

9th October, 2021

To,

1. Shri. Iqbal Chahal

Municipal Commissioner of Mumbai

2. Shri. Suresh Kakani

Addl. Municipal Commissioner of Mumbai

Sub: Contempt and offence under section **166** etc. of Indian Penal Code by unconstitutional, illegal and discriminatory query regarding vaccination status of society members.

Ref: Your letter no A/R/D/378/O.D.D.29/09/2020 COPY ATTACHED served to MANY SOCIETIES IN MUMBAI (For Example Raj Garden Society, Mahaveer Nagar, Kandivali West, Mumbai - 67 & many other Societies in Mumbai.)

Sir/Madam,

1. I, Ambar Hiralal Koiri am in receipt of your above referred letter asking societies in Mumbai to give the vaccination status of the society members.
2. That you have not mentioned the reason for asking said date and also the provisions of law which authorized you to collect such data.

3. That as per **Article 14, 19, 21** of Constitution of India and more particularly as per law laid down in the case of **(i) Registrar General Vs. State of Meghalaya 2021 SCC OnLine Megh 130**, **(ii) Re Dinthar Incident Vs. State of Mizoram 2021 SCC OnLine Gau 1313** and other various landmark judgments it is clear that, there is no difference between vaccinated and non-vaccinated people. The vaccinated people can get corona, they can spread infection and they can die due to corona. Vaccinated people can also be a super spreader.
4. Thereafter, Hon'ble High Court have made it clear that no discrimination can be made on the basis of vaccination status of a person.
5. In **Re Dinthar Incident Vs. State of Mizoram 2021 SCC OnLine Gau 1313**, it is ruled as under;

“14. It has been brought to our notice that even persons who have been vaccinated can still be infected with the covid virus, which would in turn imply that vaccinated persons who are covid positive, can also spread the said virus to others. It is not the case of the State respondents that vaccinated persons cannot be infected with the covid virus or are incapable of spreading the virus. Thus, even a vaccinated infected covid person can be a super-spreader. If vaccinated and un-vaccinated persons can be infected by the covid virus and if they can both be spreaders of the virus, the restriction placed only upon the un-vaccinated persons, debarring them from earning their livelihood or leaving their houses to obtain essential items is unjustified, grossly unreasonable and arbitrary. As such, the submission made by the learned Additional Advocate General that the restrictions made against the un-vaccinated persons vis-à-



vis the vaccinated persons is reasonable does not hold any water. As the vaccinated and un-vaccinated persons would have to follow the covid proper behavior protocols as per the SOP, there is no justification for discrimination.

18. The SOP provides that vaccinated persons who are employed in shops/stores and to drive transport/commercial vehicles should wear mask and adhere to all proper covid protocols. If an un-vaccinated person is to be made to adhere to the same protocols, there can be no difference in the work of a vaccinated or un-vaccinated person. As such, the restriction placed upon un-vaccinated persons only due to non-vaccination is unreasonable and arbitrary.

19. In view of the reasons stated above, we hold that the restrictions placed upon un-vaccinated individuals vis-à-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 un-vaccinated 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.”

6. In **Madan Mili Vs. Union of India 2021 SCC OnLine Gau 1503**, it is ruled as under;



“13. In the instant case, the classification sought to be made between the vaccinated and unvaccinated persons for Covid-19 by Clause 11 of the Order dated 30.06.2021 for the purpose of issuing a temporary permit for developmental works in both public and private sector in the State of Arunachal Pradesh is undoubtedly to contain Covid-19 pandemic and its further spread in the State of Arunachal Pradesh. There is no evidence available either in the record or in the public domain that Covid-19 vaccinated persons cannot be infected with Covid-19 virus, or he/she cannot be a carrier of a Covid-19 virus and consequently, a spreader of Covid-19 virus. In so far as the spread of Covid-19 Virus to others is concerned, the Covid-19 vaccinated and unvaccinated person or persons are the same. Both can equally be a potential spreader if they are infected with Covid-19 Virus in them. This aspect of the matter came up for consideration by this Court in WP(C)/37/2020 (In Re Dinthar Incident Aizawl v. State of Mizoram Aizawl; in which case, this Court vide Order dated 02.07.2021, in paragraph 14 thereof, had observed as follows -

“14. It has been brought to our notice that even persons who have been vaccinated can still be infected with the covid virus, which would in turn imply that vaccinated persons who are covid positive, can also spread the said virus to others. It is not the case of the State respondents that vaccinated persons cannot be infected with the covid virus or are incapable of spreading the virus. Thus, even a vaccinated infected covid person can be a super-spreader. If vaccinated and un-vaccinated persons can be infected by the



covid virus and if they can both be spreaders of the virus, the restriction placed only upon the un-vaccinated persons, debarring them from earning their livelihood or leaving their houses to obtain essential items is unjustified, grossly unreasonable and arbitrary. As such, the submission made by the learned Additional Advocate General that the restrictions made against the un-vaccinated persons vis-à-vis the vaccinated persons is reasonable does not hold any water. As the vaccinated and un-vaccinated persons would have to follow the covid proper behavior protocols as per the SOP, there is no justification for discrimination.”

14. Thus, if the sole object of issuing the Order dated 30.06.2021, by the Chief Secretary cum Chairperson-State Executive Committee, Government of Arunachal Pradesh, vide Memo No. SEOC/DRR&DM/01/2011-12, is for containment of the Covid-19 pandemic and its further spread in the State of Arunachal Pradesh, the classification sought to be made between vaccinated and unvaccinated persons for Covid-19 virus for the purpose of issuing temporary permits for developmental works in both public and private sector, vide Clause 11 thereof, prima facie, appears to be a classification not founded on intelligible differentia nor it is found to have a rational relation/nexus to the object sought to be achieved by such classification, namely, containment and further spread of Covid-19 pandemic.

15. For the reasons stated hereinabove, it prima facie appears to this Court that Clause 11 of the Order dated 30.06.2021, issued by the Chief Secretary cum Chairperson-State Executive



Committee, Government of Arunachal Pradesh, vide Memo No. SEOC/DRR&DM/01/2011-12, in so far it makes a classification of persons who are Covid-19 vaccinated and persons who are Covid-19 unvaccinated for the purpose of issuance of temporary permits for developmental works in both public and private sector in the State of Arunachal Pradesh violates Articles 14, 19 (1) (d) & 21 of the Constitution of India calling for an interim order in the case. Accordingly, till the returnable date, Clause 11 of the Order dated 30.06.2021, issued by the Chief Secretary cum Chairperson-State Executive Committee, Government of Arunachal Pradesh, vide Memo No. SEOC/DRR&DM/01/2011-12, in so far it discriminates between Covid-19 vaccinated persons and Covid-19 unvaccinated persons for issuance of temporary permits for developmental works in both public and private sector in the State of Arunachal Pradesh, shall remain stayed.”

7. That, Union of India made it clear that, there cannot be any discrimination on the basis of vaccination status. The relevant RTI dated **19.03.2021** is annexed herewith at “**Annexure - A**”. Said RTI is also taken note by Hon’ble High Court in the **Madan Mili Vs. Union of India 2021 SCC OnLine Gau 1503.**
8. That you noticee by getting the data from societies about vaccinated and non-vaccinated are not going to serve any public good. In fact it is against the law and it is an offence under section **166, 167** etc. of Indian Penal Code and also section **51(b), 55** of the Disaster Management Act, 2005.
9. That by asking vaccination status and your intention to paste stickers on society is direct violation of Union of India’s guidelines and also contempt of Hon’ble High Court.



10. Disaster Management Act, 2005 having following provisions to punish a public servant and head of the said department who are involved in violating the Central Government guidelines.

Section **51(b)** in the Disaster Management Act, 2005 reads thus;

“51. Punishment for obstruction, etc. – Whoever, without reasonable cause -

(b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act, shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years. notes on clauses Clauses 51 to 58 (Secs. 51 to 58) seeks to lay down what will constitute an offence in terms of obstruction of the functions under the Act, false claim for relief, misappropriation of relief material or funds, issuance of false warning, failure of an officer to perform the duty imposed on him under the Act without due permission or lawful excuse, or his connivance at contravention of the provisions of the Act. The clauses also provide for penalties for these offences.”

Section **55** reads thus;

“55. Offences by Departments of the Government.—



(1) Where an offence under this Act has been committed by any Department of the Government, the head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. (1) Where an offence under this Act has been committed by any Department of the Government, the head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence."

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the head of the Department, such officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

11. That as per section 60 of the Disaster Management Act, 2005, I undersigned hereby inform you to refrain from discriminating between vaccinated and unvaccinated people and I am going to file appropriate complaint against you in the Court of law as I have already approached the National Authorities and Central Government on 23.09.2021.
12. That section **166, 167** of Indian Penal Code reads thus;



“Section 166 in the Indian Penal Code

166. Public servant disobeying law, with intent to cause injury to any person.—Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both. Illustration A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z’s favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

Section 167 in The Indian Penal Code

167. Public servant framing an incorrect document with intent to cause injury.—Whoever, being a public servant, and being, as I[such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”



13. That acting against the judgment of any High Court in India is an offence under Contempt of Court.

Moreover the abovementioned judgments are passed on the issue of **Article 14, 19 and 21** of the Constitution and after hearing Union of India, therefore they are binding on all the States in India.

14. That, Hon'ble Supreme Court in **E.T. Sunup Vs. C.A.N.S.S. Employee Association 2004-CCC(SC)-4-295**, has ruled that the conduct of bureaucracy to adopt different techniques to circumvent the binding judgment is a gross contempt.
15. That due to earlier act of bringing unlawful circulars to discriminate between vaccinated and non-vaccinated, the BMC commissioner Shri. Iqbal Chahal and Chief Secretary Shri. Sitaram Kunte are made party in person before Hon'ble Bombay High Court in **PIL No. 85 of 2021** and **PIL No. 84 of 2021**.

In the **Yohan Tengra Vs. State of Maharashtra and Ors. P.I.L. No. 85 of 2021** following prayers are made;

*“a) Direct Respondent No. 1 to 6 to amend the circular/directions/SOP at **Exhibit A B, C** to the extent by permitting non-vaccinated people to travel by train and they should not be treated differently than those who are vaccinated;*

b) Direct Respondent No. 7 i.e. Union of India to initiate Prosecution under Section 51(b) of the Disaster Management Act, 2005 against Respondent No. 3, 4, 5, 6, 7 and other officers/or any person involved in deliberate and wilful disregard and defiance of the directions/SOP/Circulars issued by the Central Government.



- c) *Appropriate directions to Respondent's authorities as per Section 2 of Epidemic & Section 12 of Disaster Management Act, 2005 for providing the compensation to the petitioner and/or any other person who are victim of arbitrary, unlawful, illegal and discriminatory conduct of Respondent No. 1 to 6*
- d) *Direct respondents to open local trains for all, irrespective of their status as vaccinated or non-vaccinated.*
- e) *Direct respondents to verify authenticity of RT-PCR tests in the light of information available and reproduced in the petition and also in the light of judgment given by the Portugal Court of Appeals in the case between Margarida Ramos De Almedia,(1783/20.7TPDL.1-3) and then take a decision of relying on the test for taking decisions of lockdown or other restrictions;*
- f) *Direct respondents to not to check the healthy and asymptomatic people and only check the people having symptoms;”*

In the **Feroze Mithiborwala Vs. State of Maharashtra and Ors. P.I.L. No. 84 of 2021** following prayers are as under;

“a. *This Hon'ble Court be pleased to issue writ of certiorari, order, direction or any other appropriate, writ, order, direction thereby striking down the impugned SOP dated 10.8.2021 and impugned Notification dated 11.8.2021 issued by the Respondent, No.1 to 5 or any other notifications in so far as they discriminate with the people on account of their not being vaccinated, holding that the*



same are violative of Article 14, 19 and Article 21 of the Constitution of India.

*b. Pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to issue writ of mandamus, order, direction or any other appropriate, writ, order, direction mandating the respondents herein to modify the impugned SOP dated 10.8.2021 and impugned **Notification dated 11.8.2021 so as to allow the people or inhabitants of MMRDA region, to travel by local trains without any discrimination on account of vaccination.***

*c. Direct the Respondent No. 7 i.e. Union of India to take appropriate action under section 51(b), 55, 56 etc. of the Disaster Management Act, 2005 and section 166, 188, 120(B) etc. of Indian Penal Code against the persons/officers of state of Maharashtra **who are responsible for acting in utter disregard and defiance of the lawful directions of central government regarding no forceful vaccination.***

d. Ad-interim and/or interim relief in terms of prayer clause (c) above may kindly be granted.

e. This Hon'ble Court be pleased to pass any other order which this Hon'ble Court may deem to be just, fair and reasonable.”

A copy of said P.I.L. is at following link.

1. PIL No. 85 of 2021

[Link:https://drive.google.com/file/d/1B6BsAIRSoPEv6XPEoXsgmPyhaLD_pyEd/view?usp=sharing]

2. PIL No. 84 of 2021

[Link:https://drive.google.com/file/d/1CHJFOdvK1TbZ4guOo0Ws_UQbHkMBnuiJ/view?usp=sharing]

16. Recently a notice is also issued to Hon'ble Health Minister of India Shri. Mansukh Mandaviya for taking action against people including you, who are involved in the illegal acts of doing acts only to help vaccine syndicate and to harass people by violating their fundamental rights.
17. Therefore, person giving such information of vaccination status of members of society to you, would become an accused of contempt and also co-accused under section **120(B)** of Indian Penal Code.
18. You are hereby called upon to withdraw your letter and publish apology in the all leadings newspapers.
19. By way of this notice you are also called upon to stop your unconstitutional and illegal programme of pasting 'stickers' to building which are fully vaccinated.

Sincerely

Ambar H. Koiri
B – 1501, Runwal Hts.
L.B.S. Marg, Mulund (W)
Mumbai – 400 080.

Copy to:



1. Hon'ble Chief Justice, Bombay High Court, Mumbai
2. Hon'ble Home Minister of India
3. Hon'ble Health Minister of India