

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 607 OF 2021

IN THE MATTER OF:

Jacob Puliyel

...Petitioner

Versus

Union of India & Ors.

... Respondents

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ADVOCATE FOR THE RESPONDENT: DR. JOSEPH ARISTOTLE S.

**IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
Writ Petition (Civil) No. 607 / 2021**

IN THE MATTER OF:

JACOB PULIYEL

.... Petitioner

Versus

UNION OF INDIA AND OTHERS

... Respondents(s)

COUNTER AFFIDAVIT FILED ON BEHALF OF THE STATE OF TAMIL NADU

I, Dr.J.Radhakrishnan, I.A.S., S/o. Thiru V.Jegannathan, Hindu aged about 55 years, residing at No.65, 6th Main Road, Thiruvalluvar Nagar, Tiruvanmaiur, Chennai – 600 041, do hereby solemnly affirm and sincerely state as follows:

I am the Principal Secretary to the Government, Health and Family Welfare Department, Fort St.George, Secretariat, Chennai – 600 009, State of Tamil Nadu and as such I am well acquainted with the facts of the case from the available records. On behalf of the Chief Secretary to Government of Tamil Nadu, Secretariat, Chennai – 600 009, I have been authorised to file this Counter Affidavit and I am filing this Counter Affidavit in the Writ Petition (C) No. 607 of 2021.

2. It is submitted that the Petitioner has filed the Writ Petition (C) No. 607 of 2021 in the Hon'ble Supreme Court of India with a prayer to Strike down as unconstitutional the vaccine mandates of the State of Tamil Nadu vide circular no. R.No.91298/Immn/S1/2019 dated 18.11.2021 issued by the Directorate of Public Health, Tamil Nadu and to pass any further orders.



3. I have read the affidavit filed by the petitioner herein and I deny all the averments made therein except those that are specifically admitted herein. It is submitted that the disease COVID-19 has been declared as a notified disease, under Sec.76(1) of Tamil Nadu Public Health Act, 1939 vide Notification No 11(2)/HF/197(i)/2020, which has been published in the Tamil Nadu Government Gazette No. 119 (Part II – Section 2), dated 15.03.2020. It is further respectively submitted that, as per the provisions of the Tamil Nadu Public Health Act, 1939, [Tamil Nadu Act III of 1939] the Director of Public Health and Preventive Medicine was appointed by the Government of Tamil Nadu. As per section 76a, of the Tamil Nadu Public Health Act, 1939, the Director of Public Health and Preventive Medicine has issued a circular no. R.No. 91298/Immn/S1/2019, dated 18.11.2021 in which he has indicated to all citizen to follow the Covid Appropriate Behaviour, such as maintaining social distance, wearing masks, hand washing and avoiding crowd etc. In this regard, he has instructed the Subordinates to that effect as per the Tamil Nadu Public Health Act, 1939.

- *“.....Under Chapter – II, Section-7, the Director of Public Health and Preventive Medicine may, from time to time as occasion requires, recommend for adoption, by any local authority, such measures as may be necessary for improving the Public Health administration in the local area, or for safeguarding the public health therein.*
- *Under Sub-section (1) of Section 71 of the Tamil Nadu Public Health Act, 1939, No person who knows that he is suffering from a notified disease shall expose other persons to the risk of infection by his presence or conduct in-*



- (a) any street or Public place, or
- (b) any market, Theater or other place of entertainment or assembly, or
- (c) any School, College, Playground or such other place, of
- (d) any hotel, hostel, Boarding House, Choultry, rest-House, or Club or
- (e) any factory or Shop.

- Chapter – VII, Part-1 of Clause (b) of sub-section (2) of section 76 of the Tamil Nadu Public Health Act 1939, the Director of Public Health and Preventive Medicine has the power to make vaccination and preventive inoculations compulsory, subject to the provision of sub-section (3).

what is this provision? need to check...


Hence, all the Deputy Director of Health Services are hereby instructed to implement the above said provisions of the Tamil Nadu Public Health Act, 1939, by suitably informing the owner / occupier of the above places and ensure that all the places notified under sub-section (1) of section 71, are occupied by the persons **"Who are vaccinated against COVID-19"** so as to

prevent the spread of infection from the infected persons to other persons."

4. It is respectively submitted that the above instruction given by the Director of Public Health and Preventive Medicine to the subordinates to control the new stream of variants. Large Unvaccinated population results in emergence of virus variants. Therefore, to protect the people of Tamil Nadu, he has exercised his powers under the Tamil Nadu Public Health Act 1939, in the larger interest of the society. Sub-section (3) of section 76 of the Tamil Nadu Public Health Act, 1939 also provides immunity to the person, if the vaccination or inoculation is injurious to the health of the person subject to the conditions specified thereon. There is no illegality



in the order issued by the Director of Public Health and Preventive Medicine of the State of Tamil Nadu.

5. It is respectively submitted that section 76 of the Tamil Nadu Public Health Act 1939, states as follows:- 

".. 76. (1) (a) In the event of the prevalence or threatened outbreak of a notified disease in any place or area, Government may declare that such place or area is visited by, or threatened with, an outbreak of such disease.

(b) The power conferred on the Government by clause (a) may also be exercised, in the case of a place or area situated in a district, by the Collector of the district subject to the control of the Government.

(c) Any declaration made by the Government under clause (a) or withdrawal thereof in whole or in part shall be published in the Fort St. George Gazette and shall come into operation on the date of such publication.

(a) Any declaration made by the Collector under clause (a) or withdrawal thereof in whole or in part shall be published in the District Gazette, and shall come into operation on the date of such publication.]

(2) [When a declaration under clause (a) or clause (b) of sub-section (1) comes into operation and until it is withdrawn, the Collector of the district or any person duly authorized by him by general or special order, or if empowered in this behalf by rules made under this Act, the Health Officer or any other officer of the local authority concerned or any officer of the Government other than the Collector may, subject to such exceptions, restrictions, limitations and conditions and to such



control as may be prescribed, either generally or in the case of the notified disease to which the declaration relates, exercise the following powers, namely : -]

(a) Power to order the evacuation of infected houses and houses adjoining them or in their neighbourhood, or generally of all houses in an infected locality.

(b) power to make vaccination and preventive inoculations compulsory subject to the provisions of subsection (3).

(c) power to direct – (i) that persons arriving from places outside the local area, or residing in any building adjacent to, or in the neighbourhood of, an infected building, shall be examined by any specified medical officer or by any one of a specified class of medical officers.

(ii) that the clothing, bedding or other articles belonging to such persons shall be disinfected, if there is reason to suspect that they have been exposed to infection and

(iii) that any such person shall give his address and present himself daily for medical examination at a specified time and place, for a period not exceeding ten days ;

(d) Power to take such measures as may be necessary –

(i) In respect of, or in relation to, persons exposed to infection from any notified disease, or likely to infect other persons with any such disease, and

(ii) in respect of, or in relation to, articles exposed to infection from any notified disease, or likely to infect persons with any such disease,



Including, in case (i) the placing of restrictions on the movements of such persons, and in case (ii), the destruction of such articles and the placing of restrictions on their export from, import into, or transport within, the local area

(e) Power to direct that at any place within or outside the local area, any consignment of grain exported from or imported into, such area by rail, road or otherwise, shall be examined and, if necessary unloaded and disinfected in any specified manner and

(f) power to close all or any existing markets and to appoint special places where markets may be held.

(3) (a) If any person who, or a child in whose care, is sought to be vaccinated or inoculated in pursuance of the power referred to in clause (b) of sub-section (2), declares before a Magistrate specially empowered by the Government in this behalf that as a result of a careful inquiry into the subject, he believes that such vaccination or inoculation will be injurious to his health or the health of the child, as the case may be, the Magistrate may, after giving notice to the Health Officer and hearing any representations made by him or on his behalf, exempt such person or child from vaccination or inoculation, on condition of the person aforesaid undertaking to subject himself and the members of his family to isolation of such description and for such period and to such further restrictions, if any, as maybe directed by the Magistrate.

Provided that any exemption granted under this clause shall cease to have effect after a conviction under clause (b) and no exemption shall be granted to any person who has been so convicted.



(b) Any person who commits a breach of any undertaking given by him under clause (a) shall be punished with imprisonment which may extend to three months, or with fine, or with both. 1[.....]

[(4)] The local authority may, in its discretion, give compensation to any person who in its opinions, has sustained substantial loss by the destruction of any property under the powers conferred by this section ; but save as provided in this sub-section, no claim for compensation shall lie for any loss or damage caused by any exercise of the powers aforesaid."

6. It is respectfully submitted that the overarching goal of COVID-19 vaccines is to contribute significantly to the equitable protection and promotion of human well-being among people globally. Vaccines are very important, particularly for protecting health care workers and those most-at-risk is the only way to mitigate the public health and economic impact of the pandemic. In the longer term, the vaccine is intended to be used for active immunization of people at risk to prevent COVID-19. As part of the global efforts for rapid development of a safe and effective COVID-19 vaccine, various scientific techniques have been used to develop safe vaccine.

7. It is respectfully submitted that a National Expert Group on Vaccine Administration for COVID-19 (NEGVAC) was constituted by Cabinet Secretariat on 7th August 2020 under the Chairpersonship of Member (Health) NITI Aayog and Co-Chairpersonship of Secretary (H&FW). The National Expert Group on Vaccine Administration for COVID-19 has representation of Secretaries from Ministry of External Affairs, Department of Biotechnology, Department of Health Research, Pharmaceuticals, Meity, Finance and State Governments and technical experts including Director General Health Services (DGHS), Directors of AIIMS, National



AIDS Research Institute (NARI) and experts from National Technical Advisory Group on Immunization (NTAGI) and five state Governments. The National Expert Group on Vaccine Administration for COVID-19 has guided on all aspects of COVID-19 Vaccine introduction in India including Regulatory Guidance on Vaccine Trials, Vaccine selection, equitable distribution of vaccine, procurements, financing, delivery mechanisms, prioritization of population groups, vaccine Safety Surveillance, regional cooperation and assisting neighbouring countries, communication and media response etc.

8. It is respectfully submitted that based on the recommendations of NEGVAC and approval of Government of India, COVID-19 vaccination programme started with the Health Care Workers (HCWs) who were directly involved in care of the COVID-19 patients w.e.f. 16th January 2021 followed by Front Line Workers (FLWs) who were involved in containment and enforcement activities from 2nd February 2021. Subsequently, the individuals above 60 years and those between 45 years and 60 years with the identified 20 co-morbidities were included for COVID-19 vaccination from 1st March 2021. Since 1st April 2021, prioritized age group was expanded to cover all persons aged 45 years and above for COVID-19 vaccination. Nearly 88% of all COVID deaths in the country have been reported in the age group of 45 years and above. Starting 1st May, 2021, the eligible age for vaccination was expanded to cover all adults above 18 years. From 21st June 2021, Revised Guidelines for Implementation of National COVID Vaccination Program came into effect. All citizens irrespective of their income status are entitled to free vaccination.

9. It is respectfully submitted that emergency Use Authorization (EUA) is a regulatory mechanism to allow the use of vaccines and medicines to prevent and or



reduce the impact of life-threatening diseases or conditions as caused by COVID-19. However, before grant of the EUA, there are rigorous assessments of laboratory and clinical trial data, including data on quality, safety, production of protective antibodies and efficacy. Safety is particularly critical aspect of this scrutiny and a risk-versus-benefit evaluation is done in the context of a public health emergency. Full licensure is obtained when the manufacturer submits the complete data. EUA by Indian regulators is aligned with global guidelines.

10. It is respectfully submitted that concept of EUA always existed to save the lives of people all over the world with vaccine and medicines for life threatening diseases while companies continue to obtain additional safety and effectiveness information to enable full licensure. Previously, EUAs have been granted to vaccines for outbreaks due to anthrax, Ebola, enterovirus, H7N9 influenza, and Middle East respiratory syndrome.

11. It is respectfully submitted that in the order-dated 30.06.2021, in W.P.No. 11850/2021, on Covid-19 Management, the Division Bench of the Hon'ble High Court of Madras, among other things, has ordered as follows:-

xxx

xxx

xxx

*"2. ... The State should try and persuade persons with awareness campaigns and scientific data to indicate the efficacy of the vaccines and the indispensable nature thereof in dealing with the present pandemic. **Indeed, vaccinating oneself may not only be to protect oneself but also in the larger interest of public health. When such larger interest of public health comes into play and it is possible that a person who has not taken the vaccine may not reveal any***



symptoms but still be a silent carrier, it is doubtful whether the right to refuse to take the vaccine can be exercised in such circumstances...." xxx

Further, in the order-dated 31.05.2021, in W.P.No. 10486/2021 etc., the Division Bench of the Hon'ble High Court of Madras, among other things, has ordered as follows:-

xxx

xxx

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"7. ... It is hoped that the vaccination drive and the awareness drive to administer vaccine are kept up and the superstitions and the unsubstantiated myths built around the vaccine are dispelled."

Further, in the order dated 24.05.2021, in W.P.No. 10486/2021, the Hon'ble High Court of Madras, among other things, has ordered as follows:-

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"6. ...Awareness campaigns and like measures need to be undertaken to educate the citizens, particularly in the rural areas, to step forward and take the vaccine. Superstitions and archaic beliefs practiced in some communities stand in the way of scientific measures being implemented and there continues to be a resistance to accepting vaccination in certain sections of the society. Both the Centre and the State should take appropriate measures to allay the misgivings that may be harboured in such regard."

12. It is respectfully submitted that in the Letter dated 23.03.2021, the Department of Health and Family Welfare Department, Government of India, among others has instructed that:-



“...National Expert Group on Vaccine Administration for COVID-19 (NEGVAC) has been guiding all aspects of COVID-19 vaccination drive on the basis of available scientific evidence. Based on the recommendation of NEGVAC, Government of India has now decided to expand the prioritized age group to include all persons aged 45 years and above for COVID-19 vaccination from 1st April 2021.”

Further, in the letter, dated 03.12.2021, the Department of Health and Family Welfare Department, Government of India, among others, has instructed that:-

“...Evidence indicates that fully vaccinated individuals are protected from severity of the disease. Please ensure that the remaining 1st and 2nd dose gaps in Covid Vaccination in respect of your State are addressed and filled up through proactive measures. “

Further, in the letter dated 21.12.2021, the Department of Health and Family Welfare Department, Government of India, among others has instructed that:-

“... Ensure cent per cent coverage of left out first and second dose eligible beneficiaries in an accelerated manner. Special focus to be given to those districts where the first and second dose coverage is less than the national average. The door to door vaccination campaign need to be strengthened.”

13. It is respectfully submitted that an Academic Resources Advancement Movement Trust and NGO had filed a Public Interest Litigation petition in W.P.No. 24530/2021 before the Hon'ble High Court of Madras with a prayer of all public authorities, establishments and institutions including public and private

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educational institutions to not insist on COVID-19 vaccination as a precondition for permitting the staff and students to physically attend duties and/or classes in such establishments and institutions.

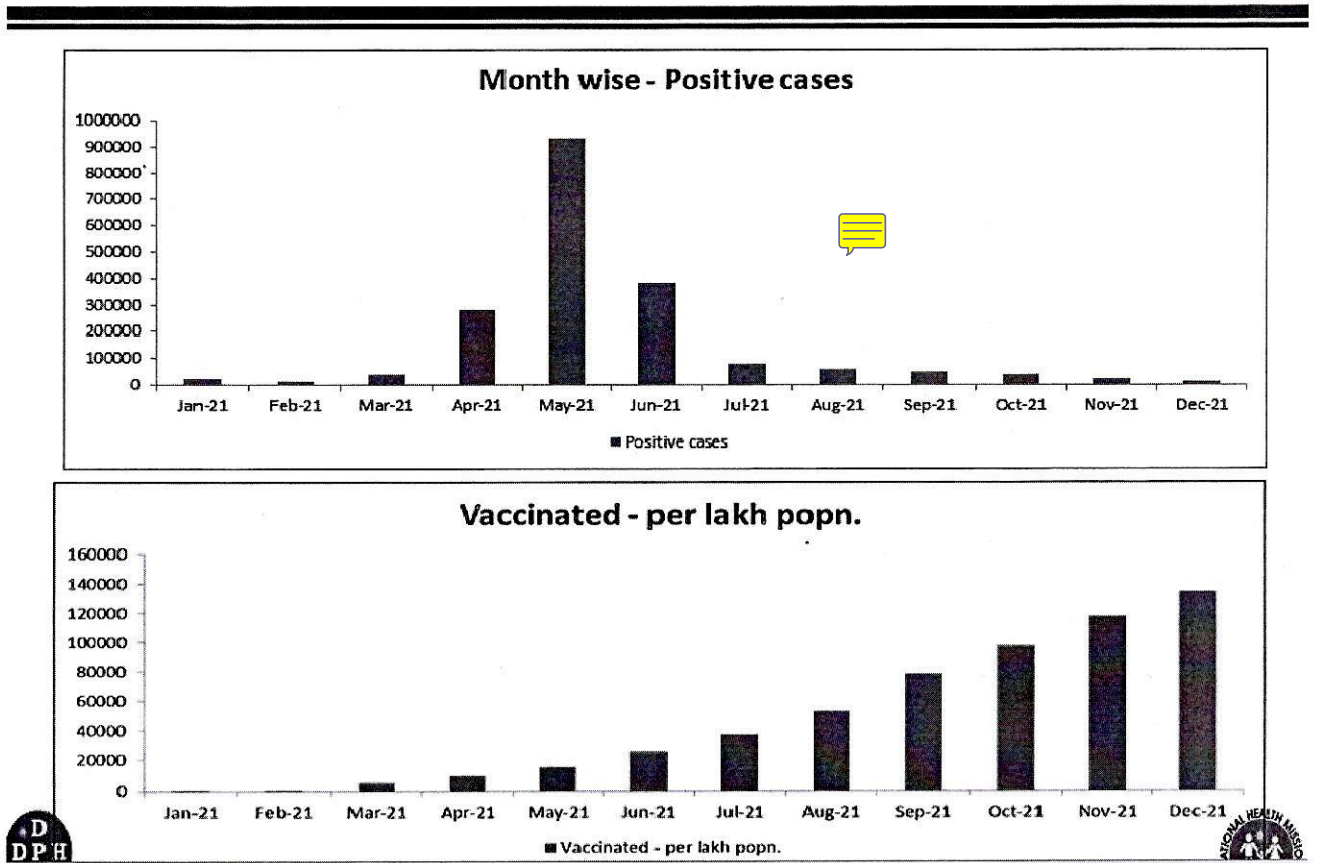
The Division Bench of the Hon'ble High Court of Madras in its order dated 22.11.2021 has observed as follows:-

“..The Vaccine Mandate is there for the safety of all. You are going against Public Interest in this Petition. Since it is a PIL, we must consider the application of equity and look at the entire situation.” *Further the High Court highlighted that the Supreme Court has laid down in two Judgments that Public Interest Litigations are not maintainable in service matters and that this Petition has been exposed as a service matter. Furthermore, the Court allowed the Petitioner to withdraw the Petition. The Public Interest Litigation (PIL) was hence dismissed as withdrawn and the Petitioner was permitted liberty to approach the Court in case the teachers' service gets affected due to Double Vaccination Mandate. The Court sternly adjudicated “It is not a question of your individual liberty alone, it's a question of individual liberty of the students as well.” The Court highlighted that the Vaccines protect the population to a large extent, including students and that the Court cannot strike down a Government Mandate.”*

14. It is respectively submitted that with increase in Covid-19 vaccine coverage in the State of Tamil Nadu, the daily Covid cases of the State of Tamil Nadu have seen a declining trend. The following Bar Graph shows this clearly:-



12/15



15. It is respectively submitted that the fundamental freedom guaranteed by Article 14 and Article 19 of the Indian Constitution are not absolute. They are subject to reasonable restrictions owing to the simple rationale that for the society to function in an orderly manner, people cannot exercise their rights in such a manner which is injurious to the society as a whole because if it is done, it will lead to spread the disease which cannot be controlled. Therefore, the reasonable restrictions are imposed on the enjoyment of fundamental rights due to the fact that in certain circumstances, individual liberty has to be subordinated to certain other larger interests of the society.



16. The State of Tamil Nadu act upon the provision confined by the Tamil Nadu Public Health Act, 1939, to protect the society from the spread of Covid-19 and variants. While some variants of Covid-19 do not manifest symptom in one individual, it can spread easily to others, who have some comorbidities resulting in severe complications. Pandemic cannot be controlled unless significant population is vaccinated. Hence, in the larger public interest and in the interest of Public Health State need to have reasonable restrictions. It is prayed that there is no illegality in the order issued by the Director of Public Health and Preventive Medicine, Government of Tamil Nadu and the Tamil Nadu Public Health Act, 1939, Director of Public Health has been empowered to issue reasonable restrictions.

17. Therefore, the prayer of the Writ Petition is not valid and the instruction issued by the Director of Public Health and Preventive Medicine vide circular no. R.No. 91298/Immn/S1/2019, dated 18.11.2021 is to be in action to the larger interest of the society .

In view of the above submission, it is humbly prayed that this Hon'ble Court may be pleased to accept this Counter Affidavit and dismiss the writ petition and pass appropriate orders as this Hon'ble Court may deem fit and proper and thus render justice.



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DEPONENT

03/10/22
D. DHEENADHAYALAN, M.A., B.L.,
ADVOCATE & NOTARY PUBLIC
400, LAW CHAMBER,
MADRAS HIGH COURT, CHENNAI-104
EXPIRE ON 22/10/25
CELL No : 9381016780

VERIFICATION

I, Dr. J. Radhakrishnan, I.A.S, S/o. Thiru V. Jegannathan, Hindu aged about 55 years, residing at No.65, 6th Main Road, Thiruvalluvar Nagar, Thiruvannamipur, Chennai – 600 041 do hereby solemnly affirm and sincerely state as follows, do hereby declare that this is my name, signature and official designation and what are all stated in the above said paragraphs are true and correct to the best of my knowledge, belief and information on record. No material facts have been concealed and verified the same on this the 3rd day of January, 2022.

DEPONENT**IDENTIFIED BY ME****Notary**

**D. DHEENADHAYALAN, M.A., B.L.,
ADVOCATE & NOTARY PUBLIC
400, LAW CHAMBER,
MADRAS HIGH COURT, CHENNAI-104
EXPIRE ON 22/10/25
CELL No : 9381016780**