher Secondary School, Vasco da Gama, Mormugao, Goa.

5. The Director, Directorate of Health Services Having office at Campal, Panaji-Goa.

6. The Union of India, Through the Ministry of Health and Family Welfare, New Delhi.

...Respondents

7. Indian Council of Medical Research, Ramalinga Swami Bhawan, P. O. Box No. 4911, Ansari Nagar, New Delhi – 110029.

Mr. B. Pacheco, Advocate *for the Petitioners.*

Mr. D. Pangam, Advocate General *with Ms. Maria Correia, Additional Government Advocate for the Respondent nos. 1, 2, 3, 5 and 6 in WP No. 1770 of 2021-F.*

Mr. D. Pangam, Advocate General *with Mr. Shubham Priolkar, Additional Government Advocate for the Respondent nos. 1, 2 and 3 in WP No. 1820 of 2021-F.*

Mr. Pravin Faldessai, Assistant Solicitor General of India *for the Respondent nos. 7 and 8 in WP No. 1770 of 2021-F and for Respondent no.6 in WP No. 1820 of 2021-F.*

Mr. Bernard Fernandes, Advocate *for the Respondent no.4.*

**CORAM: SMT. SADHANA S. JADHAV &
MANISH PITALE, JJ**

DATED: 6th January 2022

ORAL ORDER (*Per Manish Pitale, J.*)

1. By these Writ Petitions, the Petitioners have challenged circulars dated 15/16.07.2021 and 16.08.2021 issued by the Directorate of Higher Education as also a circular dated 13.07.2021, issued by the Directorate of Education.

2. The Petitioners in Writ Petition No. 1770 of 2021 are teaching at certain Government Colleges in the State of Goa, while the Petitioners in Writ Petition No.1820 of 2021 are teachers in Government aided schools in the State of Goa.

3. The common grievance of the Petitioners in these two Writ Petitions before this Court is that, by the impugned circulars, the aforesaid Departments of the State of Goa have insisted upon the teaching and non-teaching staff of Schools and Colleges to take vaccination doses and if they fail to get vaccinated, they are required to produce RT-PCR reports every week for attending duties. According to the Petitioners, they had submitted representations before the concerned Departments of the State for making vaccination by the teaching and non-teaching staff voluntary and not mandatory. In the grounds raised in these Writ Petitions, various apprehensions have been expressed, including an

apprehension that the vaccination doses may have detrimental effects on the health and long terms effects on the human body. It is also apprehended that if vaccination doses are not taken and as per the circulars the teaching and non-teaching staff of Schools and Colleges are required to undergo repeated RT-PCR tests, it may damage their nasal cavities.

4. The Respondents entered appearance and opposed the reliefs sought in these Writ Petitions, *inter alia*, contending that it was necessary for the teaching and non-teaching staff of the Schools and Colleges to be vaccinated, because such staff would be interacting with students who are yet to be covered under the vaccination program.

5. When the Writ Petitions were called out for hearing, the learned Counsel appearing for the Petitioners in these Writ Petitions, reiterated the contentions raised in the Writ Petitions and prayed for setting aside the impugned circulars. It was highlighted that if the Petitioners had any medical condition which would result in health complications on receiving the vaccination doses, it would be a serious matter and that, therefore, this Court may consider the prayers made in the Writ Petition.

6. Mr. Pangam, the learned Advocate General, appearing on behalf of the Respondent-State authorities in both the Writ Petitions, submitted that there is no substance in the contentions raised on behalf of the Petitioners. It was brought to the notice of this Court that similar circulars issued in different States, were

challenged in the High Courts, and that various High Courts had passed orders upholding such circulars. It was submitted that a Division Bench of this Court in a recent Judgment and Order dated 21.12.2021, rejected identical contentions raised in *Writ Petition (L) No. 17132 of 2021 (Deepak Kumar Radheshyam Khurana & Ors. vs. Mumbai Port Trust & anr.)*, wherein similar circular issued by the Mumbai Port Trust dated 15.06.2021, was made subject matter of challenge. According to the learned Advocate General, all the contentions raised on behalf of the Petitioners stand answered against them and that, therefore, the present Writ Petition deserves to be dismissed.

7. We have perused the Judgment and Order passed by the Division Bench of this Court in *Deepak Kumar Radheshyam Khurana vs. Mumbai Port Trust & anr.* (supra). A perusal of the said Judgment shows that the contents of the circular dated 15.06.2021 issued by the Mumbai Port Trust, are as follows:

“(ii) Employees who have not registered for vaccination/Registered but not taken any dose of vaccine so far, will not be permitted to attend office without production of RT-PCR test conducted by a recognised hospital at their own cost w.e.f. 16.6.2021.

(iii) The RT-PCR test report will be valid for ten days only and thereafter the employees have to again submit fresh RT-PCR Report, for every 10 days, so as to take them to duty.

(iv) Further, the above facts will also be taken into consideration for payment of Rs. 50 lakh compensation announced by the Ministry.

(v) Further, the employees who have not registered for vaccination/employees who have registered but have not taken vaccine so far, will be given treatment in Port Hospital on payment basis only for COVID-19 treatment. Further, no referral / reimbursement of bills will be entertained in their cases in respect of COVID-19 related treatment hospitalization.”

8. The Division Bench of this Court in the aforesaid Judgment considered various grounds of challenge raised on behalf of the Petitioners therein, including the contention that the insistence for vaccination in the said circular issued by the Mumbai Port Trust was discriminatory between the vaccinated and non-vaccinated employees. The Division Bench also considered the reliance placed on behalf of the Petitioners on a response given under The Right to Information Act on 09.03.2021 by the Ministry of Health and Family Welfare, Government of India, wherein, it was stated that taking of the Covid-19 vaccine was a voluntary act. The Division Bench of this Court also considered the aspect as to whether the Mumbai Port Trust as an employer was justified in stating in the circular that non-vaccinated employees would not be entitled to reimbursement of bills in respect of Covid-19 related treatment on hospitalization. All the aforesaid contentions raised on behalf of the Petitioners were considered in detail by referring to various aspects

of the matter, including scientific material brought to the notice of the Division Bench of this Court in the aforesaid case. The circular of the Mumbai Port Trust was upheld and the Writ Petition was dismissed.

9. It is interesting that in the present Writ Petitions also, the Petitioners have relied upon the very same response given under The Right to Information Act by the Ministry of Health and Family Welfare, Government of India, dated 09.03.2021, to claim that taking Covid-19 vaccination is a voluntary act. The contents of the impugned circulars in these two Writ Petitions show that they are similar to the circular dated 15.06.2021 issued by the Mumbai Port Trust, which was the subject matter of challenge in the case of *Deepak Kumar Radheshyam Khurana vs. Mumbai Port Trust & anr.* (supra).

10. The impugned circular dated 15/16.07.2021 issued by the Directorate of Higher Education, reads as follows:

CIRCULAR

“The State Government is planning to start physical mode once the present pandemic situation gets normal.

As per the inputs collected from the Colleges and Goa University a week ago on Covid vaccination, it is known that about 11% of teachers and staff have not yet taken even the first dose vaccination.

It is expected to achieve 100% vaccination of all teaching and non-teaching staff before classes

start in the physical mode for ensuring the safety of all concerned, especially the students.

Now it is informed that all teaching and non-teaching staff of the Colleges and Goa University should take atleast first dose of vaccination by 31st July, 2021.

Those staff who are not able to get vaccinated due to medical reasons shall produce the certificate to this effect from the Medical Board constituted by the Goa Medical College.

Other staff who do not get vaccinated for any other reason shall submit the RT-PCR report every week for attending the duties w.e.f. 2nd August 2021. The expenditure towards the RT-PCR test will not be reimbursed by the Government and no duty leave will be admissible for taking the RT-PCR test.

The teaching and non-teaching staff members shall also ensure that their family members get fully vaccinated.

The Registrar of Goa University and Principals of both Government and aided Colleges shall submit their status report to this effect by 4th August 2021, 3.00 p.m. using the link <https://forms.gle/jFcwR7oE6QBvolmSA> for onward submission to the Government/.

This circular is issued in concurrence with the State Government.

(Prasad Lolayekar, IAS)
Director of Higher Education”

11. The impugned circular dated 13.07.2021 issued by the Directorate of Education, reads as follows:

CIRCULAR

“This has reference to WhatsApp messages dated 22nd June & 24th June, 2021 issued about getting vaccinated by the teachers for safety of all concerned.

Now, it is informed that in the interest of the Health of the students all the teaching and non-teaching staff of the schools should get vaccinated urgently without any further delay. The staff who does not get vaccinated for any reason by then, they must submit RT-PCR report possibly weekly once to attend their duties in the school.

Those who cannot produce the test report they must produce recommendations of medical experts if they have exemption of such report for any reason.

The teaching and non-teaching staff members must also ensure that their members of the family are also vaccinated without any further delay as precaution to prevent any transmission through them.

(D. R. Bhagat)
Director of Education

12. It is pertinent that circular dated 16.08.2021 issued by the Director of Higher Education, which is also impugned in Writ Petition No. 1770 of 2021, merely states that all non-vaccinated staff members excluding those who cannot be vaccinated because they were Covid-19 positive, shall provide the RT-PCR report every week.

13. The contents of the above-quoted impugned circulars show that the concerned Departments have issued the same to ensure that the Covid-19 infection is not spread to the students of the Schools and Colleges through the teaching and non-teaching staff and further that the families of such teaching and non-teaching staff also would benefit from the exercise being carried out for vaccination against Covid-19 pandemic.

14. Considering the identical challenges raised in these two Writ Petitions, as compared to the challenges raised in the aforesaid case of *Deepak Kumar Radheshyam Khurana vs. Mumbai Port Trust & anr.* (supra) in which Judgment and Order dated 21.12.2021 was passed by this Court, we follow the reasoning given in the said Judgment and Order given by the Division Bench of this Court and hold that the contentions raised in these two Writ Petitions before this Court are without any substance and they deserve to be rejected. The apprehensions raised on behalf of the Petitioners in these two Writ Petitions are totally unfounded and we are of the opinion that the circulars are clearly in public interest, particularly in the interest of the students who are taking education in the concerned Schools and Colleges.

15. Insofar as the specific apprehension expressed on behalf of the Petitioners in these two Writ Petitions that due to a specific medical condition, they may not be able to take the vaccination dose, suffice it to say, that no material is placed on record in support of such a contention. At this stage, the learned Counsel appearing for the Petitioners sought an adjournment to place on record documents to support such a contention.

16. But, we are of the opinion that even if the Petitioners have specific material to support such an apprehension or ground of challenge, it would still not take the case of the Petitioners any further, for the reason that the impugned circulars specifically provide that if the staff is not able to get vaccinated due to medical reasons, they can produce such a certificate from Medical Board constituted by the Goa Medical College or produce a recommendation of medical experts regarding such an exemption. This is evident from a perusal of the above-quoted circular dated 13.07.2021 issued by the Directorate of Education and the circular dated 15/16.07.2021 issued by the Directorate of Higher Education. Therefore, even the said ground is found to be without any merit.

17. In view of the above, the Writ Petitions are dismissed.

MANISH PITALE, J

SMT. SADHANA S. JADHAV, J.