

IN THE HIGH COURT OF BOMBAY AT GOA.

Writ Petition No. 1770 /2021

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

2. Mr. Xavier M Martins
Aged 55, Indian National,
 - i. Associate Professor, English
 - ii. Sant Sohirobanath Ambiyé,
 - iii. Government College of Arts and Commerce
 - iv. Virnoda – Pernem Goa.

3. Ms. Elsa Fernandes
 - i. Lecturer in Arch. Assistantship
 - ii. Department of Arch. Asstt.
 - iii. Government Polytechnic
 - iv. Panaji -Goa.

.....Petitioners.

V/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 Ambiyé,

Government College of Arts and Commerce

Virnoda - Pernem.

5. The Principal,

Government Polytechnic Panaji,

Panaji Goa,

6. The Director,

Directorate of Health Services

Having office at Campal

Panaji – Goa.

7. The Union of India

Through the Cabinet Secretary,

Cabinet Secretariat (Main),

New Delhi.

8. Indian Council of Medical Research, Ramalinga Swami Bhawan,

P.O. Box No. 4911,

Ansari Nagar,

New Delhi – 110029.

....Respondents.

(All registered addresses)

**IN THE MATTER OF ARTICLES 14, 21 AND 226 OF THE
CONSTITUTION OF INDIA.**

To,

THE HON'BLE CHIEF JUSTICE

& OTHER COMPANION JUDGES

OF THIS HON'BLE COURT.

**THE HUMBLE PETITION OF THE PETITIONERS ABOVE NAMED MOST
RESPECTFULLY SHOWETH:**

The Petitioners most respectfully states and submits as under:

1. The Petitioners are lecturers teaching at certain Government Colleges in the State of Goa.
2. The Petitioners nos.1 and 2 are aggrieved by the circular dated 16/07/2021 bearing no. ACADII/MISC/104/DHE/2021/VOLI/2115 issued by the Director of Higher Education New SCERT Building, Alto Porvorim, Bardez Goa and the Petitioner no. 3 is aggrieved by the circular dated 28/07/2021 bearing no. DTE/Admn/3-8/COVID-19/2020 issued by the Director, Directorate of Technical Education Administration Section Government of Goa regarding compulsory Covid19 vaccination and RTPCR tests.

FACTS IN BRIEF.

1. The Petitioners are lecturers teaching at certain Government Colleges in the State of Goa.
2. Along with the rest of the world the State of Goa was also affected by the Covid19 Pandemic.

3. Since March 2020 all schools and colleges in the State of Goa were closed and the classes of the students have been conducted virtually on the directions of the State and Central Government to curb the spread of Covid19.
4. The petitioners states that after the second wave, the online classes have resumed from the month of June 2021, and the teaching and non-teaching staff are continuously taking precautions such as maintaining social distancing, wearing masks, proper sanitising of their hands, etc while rendering their services. They have been conducting online examinations, internal tests of the students, practical's etc very effectively and efficiently.
5. In month July 2021, a survey was conducted by the Colleges on the directions of the Directorate of Higher Education, Government of Goa whereby the records of all the teachers were taken who had taken the first and second dose of the Covid19 vaccine were noted down.
6. The petitioners state that pursuant to the survey a circular dated 16/07/2021 bearing no. ACADII/MISC/104/DHE/2021/VOLI/2115 came to be issued by the Directorate of Higher Education New SCERT Building, Alto Porvorim, Bardez Goa which states;

“All the teaching and non-teaching staff of the colleges and Goa University should take at least the first dose by 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 are not able to get vaccinated for any reasons should produce a RTPCR report every week w.e.f 02/08/2021. 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 the Principals of both Government and aided Colleges shall submit the status to this effect by 4th August 2021, 3 pm using the link <https://forms.gle/jFcwR7oE6QBvo1mSA> for onward submission to the Government.

Hereto annexed and marked is the copy of the Circular dated 16/07/2021 issued by the respondent no. 2 and marked as **Annexure A.**

7. The Petitioner no. 3 who is a lecturer at Government Polytechnic College at Panaji Goa states that the Directorate of Technical Education Administration Section issued a Circular dated 28/07/2021 bearing no. DTE/Admn/3-8/COVID-19/2020 which states:
- All teaching and non teaching staff of the institutions shall take the 1st dose of vaccination by 31st July 2021.*

Staffs 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 reasons shall submit RT-PCR test 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 undergoing the RT-PCR Test.

Teaching and non teaching staff members shall ensure that their family members get fully vaccinated.

Hereto annexed and marked is the copy of the Circular dated 28/07/2021 issued by the respondent no. 3 and marked as **Annexure B.**

8. The circular dated 16/07/2021 bearing no. ACADII/MISC/104/DHE/2021/VOLI/2115 issued by the Respondent no.2 and the circular dated 28/07/2021 bearing no. DTE/Admn/3-8/COVID-19/2020 issued by the Respondent no. 3 is in verbatim to each other.
9. The petitioners upon going through the circulars dated 16/07/2021, 28/07/2021 were worried as they had certain apprehensions on the vaccines being administered in the State of Goa as there were many negative reports in the news articles as regards to the covid19 vaccines.
10. The petitioners state that at present the State of Goa with the help of the Central Government is administering the COVISHIELD vaccine doses to the general public at large for free and there are certain vaccines (such as COVAXIN) which are administered by the private hospitals to the general public on payment.
11. The exercise administering of these doses to the general public is called as the TIKA UTSAV, which is purely voluntary and no citizen/individual is coerced for compulsory vaccination.

12.The effects of these vaccines have neither been tested nor researched in a proper manner. The World Health Organisation has only approved the use of COVISHIELD for emergency use and has granted it a ‘emergency use listing’. Similar is the position with the COVAXIN which is not yet approved by the World Health Organisation except for emergency use.

13.The Emergency Use Listing (EUL) is a time limited risk - benefit assessment for emergency use of vaccines, medicines and in vitro diagnostics during a PHEIC when limited data are available and the products are not yet ready for licensure and WHO prequalification. As the Emergency Use Listing (EUL) is time-limited in nature, the applicant is still expected to complete the development of the product and submit application for licensure and prequalification. The issuance of an Emergency Use Listing (EUL) for a product reflects World Health Organisations recommendation for emergency use following a robust scientific risk benefit assessment. However, each World Health Organisation member states has the sole prerogative to allow the emergency use of a product under an Emergency Use Listing (EUL) within their country.

14.COVISHIELD™ manufactured by Serum Institute of India Pvt. Ltd (SIIPL) was assessed under the World Health Organisation EUL (Emergency Use listings) procedure based on the review of data on quality, safety, efficacy, Risk management plan (RMP) and programmatic suitability performed by World Health Organisation Vaccine Prequalification experts and evaluators from National Regulatory Authorities (NRAs) from different countries and regions.

15. Emphasis was placed on the risk-benefit of the vaccine and therefore on the Risk Management Plan (RMP) because of the need to consider the perspectives and concerns of regulators from different regions, that might otherwise not be considered by the National Regulatory Authorities (NRA) with reference to the World Health Organisation.

16. The use of the COVISHIELD only under an emergency situation has been endorsed by the Drugs Controller General of India by an authorisation for restricted emergency use approval issued on 3rd January 2021.

Annexed here to is the relevant extract of the document for emergency use listing on COVISHIELD submitted by SIIPL to the World Health Organisation marked as **Annexure C.**

17. Further in a reply to an RTI application dated 9/03/2021 filed by one Anurag Sinha of Jharkhand, the Central Ministry of Health and Family Welfare has stated very clearly that taking Covid vaccines was entirely voluntary and there is no relation whatsoever to provision of government facilities, citizenship, job etc. to the vaccine.

Annexed here to is the copy of the reply to the RTI dated 09/03/2021 and marked as **Annexure D.**

18. In a reply dated 23/03/2021 to an RTI application filed by one Mr. Dinesh Salunke, the Central Ministry of Health and Family Welfare has stated very clearly that taking Covid vaccines was entirely voluntary.

Annexed here to is the copy of the reply to the RTI dated 23/03/2021 and marked as **Annexure E.**

19. The petitioners further states that in a reply filed by Mr. Tarun, dated 16/04/2021 bearing file no. MOHW/R/E/21/01536, the Ministry of Health and Family Welfare replied to its first query, stating that the *Vaccination of Covid 19 is Voluntary*.

And very interestingly to a query whether government or private organisation can hold the salary for not taking the vaccine and also whether the government can cancel any kind of government facilities such as subsidies, ration and medical facilities in case of not taking Covid19 vaccine, they replied stating *in view of the above reply these queries do not arise*.

Annexed here to is the copy of the reply dated 16/04/2021 and marked **Annexure**

F.

20. In a reply dated 25/05/2021 to an RTI application filed by Mr. Amit Chouhan, the Central Ministry of Health and Family Welfare, immunisation section has stated very clearly that taking Covid19 vaccines was entirely voluntary.

The reply also states that there were total 24,233 (data as on 8th May 2021) developed Adverse side effects after covid19 vaccine.

Annexed here to is the copy of the reply to the RTI dated 25/05/2021 and marked as **Annexure G.**

21. In a reply dated 09/06/2021 to the RTI application filed by Mr. Mahinder Kumar, the Central Public Information Officer (Hospital Affairs) has stated very clearly that RT-PCR/Rapid Antigen Testing is not mandatory in India, it is Voluntary.

Annexed here to is a copy of the reply to the RTI dated 09/06/2021 and marked as **Annexure H.**

22. On bare perusal of the above RTI replies it makes it clear that the Union of India has made the vaccination drive voluntary. Therefore to coerce any citizen to take the vaccine is not only contrary to the statements/guidelines of the Union of India but clearly violative of their fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India which the circular dated 16/07/2021 infringes upon.
23. According to Sections 3 and 6 read with Section 10 and 11 of the Disaster Management Act, 2005, the Central Government is empowered to establish the National Disaster Management Authority (NDMA) who, in turn is authorized to formulate national and state-level plans and policies to control, management, and mitigate the disaster.
24. Further, under Section 62, the Central Government can issue directions to the Union Ministries, Departments, and State Governments “to facilitate or assist in the disaster management.”
25. No orders/guidelines have been issued under the Disaster Management Act, 2005 by the Union of India or by the National Disaster Management Authority regarding compulsory vaccination of teachers. The petitioners further state that no orders have been issued by the State Government under the Epidemic Diseases Act, 1897, regarding compulsory vaccination. Therefore the circulars dated 16/07/2021 and 28/07/2021 issued by the Respondent no. 2 coercing only the petitioners and other teachers to go in for compulsory vaccination is clearly arbitrary, illegal and violates Articles 14 and 21 of the Indian Constitution.
26. The petitioners have a right to receive treatment of his/her choice and a vaccination cannot be forced upon them. Making vaccination mandatory and forcing it upon any

individual in this case the teaching and non - teaching staff is contrary to their human and fundamental rights.

27. In its judgement in the matter of **Common Cause v/s Union of India reported in (2018) 5 SCC 1**. The Hon. Supreme Court has held that individual has right over his/her own body and the right to decide the medical treatment for themselves.

28. The petitioners again reiterate that the vaccination drive is completely voluntary and therefore the decision of the respondent no. 2 to issue the circular 16/07/2021 is not only to the contrary to the guidelines of the Union of India but violative of the Articles 14 and 21 of the Indian Constitution.

29. The petitioners state that the vaccines are still at the stage of clinical trials, they are experimental. There is no proven medical evidence that the COVID-19 vaccine can prevent a person from acquiring the virus. There are only reports that the vaccines can lessen the impact of the virus on the human body and prevent fatalities. In these circumstances considering that the short term and the long term effects of the vaccines on the human body it is still not clear, making the vaccine compulsory is not only improper but illegal and inhumane to any one taking the vaccine.

30. The current Covid 19 vaccines used in India are not conclusively proven to be safe and effective as they have been approved for emergency use listing. The long terms effects of the vaccines on the human body have still not been documented and studied, this is because the clinical trials of the vaccines and the approval was rushed through due to the emergency situation during the peak of the pandemic and hence they have been granted emergency use listing by the World Health Organisation as on date.

31. The State government has not taken enough steps to sensitise the citizens of the entire exercise of vaccination, educating them about the pros and cons to facilitate an informed decision about taking the vaccine.
32. In the present case as per the impugned circulars dated 16/07/2021 and 28/07/2021 in the event the petitioners do not take the vaccine they may be denied the entry into the institution which will affect their work and prevent them from carrying out their duties.
33. Further the circular gives the petitioners an option of getting the RT-PCR tests done once a week at their own cost to those who don't intend to take the vaccine and further states that the expenses of the RT-PCR test will not be reimbursed by the Government and no duty leave will be admissible for taking the RT-PCR test.
34. The petitioners submit that such directions are a flagrant abuse of the Constitutional provisions of the Petitioners' right to life guaranteed under Article 21 of the Constitution of India, the right to choose, the right to protect their own bodies as well as right to employment.
35. The RT-PCR tests are predominantly used worldwide and in India as a test for Covid-19 diagnosis. The petitioners if not vaccinated need to also bear the expenses of the RT-PCR test every week which are by themselves expensive thereby causing them financial hardship and that too no leave would be granted to the petitioners to go to the centres for taking the tests.
36. The petitioners apprehend that repeated use of these tests every week will cause them severe health problems as the ICMR has issued an Advisory for testing in which has

recommended measures to optimise RT-PCR testing. The Circulars issued by the Respondents no. 2 and no. 3 are contrary to these guidelines.

37. So also in an advisory issued by the Ministry of Health and Family Welfare, Government of India stating that all individuals need not be tested because the disease of Covid19 is primarily reported in individuals with travel history to the affected countries or close contacts of positive cases.

- And that all symptomatic people who have history of international travel in last 14 days,
- Those who had come in contact of confirmed cases,
- Are health care workers, are hospitalised patients with severe Acute Respiratory (SARI) and Influenza like illness (ILI) or severe pneumonia.

38. The advisory further states that Asymptomatic direct and high risk contacts of confirmed cases should be tested once between day 5 and day 14 of coming in his/her contact. Direct and high risk contact includes:

- Those living in same household with a confirmed case,
- Healthcare worker who examined a confirmed case without adequate protection as per WHO recommendations.

Annexed here to is a copy advisory issued by the Ministry of Health and Family Welfare, Government of India and marked as **Annexure I.**

39. The vaccination has not been made mandatory in the other government departments in the State of Goa, where the staff come in close proximity and contact with each other as well as members of the public who visit their offices and no such circulars have been

issued to other departments. No such circular has been issued to the doctors and other health workers in the Goa Medical College and in the government hospitals, though they are the ones who work in high risk settings and in close proximity with the patients they treat. Thus the petitioners are being discriminated against thereby violating their fundamental rights guaranteed under Article 14 of the Indian Constitution.

40. The Meghalaya High Court has recently considered this issue in P.I.L No. 6/2021 filed by **Registrar General High Court of Meghalaya VS State of Meghalaya** and in its interim order dated 23/06/2021 has observed thus;

“Article 21 encompasses within its fold, right to health as fundamental right. By that same analogy, right to health care which includes vaccination, is a fundamental right. However vaccination by force or being made mandatory by adopting coercive methods vitiates the very fundamental purpose of the welfare attached to it.

It impinges, on the fundamental right(s) as such, especially when it affects the right to means of livelihood which makes it possible for a person to live.

Another pivotal question emerges as to whether any notification/order published by the State Government and/or its authority can be understood as a prescription by “law” for the purposes of prohibiting a greater degree of rights; i.e. fundamental rights. In other words, can a State Government and/or its authority issue any notification/order which is likely to have a direct effect on the fundamental rights of its citizens especially on a subject matter that concerns both public health and the fundamental rights of the individual person.

The issue here essentially centres around a question on the law making power of the State Government, which, even though permitted by Entry 6, List II of the Seventh Schedule, has to be in consonance with the fundamental right to life and livelihood of an individual.

A notification/order of the State certainly cannot put an embargo or fetter; on the fundamental right to life of an individual by stripping off his/her right to livelihood, except according to the procedure established by law. Even that procedure is required to be reasonable, just and fair.

Therefore, right to life and the welfare policy for vaccination can never affect a major fundamental right; i.e., right to life, personal liberty and livelihood, especially when there exists no reasonable nexus between vaccination and prohibition of continuance of occupation and/or profession.

A harmonious and purposive construction of the provisions of law and principles of equity, good conscience and justice reveals that mandatory or forceful vaccination does not find any force in law leading to such acts being liable to be declared ultra vires ab initio.

A copy of the interim order dated 23/06/2021 is annexed and marked as

Annexure J.

41. The Meghalaya High Court also relied on the case of *X v. Netherlands* and *X vs. Austria* to illustrate that when a person is subjected to an intrusion of their body, even if of a minor intensity such as through a needle, concerns regarding the issue of personal

and bodily autonomy and integrity arise regardless of the consequences of such intrusion.

42. These intrusions that lead to such concerns, as mentioned above, were equated by the Meghalaya High Court on a similar footing of non-sterilization rights and sex reassignment. In other words, this essentially means that even minor intrusions on an unwilling person's body are capable of violating their right to personal choice and bodily autonomy and integrity.

43. The Gauhati High Court has also considered this issue in WP(C)/37/2020, In **Re Dinthar Incident versus State of Mizoram and 11 Ors**, vide its interim order dated 2nd July 2021, passed by the Division Bench comprising of Hon'ble Justice Michael Zothankhuma and Hon'ble Justice Nelson Sailo observed:

“It has been brought to our notice that even persons who have been vaccinated can still be infected with the Covid virus and spread it to others. So if vaccinated and unvaccinated persons can be infected by the Covid virus, and if they can both be spreaders of the virus, the restriction placed only upon the unvaccinated persons, debarring them from earn; livelihood or leaving their houses to obtain essential items is unjustified, grossly unreasonable and arbitrary.

Clauses 5(2), 6 (1) and 6(2) violate Article 14 of the Constitution by discriminating; between vaccinated and unvaccinated individuals.

Clause 6(1) and 6(2) violate the Fundamental right of a person to practice profession, or to carry on any occupation or trade or business under Article 19 (1) (g) and his right to livelihood protected by Article 21 of the Constitution of India.

Furthermore, Article 19(6) of the Constitution states that restrictions can only be made in the form of a law and not by way of executive instructions by the State Government via Executive Orders under the Disaster Management Act, 2005, curtailing the Fundamental Rights of the citizens that are protected by the Constitution.

We hold that the restrictions placed upon unvaccinated individuals vis-a-vis vaccinated individuals in terms of Clause 5(2), 6(1), 6(5), Serial No. 31 & 42 of Annexure-3 of the SOP dated 29.06.2021 are arbitrary and not in consonance with the provisions of Article 14, 19 & 21 of the Constitution. The said impugned Clauses are interfered with, to the extent that the allowances available and given to vaccinated persons in the above clauses shall also be made equally applicable to unvaccinated persons. The State respondents are accordingly directed to issue a corrigendum of the SOP dated 29.06.2021 at the earliest incorporating the above directions.”

A copy of the interim order dated 02/07/2021 is annexed and marked as

Annexure K.

44. In **Osbert Khaling v/s State of Manipur** and 2 others the Division Bench of the High Court of Manipur at Imphal in its interim order dated 13/07/2021 has observed thus;

Restraining people who are yet to get vaccinated from opening institutions, organisations, factories shops etc or denying them their livelihood by linking their employment be it NREGA job card holders or workers in Government or private projects, getting vaccinated would be illegal on the part of the state, if not unconstitutional. Such a measure would also trample upon the freedom of the individual to get vaccinated or choose not to do so.

A copy of the interim order dated 13/07/2021 is annexed and marked as

Annexure L.

45. As in the case of **YOGENDRA KUMAR versus INDIAN AIR FORCE & 1 other(s)**, before the High Court of Gujarat at Ahmedabad in Special Civil Application No, 8309 of 2021, a Division Bench of the Gujrat High Court presided by Honourable Mr. Justice A. J. Desai and Hon'ble Dr. Justice A.P Thakur passed an order on 22nd June 2021 that no coercive action shall be taken against the Petitioner who is at the present not willing to take the Vaccine. It directed thus;

“The petitioner Yogendra Kumar, an IAF corporal, had moved the HC seeking a direction to quash the show cause notice dated May 10, 2021, in which the IAF stated that his stand against vaccination "verges to gross indiscipline", and his continuation in the service is likely to adversely impact the health of other "air warriors and AF civilians". "The IAF is of the opinion that your continuation in the disciplined force like Indian Air Force is undesirable and you need to be separated from the service.”

Yogendra Kumar stated in his petition that has the right to receive treatment of his choice and vaccination cannot be forced upon him, because as per the Central government, the vaccine is voluntary and not mandatory for individuals in the country. He stated that was unwilling to get vaccinated as it is not fully approved by the administration and has been given emergency use authorization, hence it should not be considered the only option for prevention against COVID-19. He also cited newspaper reports related to deaths and adverse effects of COVID-19 vaccines and cited a

Supreme Court judgment of 2018 to buttress his claim and said he has the right to receive treatment of his choice and vaccination cannot be forced upon him. Also that he is taking Ayurvedic medicines and products suggested by the AYUSH ministry, and is also strictly following the guidelines of wearing mask, avoiding crowded places, using sanitizer and washing hands at regular intervals. That he does yoga and takes sufficient amount of vitamin C through fruits and vegetables, the petitioner said, adding that while these measures do not give 100 per cent protection from the infection, they have worked in his case so far.”

“No coercive action shall be taken against the petitioner, who is at present not willing to take vaccine.”

A copy of the interim order dated 22/06/2021 is annexed and marked as

Annexure M.

46. The petitioners thus submit that by applying the ratio laid down in the above mentioned judgements the impugned circulars dated 16/07/2021 and 28/07/2021 are illegal and unconstitutional.

47. The petitioners further submit that the COVISHIELD Vaccine is a variant of AstraZeneca vaccine manufactured and administered in Europe which is banned/restricted in 11 countries worldwide as it had been reported that it caused blood clots in some persons.

- i. In United States of America the AstraZeneca vaccine is not yet approved by Food and Drug Administration (FDA). It has been seen that people lesser than 55 years of age are more susceptible to blood clots by this vaccine.

- ii. Norwegian health workers under the age of 50 were hospitalized and one was reported dead after the vaccination. The newspaper also quoted Norwegian experts, who said deadly blood clots were caused by the AstraZeneca Covid Vaccine.
- iii. Denmark has ceased giving the Oxford-AstraZeneca Covid Vaccine amid concerns about rare cases of blood clots, the first European country to do so fully.
- iv. In United Kingdom – all people under the age of 40 have offered an alternative to, Oxford-AstraZeneca vaccine in the UK as a precaution, after a review of all the latest evidence by vaccine advisers and safety experts.
- v. France has recommended AstraZeneca for over – 55years only.
- vi. Italy has restricted use of AstraZeneca Covid jab to over 60years.
- vii. Spain has restricted the use of AstraZeneca’s Covid19 vaccine below 60 years of age over reports of dangerous blood clots in some recipients.
- viii. In Sweden all Swedes under 65 to be given alternative to AstraZeneca vaccine for second dose.
- ix. Canada’s National Advisory Committee on Immunization (NACI) has recommended that the AstraZeneca Covid-19 vaccine not be used for individuals below the age of 55.
- x. Ireland has stopped using the Oxford/AstraZeneca COVID-19 vaccine on most people under the age of 60 because of the potential danger of rare blood clots.
- xi. Netherlands has halted the use of AstraZeneca vaccine for people under 60.
- xii. Portugal has recommended the AstraZeneca COVID-19 vaccine only for people aged over 60.

48. There have been number of cases of deaths and serious adverse events following vaccination by both COVAXIN and COVISHEILD reported in the newspapers in India till date. However the official data shows that there are only 180 deaths following immunization till March 29th 2021. Therefore, there appears to be a significant discrepancy between deaths reported in the newspapers and the official government figure.

49. The Petitioners states that a 26-year-old doctor Mrs. Shrusthi Halari has tested positive for the corona virus (Covid-19) disease thrice in the past 13 months, twice after receiving both doses of a vaccine against the virus. Swab samples of Dr. Shrusthi Halari, who worked at the Mulund Covid Centre in the Mumbai, have been collected for genome sequencing as part of a study into occurrence of the infection after being completely inoculated.

50. According to news reports, the doctor's family members, including her father, mother and brother, all of whom have comorbidities, have also contracted the virus. All of them got infected for the first time this month, after receiving both doses of the vaccine.

51. If vaccinated and un-vaccinated persons can be infected by the covid19 virus and they can both be spreaders of the virus, the restriction placed only upon the un-vaccinated persons, in this case being the petitioners, is unjustified, grossly unreasonable and arbitrary.

52. Alarmed by the rise in death rates and serious adverse events following immunisation Tamil Nadu Medical Practitioners Association wrote a letter dated 27.04.21 addressing to the medical fraternity of Tamil Nadu, highlighted the Covid deaths after taking the

Covid19 vaccines. The medical Practitioners of Tamil Nadu in letter states that this be due thrombogenic property (blood clots) of the vaccine, if there is some pre-existing disease in those vessels and thereby suggested the rivaroxaban 10 mg and aspirin 75 mg two days before the vaccination and continued it for 8 days. But also suggested that this not be strictly randomised and should be able to assure the patients about their safety and also requested the fellow doctors to per sue this theory to the ICMR and Adverse Effects Following Immunisation (AEFT Committee).

Annexed here to is a copy of the letter dated 27/04/21 written by the Tamil Nadu Medical Practitioners and marked as **Annexure N.**

53.The petitioners further submit that the Vaccine Adverse Event reporting system (VAERS) reports all the deaths happenings post vaccination. This system has reported 4853 deaths and 1,95,000 serious adverse events reported out of 257 million doses of vaccination in the USA.

54. There are guidelines published by the Serum Institute of India Pvt. Ltd and Bharat Biotech international Ltd for administering COVISHIELD and COVAXIN vaccines respectively as who should take it and who should not.

Annexed here to are the guidelines of COVAXIN and COVISHIELD vaccines and marked as **Annexure O Colly.**

In spite of these guidelines the circulars dated 16/07/2021, and 28/07/2021 was issued by the Respondent no. 2 and no. 3 without making any reference to these guidelines and in these circumstances the petitioners have serious concerns about the vaccines and do not wish to take the same.

55. The petitioners being aggrieved by the arbitrary and illegal circulars dated 16/07/2021 and 28/07/2021 made representations dated 30/07/2021, 31/07/2021 and 5/08/2021 to the Respondent no. 2 and no. 3.

Annexed hereto are the copies of the representations dated 30/07/2021, 31/07/2021 and 5/08/2021 and marked as **Annexure P Colly.**

56. The petitioners have highlighted in their representations that:

There are no proven records which show that the vaccination stops the transmission of Covid19; in turn people are catching Covid19 even after vaccination too. On the other hand the virus continues to mutate and evolve with new variants.

Stressed on the reports of adverse reaction suffered by persons who have taken Covid vaccines particularly the COVISHIELD vaccine which is known to have cause blood clots and other medical conditions in certain persons. The effects of these vaccines have neither been tested nor researched in a proper manner.

The Petitioner brought to the notice of the authorities that they are under medication for various ailments, the petitioner no. 1 have undergone laparoscopic palioplasty for Pelviureteric Junction (PUJ) obstruction and expressed his apprehension to take the vaccine especially when its listed for emergency use only.

They are relying and dependent on other alternative medicines of Homeopathy, as recommended by the Ministry of Ayush, Government of India and collectively prayed that as the following all the present SOPs in force and taking all the precautions to combat the spread of Covid19 and that the circulars dated 16/07/2021 and 28/07/2021 be withdrawn and they may be granted a freedom of choice in medical treatment.

The respondent no. 2 and respondent no. 3 till date have not replied nor intimated the petitioners addressing their grievances and nor have offered them any redressal measures.

57. It is the case of the Director of Higher Education (Respondent no. 2) and the Director of Technical Education (Respondent no. 3) that the petitioners may come into close contact with the students who of young age and thus spread the virus to them, such an apprehension unreasonable and unfounded as much as the same students could easily contract the virus from other sources outside the institution such as their own parents, family members, fellow students etc. as there is no guarantee that such persons will be vaccinated.

58. The petitioners further state that there is no recommendation from the ICMR that the teachers should be compulsorily vaccinated. Also states like Maharashtra, Kerala, Karnataka, Andhra Pradesh has not made it compulsory for the teachers to be vaccinated, except the State of Tamil Nadu where by all teaching and non teaching staff from government and government aided school and Chennai Schools (run by the Greater Chennai Corporation) have been asked to get the Covid19 vaccine and those who cannot take the vaccine should submit the required documents to the authorities to support their stand. So also Class 9-12 teachers to be vaccinated on priority by August 10 in Jharkhand However there is no mention of any coercive action initiated against the non vaccinated individuals.

59. The State of Gujarat have directed the managers owners and staff of any business/professional establishment who are under night curfew to be vaccinated.

However there is no mention of any coercive action initiated against the non vaccinated individuals.

60. Similar situations of compulsory vaccination arose in Uttar Pradesh, Delhi, and Odisha, wherein vaccination was made mandatory for businesspersons, traders, and frontline health workers despite the Union Health Ministry clarifying: “Vaccination for COVID-19 is voluntary.”

Thus, considering this contradiction by the state Governments and the fact that mass skepticism exists for COVID-19 vaccines in various parts of our country which the Hon’ble High Court of Meghalaya has also acknowledged, it is imperative to analyze the constitutional validity of such compulsory or forced vaccination.

61. This essentially also means that the right to health care (vaccination) is included under the right to life. However, if such health care is provided through coercive means by making it mandatory (compulsory vaccination) in that case, the very fundamental purpose of this health care is defeated because it encroaches upon the Fundamental Right to Privacy.

62. The petitioners in this case are deprived of their Right to Personal choice and bodily autonomy and integrity guaranteed as a part of the Right to privacy, under Article 21, in *Justice K. S. Puttaswamy (Retd.) Vs Union of India*.

63. Rolling out a mandatory vaccination policy in by the Respondent no. 2 and no. 3 would violate the Petitioners right to personal choice and bodily autonomy and integrity.

64. Although the Indian Government has a constitutional obligation under Article 47 of the Indian Constitution to maintain and improve public health, it is of utmost importance to

comprehend that compulsory vaccination would only lead to social disorder and disunity, thereby leading to a violation of Article 38 of the Indian Constitution, as individuals' Fundamental Rights would be violated which would, in turn, cause mass chaos.

65.To prevent such a scenario, the Meghalaya High Court observed that it is the duty of the state Government and its authorities to engage in “one-to-one dialogues” and dwell on the efficiency and positive aspects of administering the vaccine. No such efforts have been made by the Respondent no. 2 and no.3 to sensitise the petitioners and their fellow colleagues.

66.Aggrieved by the arbitrary and unconstitutional Circulars dated 16/07/2021 and 28/07/2021 issued by the respondent no.2 and respondent no. 3 respectively, the petitioners are constrained to file this petition before this Hon'ble Court:

GROUND

- a. The circulars dated 16/07/2021 and 28/07/2021 issued by the Respondent no. 2 and no.3 are contrary to the Petitioners right to life and right to choose as guaranteed by the Article 14 and 21 of the Indian Constitution.
- b. The World Health Organisation has only approved the use of the vaccines 'COVISHIELD' and 'COVAXIN' for 'emergency use' and has granted the 'emergency use listing'. This being the position the circulars of the respondent nos. 2 and 3 seeking to coerce the petitioners to go for compulsory vaccination is contradictory to Articles of 14, and 21 of the Indian Constitution.

- c. The circulars dated 16/07/2021 and 28/07/2021 issued by the Respondent no. 2 and no. 3 are violative of the fundamental right to life and livelihood of the petitioners.
- d. The doctors at the Covid19 hospitals and in the Goa Medical College managed by the Directorate of Health Government of Goa, come under close proximity with the Covid positive patients and are more vulnerable of being infected with Covid19. No circulars on similar lines have been issued by the Directorate of Health Services to doctors and staff members of these facilities. By issuing the circulars dated 16/07/2021 and 28/07/2021 the Respondent no. 2 and no. 3 have acted in a discriminatory, autocratic and arbitrary manner which is violative of the Article 14 of the Indian Constitution.
- e. The petitioners are taking Ayurveda, homeopathy and the medicines prescribed by the Ayush Department, Government of India as a treatment modality for COVID-19 and do not see allopathic treatment for curing the Covid19 as a result liberty should be granted to petitioners to opt for the treatment of their choice and vaccination cannot be forced upon them.
- f. The circulars dated 16/07/2021 and 28/07/2021 are completely silent on the on the guidelines/prerequisites one should follow before administering the vaccine COVAXIN or the COVISHIELD to the teaching and non -teaching staff. So also the circulars are silent so as to the vaccination to be administered to the pregnant teachers and especially abled teachers.
- g. There is no recommendation from the ICMR, of India Pvt Ltd, that the teachers should be compulsory be vaccinated. Also States like Maharashtra, Kerala,

Karnataka, Tamil Nadu has not made it compulsory for the teachers to be vaccinated.

- h. The petitioners if not vaccinated will have to go for repeated use of RT-PCR test every week, which will cause them severe health problems. They will have to bear the expenses every week thereby causing them financial hardships.
- i. The Respondents 2 and 3 instead of forcing the teachers to vaccinate could prescribe other precautionary measures such as thermal testing at entry in the institutions , ensuring that teachers and students who are experiencing flu like symptoms self isolate and test, etc which are far less intrusive and easily implementable.
- j. The State government have not taken diligent steps to sensitise the citizens regarding the entire exercise of vaccination, informing them of the pros and cons of Covid Vaccination and have not facilitated informed decision making particularly in a situation the where the beneficiaries of the vaccines are sceptical, susceptible, and belonging o the vulnerable and marginalised section of the society.
- k. Such other grounds as deemed fit and proper to this Hon'ble Court.

67. That this Hon'ble Court has the jurisdiction to entertain and dispose of this petition.

68. The Petitioner has no other alternate equally efficacious remedy and the reliefs prayed for here in if granted shall be complete in themselves.

69. The Petitioner has not filed any other petition with respect to the same subject matter either before this Court or before the Hon'ble Supreme Court of India.

70. The Petitioner therefore prays:

PRAYERS

- a. For an appropriate Writ, Order or direction, thereby quashing the circular dated 16/07/2021 issued by the respondent no. 2.
- b. For an appropriate Writ, Order or direction, thereby quashing the Circular dated 28/07/2021 issued by the Respondent no.3.
- c. For an appropriate Writ, order or direction, thereby directing the respondents 1, 2 and 3 to consider the petitioner's representations dated 30/07/2021, 31/07/2021 and 5/08/2021 and to issue a corrigendum thereby making the vaccination by the teaching and non-teaching staff voluntary.
- d. For an interim relief staying the operation of the circulars dated 16/07/2021 and 28/07/2021 and thereby directing the Respondent no. 2 and respondent no. 3 not to take any coercive measures/action against the petitioners, pending the hearing and final disposal of the petition.
- e. For ex-parte ad-interim reliefs in terms of prayer clause d.
- f. Any other reliefs as deemed fit and proper to this Hon'ble Court.

Place: Panaji – Goa

Date: 12/08/2021

Petitioner No.1

Petitioner no. 2

Petitioner no. 3

Adv. for the Petitioner

AFFIDAVIT

I, Mr. Oscar De Noronha Aged 56, Indian National, Associate Professor, English Sant Sohirobanath Ambiyé,

Government College of Arts and Commerce Virnoda – Pernem, the Petitioner No. 1 herein, do hereby on solemn affirmation state that the contents of Paragraphs 1 to 67 and the rest of the paras of this petition are true and correct to my personal knowledge and the contents of the rest of the paragraphs this petition are submissions based on legal advice received which I believe to be true.

Solemnly affirmed at Panaji on this 12th day of August 2021.

DEPONENT

Identified by:

IN THE HIGH COURT OF BOMBAY AT GOA.

Writ Petition No. 1770 /2021.

1. Mr. Oscar De Noronha

And Others. Petitioners.

V/s

1. The State of Goa,

And others. Respondents.

BRIEF SYNOPSIS

1. **March 2020** Along with the rest of the world the State of Goa was affected by the Covid19 Pandemic.
2. The Petitioners are teaching and non teaching staff at certain government aided colleges and government colleges in the State of Goa.

3. **Since March 2020** all schools and colleges in the State of Goa were closed and the classes of the students have been conducted virtually.
4. **June 2021** - After the second wave, the online classes have resumed from the month of June 2021.
5. Teaching and non-teaching staff are continuously taking precautions while rendering their services by conducting online examinations, internal tests of students very effectively and efficiently.
6. **July 2021**, a survey was conducted by the Colleges on the directions of the Directorate of Higher Education, whereby the records of all the teaching and non teaching staff were taken who had taken the first and second dose of the Covid19 vaccine were noted down.
7. **16/07/2021**- A circular dated 16/07/2021 bearing no.ACADII/MISC/104/DHE/2021/VOLI/2115 came to be issued by the Directorate of Higher Education New SCERT Building, Alto Porvorim, Bardez Goa.
8. **28/07/2021** – A Circular dated 28/07/2021 bearing no. DTE/Admn/3-8/COVID-19/2020 issued by the Directorate of Technical Education Administration Section Government of Goa.
9. The petitioners were worried as there were many negative reports as regards these vaccines.
10. The petitioners state that at present the State of Goa is administering the COVISHIELD and COVAXIN under the banner of Tika Utsav which is voluntary.

11. The effects of these vaccines have neither been tested nor researched in a proper manner.
12. COVISHIELD™ manufactured by Serum Institute of India Pvt. Ltd (SIIPL) was assessed under the WHO EUL (Emergency Use Listings) has been allowed to be used under the emergency use listing by the World Health Organisation, and the Central Drug Standard Organisation.
13. RTI application dated 9/03/2021 filed by Anurag Sinha the Central Ministry of Health and Family Welfare has stated clearly that taking Covid vaccines was entirely voluntary.
14. In a reply dated 23/03/2021 to the RTI application filed by Mr. Dinesh Salunke, the Central Ministry of Health and Family Welfare has stated very clearly that taking Covid vaccines was entirely voluntary.
15. The petitioners further states that in a reply filed by one Mr. Tarun, dated 16/04/2021 bearing file no. MOHW/R/E/21/01536, the Ministry of Health and Family Welfare replied first query stating that the *Vaccination of Covid 19 is Voluntary*.
16. And to a query whether government or private organisation can hold the salary for not taking the vaccine and also whether the government can cancel any kind of government facilities such as subsidies, ration and medical facilities in case of not taking Covid19 vaccine. To which they replied stating *in view of the above reply these queries do not arise*.
17. On bare perusal of the above RTI replies it makes it clear that the Union of India has made the vaccination drive voluntary.

18. **Common Cause v/s Union of India reported in (2018) 5 SCC 1.** The Hon. Supreme Court has held that individual has right over his/her own body and the right to decide the medical treatment for themselves.

19. The petitioner states that the vaccines are still at the stage of clinical trials, they are experimental.

20. There is no proven medical evidence that the COVID19 vaccine can prevent a person from acquiring the virus.

21. In the event the petitioners do not take the vaccine they may be denied the entry into the institution which will affect their work and prevent them from carrying out their duties.

22. Further the circular gives the petitioners an option of getting the RTPCR tests over a week at their own costs to those who don't intend to take the vaccine.

23. The petitioners submit that such directions are flagrant abuse of the Constitutional provisions of the Petitioners Right to Life.

24. Thus the petitioners are being discriminated against thereby violating the fundamental rights guaranteed under the Indian Constitution.

25. The Meghalaya High Court has recently considered this issue in PIL No. 6/2021 filed by **Joannes JTL Lamarevs State of Meghalaya and in its Judgement dated 23/06/2021 observed thus**

Vaccination by force or being made mandatory by adopting coercive methods vitiates the very fundamental purpose of the welfare attached to it.

26. The Gauhati High Court in WP(C)/37/2020 **Re Dinthar Incident versus State of Mizoram and 11 Ors**, dated 2nd July 2021,

held that the restrictions placed upon unvaccinated individuals vis-a-vis vaccinated individuals are arbitrary and not in consonance with the provisions of Article 14, 19 & 21 of the Constitution.

As in the case of **YOGENDRA KUMAR versus INDIAN AIR FORCE & 1 other(s)**, it has observed thus: No coercive action shall be taken against the petitioner, who is at present not willing to take vaccine.

27. By applying the ratio laid down in the above mentioned judgements the impugned circular dated 16/07/2021 and 28/07/2021 is illegal and unconstitutional.

28. COVISHIELD Vaccine is a variant of AstraZeneca vaccine manufactured and administered in Europe which is banned/restricted in 11 countries namely worldwide and main reason is vaccinated people are with blood clots.

29. There have been number of cases of deaths and serious adverse events following vaccination by both COVAXIN and COVISHIELD reported in the newspapers in India till date

30. The **Tamil Nadu Medical Practitioners Association** wrote a letter dated **27.04.21**, in this regard highlighting their concerns which inter alia highlighted the covid deaths after taking the covid vaccine.

31. The Vaccine Adverse Event reporting system (VAERS) reports all the deaths happenings post vaccination and has reported 4853 deaths and 195000 serious adverse events reported out of 257 million doses of vaccination in the USA.

32. There are guidelines published for administering COVISHIELD and COVAXIN doses as who should take it and who should not.
33. The circulars dated 16/07/2021 and 28/07/2021 were issued by the Respondent no. 2 and Respondent no. 3 respectively without making any reference to these guidelines and in these circumstances have serious concerns about the vaccines and do not wish to take the same.
34. The petitioners being aggrieved by the arbitrary and illegal circular dated 16/07/2021 and 28/07/2021 made representations to the Respondent no. 2 and no. 3 objecting to circulars.
35. The respondents no. 2 and no. 3 till date have not replied nor intimated the petitioners addressing their grievances and nor have offered them any redressal measures.
36. The petitioner states that no other department has issued such circulars coercing its staff to go in for vaccination, the staff of the government hospital being the most vulnerable.
37. Aggrieved by the arbitrary and unconstitutional Circulars dated 16/07/2021 and 28/07/2021 issued by the respondent no. 2 and no. 3 the petitioners are constrained to file this petition before this Hon'ble Court.

Panaji Goa

12/08/2021

Adv. for the Petitioners

IN THE HIGH COURT OF BOMBAY AT GOA

Writ Petition No. 1770 /2021

1. Mr. Oscar De Noronha

And Others.Petitioners

V/s

1. The State Of Goa and othersRespondents.

INDEX

Sr. No.	Particulars	Exhibit	Page No.
1.	Synopses		

2.	Memo of Petition.		
3.	Copy of the Circular dated 16/07/2021 issued by the respondent no. 2	Annexure A.	
4.	Copy of the Circular dated 28/07/2021 issued by the respondent no. 2	Annexure B	
5.	Copy of the relevant extract of the document for emergency use listing on Covishield submitted by SIPL to the World Health Organisation	Annexure C	
6.	Copy of the reply to the RTI application dated 9/03/2021 filed by Anurag Sinha of Jharkhand, before the	Annexure D	

	Central Ministry of Health and Family Welfare.		
7.	Copy of the reply to the RTI dated 23/03/2021	Annexure E	
8.	Copy of the reply to the RTI dated 16/04/2021.	Annexure F	
9.	Copy of the reply dated 25/05/2021.	Annexure G.	
10.	Copy of the Judgement dated 09/06/2021.	Annexure H.	
11.	Copy of the advisory issued by the Ministry of health and Family Welfare.	Annexure I	
12.	Copy of the interim order dated 23/06/2021.	Annexure J.	

13.	Copy of the interim order dated 02/07/2021	Annexure K	
14.	Copy of the interim order dated 13/07/2021	Annexure L	
15.	Copy of the interim order dated 22/06/2021	Annexure M	
16.	Copy of the letter dated 27/04/21 written by the Tamil Nadu Medical Practitioners.	Annexure N	
17.	Copy of the guidelines of Covaxin and COVISHIELD vaccines.	Annexure O Colly	
18.	Copies of the representations dated 30/07/2021, 31/07/2021, and 5/08/2021.	Annexure P	

Panaji - Goa

12/08/2021

Adv. for the Petitioners