

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

**PUBLIC INTEREST LITIGATION NO. 84 OF 2021**

**Feroze Mithiborwala** } **Petitioner**  
**versus**  
**State of Maharashtra and Ors.** } **Respondents**

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

**Yohan Tengra** } **Petitioner**  
**versus**  
**State of Maharashtra and Ors.** } **Respondents**

Mr. Tanveer Nizam i/b Adv Mangesh Bhimrao Dongre a/w Adv. Vijay Kurle, Adv. Dipali N. Ojha, Adv Mariam Nizam, Adv. Awtar Singh, Adv Ishwarlal S. Aggarwal, Adv Mayank Mishra, Adv Kajal Hindalekar, Adv Rajeshwar Panchal, Adv. Partho Sarkar, Adv. Sandeep Sheregar, Adv. Mita Rudani, Adv. Pratik Jain, Adv. Shivam Mehra, Adv. Deepika Jaiswal, Adv. Poonam Rajbhar, Adv. Nicky Pokar, Adv. Snehal Surve, Adv. Shivchand Mishra, Adv. Mangesh Mali, Adv. Siddhi Dhamnaskar, Adv. Pratik Sarkar, Adv. Vikas Pawar, Adv. Aditya Parmar, Adv. Sarang Gundagwar, Adv. A.R. Kori, Adv. Mohan Rawat, Adv Mita Rudani, Adv. Adarsh Diwani, Adv. Gopal Nirban, Adv. Mohan Rawat, Adv. Aniruddh More for Petitioner in PIL No.84 of 2021.

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

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

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

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

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

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

**DATE: MARCH 2, 2022**

**P.C.:**

1. Mr. Anturkar, learned senior advocate for the respondents, has placed before us an order dated 1<sup>st</sup> March 2022 signed by the Chief Secretary, Department of Disaster Management, Relief and Rehabilitation and Chief Executive Officer, State Executive Committee.

2. Although such order has not yet been published, as stated by Mr. Anturkar, it reveals that the State Executive Committee has decided to maintain the impugned earlier restriction that public transport cannot be availed of by those who are not fully vaccinated. This order, according to Mr. Anturkar, is based on the minutes of the meeting of the State Executive Committee (hereafter "the Committee", for short) chaired by the Chief Secretary to the Government of Maharashtra on 25<sup>th</sup> February 2022.

3. In our order dated 22<sup>nd</sup> February 2022, we had in no uncertain terms observed that the previous orders of the State Government imposing restrictions on user of public

transport had no sanction of law and that in keeping with the improving situation, it would be eminently desirable if the Committee takes a decision which would effectively put a quietus to the issues raised in the PIL petitions. The hope and trust reposed by us in the Committee that it would take a decision, which is reasonable and not in derogation of the Fundamental Rights of the citizens guaranteed by Article 19(1)(d), stand belied. We were utterly mistaken. The Committee, instead of respecting the observations that were made in the order dated 22<sup>nd</sup> February 2022, has once again insisted on only those who are vaccinated to avail public transport despite the fact that presently in Mumbai and its adjoining areas almost every activity is being performed as in the pre-pandemic days and normalcy has been restored in fair measure. In hindsight, we feel that having regard to the gross violations of the Disaster Management Act, 2005 (hereafter "the Act", for short) and the rules framed thereunder in imposing restrictions since 10<sup>th</sup> August 2021, it would have been appropriate if we had struck down the further orders passed in the name of the State Government post August, 2021 by the Chief Secretary, Government of Maharashtra in exercise of our *suo motu* powers instead of, in accordance with judicial discipline, permitting the Committee to take a fresh decision. This decision of the Committee, in the circumstances, is unexpected to say the least.

4. Be that as it may, since a new order has been issued under the Act maintaining the same restriction as before, publication of which is in contemplation, we are of the considered opinion that nothing further survives for decision

on these two PIL petitions and that the petitioners herein, if they feel aggrieved by such order (as and when it is published), ought to subject such order to challenge in fresh proceedings. Granting liberty to the petitioners to pursue their remedy in accordance with law, we dispose of these PIL petitions. No costs.

5. Since we are not disposing of the PIL petitions on merit, all contentions that have been raised by the petitioners are kept open.

6. Copy of the order dated 1<sup>st</sup> March 2022 and the minutes of meeting of the Committee dated 25<sup>th</sup> February 2022 shall be retained with the records and marked 'X' for identification.

7. The respondents are granted liberty to publish the order dated 1<sup>st</sup> March 2022.

8. We direct Mr. Kakade, learned Government Pleader to supply a copy of the said minutes of the meeting of the Committee to the petitioners' advocates once the order dated 1<sup>st</sup> March 2022 is published and made available to the public.

**(M. S. KARNIK, J.)**

**(CHIEF JUSTICE)**