

## **[VACCINE MANDATE CASE]**

Summary of the judgment passed by the Supreme Court in **Jacob Puliye's Case 2022 SCC OnLine SC 533** [dated 2<sup>nd</sup> may 2022].

1. All mandates issued by all Government and private bodies which discriminates between vaccinated and unvaccinated and which restrict any benefit or Services to unvaccinated people are proved as illegal, unconstitutional, arbitrary and violative of **Article 14, 19 & 21 of the Constitution of India**. Now no one can be compelled to produce RTPCR Tests only because he is not vaccinated. The status of vaccinated and unvaccinated is held to be the same. [**Para 60 of Jacob Puliye Vs. Union of India 2022 SCC OnLine SC 533**]

[See also:- **Madan Mili Vs. UOI 2021 SCC OnLineGau 1503**]

2. Now every citizen suffered due to such unlawful and unconstitutional mandates and whose fundamental rights and livelihood are affected are entitled for compensation before High Court under **Article 226 of the Constitution of India** and also before Civil Court.

[**Precedents:-** Veena Sippy Vs. Mr. Narayan Dumbre **2012 SCC OnLine Bom 339**, S. Nambi Narayanan Vs. Siby Mathews **(2018) 10 SCC 804**, Dr. Reeni Johar Vs. State **(2016) 11 SCC 703**, Registrar General, High Court of Meghalaya Vs. State of Meghalaya **2021 SCC OnLine Megh 130**]

3. All contrary judgments passed by any courts in India such as Gujarat, Karnataka, Kerala, Calcutta High Courts etc, AND orders or directions given by

any officials, Ministers or authority stands overruled even if they were before the Supreme Court or not. As per **Article 141 of the Constitution of India** this judgment of Supreme Court is binding to all authorities, Courts, private bodies etc. Other judgments are impliedly overruled.

[**State Bank of Travancore Vs. Mathew K.C. (2018)3 SCC 85, C.N. Rudramurthy (1998) 8 SCC 275, S.E Graphites Private Vs. State of Telangana 2019 SCC OnLine SC 842.**]

4. The ratio laid down by the Constitution Bench in **Common Cause Vs. Union of India (2018) 5 SCC 1** is binding to all cases of vaccine mandates and any direct or indirect force or SOP which compels a person to get vaccinated for availing any benefits or services are prohibited. It is a choice of every person to refuse to get vaccinated or refuse any treatment which is suggested by the Government. No one can force them. No authority or courts in India can ask any person to give reasons for not getting vaccinated. It is integral part of fundamental right of each person under **Article 21 of the Constitution** and no law in future cannot be brought to take away this right. **Article 13 of the Constitution** is clear on this point. The proposed Health Bill stands anticipatorily overruled on this ground.

5. In future if Governments wants to bring any restrictions then the Government has to give the scientific & peer-reviewed studies conducted by the renowned Government body such as ICMR to prove beyond reasonable doubt that the vaccinated people are safe and cannot transmit infection. Which is impossible for any vaccine. [**Para 53**]

6. All the restrictions in future should be in tune with the law laid down in **Common Cause Vs. Union of India (2018) 5 SCC 1, K. S. Puttaswamy Vs. Union of India (2017) 10 SCC 1**. Further all mandates will be subject to scrutiny by the High Court or Supreme Court. Any person can file Writ Petition and State



or Court cannot object the maintainability of the Petition. Courts will be bound to decide the cases on merits. [Para 89 (iii)]

7. The ratio in the following judgements are proven to be the correct appreciation and good law on vaccine mandates :-

(i) Re Dinther Incident Vs. State of Mizoram 2021 SCC OnLine Gau 1313 (Coram: Hon'ble Judges Michael Zothankhuma and Nelson Sailo)

(ii) Madan Mili Vs. Union of India 2021 SCC OnLine Gau 1503  
(Coram: Hon'ble Judge Nani Tagia)

(iii) Osbert Khaling Vs. State of Manipur 2021 SCC OnLine Mani 234  
(Coram: Hon'ble Judges Chief Justice Sanjay Kumar & Nobin Singh)

(iv) Feroze Mithiborwalla Vs. State of Maharashtra 2022 SCC OnLine Bom 356 (Dt. 22. 2. 2022) (Coram: Chief Justice Dipankar Dutta & Hon'ble Justice M.S. Karnik)

(v) Feroze Mithiborwalla Vs. State of Maharashtra 2022 SCC OnLine Bom 457 (Dt. 02.03.2022) (Coram: Chief Justice Dipankar Dutta & Hon'ble Justice M.S. Karnik )

(vi) Aniruddha Babbar Vs. State of Nagaland 2021 SCC OnLine Gau 1504 (Coram: Hon'ble Judges Songkhupchung Serto & Hukato Swu)

8. Following judgments are proved to be unlawful and wrong position in law and now stands overruled:-

(i) Gujarat High Court in the case of Nishant Prajapati Vs. Union of India in writ Petition number 142 of 2021 judgment dated 17.12.2021 passed by Justice J. B. Pardiwala and Justice Niral R. Mehta.



(ii) Karnataka High Court in the case of **Sushma S. Aradhya Vs. State of Karnataka** judgment dated **16 July 2021** passed by Division Bench of Chief Justice Ritu Raj Awasthi & Sachin Shankar Magadum.

(iii) Kerala High Court in the case of **Sanil Narayan Vs. State in W.P. (C) No. 21120 of 2021** judgment dated **20.10.2021** passed by the Justice P.B.Suresh Kumar.

(iv) Meghalaya High Court **Registrar General, High Court of Meghalaya Vs. State of Meghalaya 2021 SCC OnLine Megh 130** judgment dated **23.06.2021** passed by Chief Justice Biswanath Somadder & H.S. Thangkhiew.

(v) Bombay High Court in the case of **Deepak Kumar Khurana Vs. Mumbai Port Trust 2021 SCC OnLine Bom 5920** passed by Justice S.J. Kathawalla .

(vi) Calcutta High Court in the case of **Poulomee Mukharjee Vs. The State of West Bengal 2021 SCC OnLine Cal 2686** passed by Justice Rajesh Bindal, A.C.J. and Justice Rajarshi Bharadwaj .

9. State Government in future cannot bring any health pass which compels or force a common man to get vaccinated. [Para 60]

Even the court while discussing the issue of Health Pass indirectly suggested the state to acknowledge the natural immunity developed through previous infection.

10. This judgment also **exposed the illegal and anti-constitutional mindset of Supreme Court Judge Dr. D.Y. Chandrachud** who was not entertaining the petitions against vaccine mandates and he was giving advice to the public to get vaccinated. Which was against the Constitution Bench judgment in **Common Cause Vs. Union of India (2018) 5 SCC 1** and another larger Bench judgment in the case of **In Re: Distribution of essential Supplies and Services During Pandemic (2021) 7 SCC 772.**



11. Everyone must take a note of following important observations of the binding Precedents:

In **Jacob Puliyel Vs. Union of India 2022 SCC OnLine SC 533**, it is ruled as under;

*“60. We have already referred to the material placed by the Union of India and the States appearing before this Court. While there is abundant data to show that getting vaccinated continues to be the dominant expert advice even in the face of new variants, no submission nor any data has been put forth to justify restrictions only on unvaccinated individuals when emerging scientific evidence appears to indicate that the risk of transmission of the virus from unvaccinated individuals is almost on par with that from vaccinated persons. To put it differently, neither the Union of India nor the State Governments have produced any material before this Court to justify the discriminatory treatment of unvaccinated individuals in public places by imposition of vaccine mandates. No doubt that when COVID-19 vaccines came into the picture, they were expected to address, and were indeed found to be successful in dealing with, the risk of infection from the variants in circulation at the time. However, with the virus mutating, we have seen more potent variants surface which have broken through the vaccination barrier to some extent. While vaccination mandates in the era of prevalence of the variants prior to the Delta variant may have withstood constitutional scrutiny, in light of the data presented by the Petitioner, which has not been controverted by the Union of India as well as the State Governments, we are of the opinion that the restrictions on unvaccinated individuals imposed through vaccine mandates cannot be considered to be proportionate,*



*especially since both vaccinated and unvaccinated individuals presently appear to be susceptible to transmission of the virus at similar levels.*”

In **Madan Mili Vs. UOI 2021 SCC OnLineGau 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.”*

## 12. Point 89 - Conclusions -

(v) - ....In light of this, restrictions on unvaccinated individuals imposed through various vaccine mandates by State Governments / Union Territories cannot be said to be proportionate. .... **we suggest that all authorities in this country, including private organisations and educational institutions, review the relevant orders and instructions imposing restrictions on unvaccinated individuals in terms of access to public places, services and resources, if not already recalled.**

(vi) However, we reiterate that subject to the protection of privacy of individual subjects, with respect to ongoing clinical trials and trials that may be conducted subsequently for COVID-19 vaccines, **all relevant data**





**required to be published under the extant statutory regime must be made available to the public without undue delay.**

(vii) Recognising the imperative need for collection of requisite data of adverse events and wider participation in terms of reporting, **the Union of India is directed to facilitate reporting of suspected adverse events by individuals and private doctors on an accessible virtual platform. These reports shall be made publicly accessible**, without compromising on protecting the confidentiality of the persons reporting, **with all necessary steps to create awareness of the existence of such a platform and of the information required to navigate the platform to be undertaken by the Union of India at the earliest.**

