

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF MAY, 2021

PRESENT

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

WRIT PETITION NO.9242 OF 2021 (GM-RES-PIL)

BETWEEN:

1. SRI MATHEW THOMAS
S/O LATE T.P.JOHN
AGED ABOUT 82 YEARS
RESIDENT OF NO.2,
'ARISTOS', SOBHA CITY
THANISANDRA MAIN ROAD
BENGALURU-560 064.
2. SRIRAM M.S
S/O SUNDHARARAGHVAN
R/A NO.304, SKYLAND
GOLDEN RACE
KEG NAGAR
BANGALORE - 560018.
3. MR. NISWARTH KOCHAR
R/AT FLAT A 602
ND PASSION APARTMENTS
SILVER COUNTRY ROAD
KUDLU, BANGALORE
KARNATAKA - 560068.

... PETITIONERS

(BY SRI NITIN A.M, ADVOCATE)

AND:

1. THE GOVERNMENT OF INDIA
REPRESENTED BY THE SECRETARY

MINISTRY OF HEALTH AND FAMILY WELFARE
ROOM NO.348, 'A' WING
NIRMAN BHAVA
NEW DELHI - 110011.

2. STATE OF KARNATAKA
REPRESENTED BY ITS
CHIEF SECRETARY
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BENGALURU - 560001.
3. INDIAN COUNCIL OF MEDICAL
RESEARCH
DIRECTOR GENERAL ICMR
ADDRESS: V RAMALINGASWAMI BHAWAN
P.O BOX NO.4911,
ANSARI NAGAR
NEW DELHI - 110029.
4. CENTRAL DRUGS STANDARD
CONTROL ORGANIZATION
REP BY THE DRUG CONTROLLER
GENERAL OF INDIA
MINISTRY OF HEALTH AND
FAMILY WELFARE
DIRECTORATE GENERAL OF
HEALTH SERVICES
GOVERNMENT OF INDIA
FDA BHAVAN
ITO, KOTLA ROAD,
NEW DELHI - 110002.

... RESPONDENTS

(BY SHRI S SHIVAKUMAR CGC FOR R1;
SHRI DHYAN CHINNAPPA, AAG ALONG WITH
SMT.PRATHIMA HONNAPUR, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
DIRECT RESPONDENT NO.01 AND 02 TO TAKE
APPROPRIATE STEPS TO DIRECT ALL HOSPITALS TO
CONDUCT AUTOPSY IN ORDER TO ATTRIBUTE THE CAUSE
OF DEATH IN ACCORDANCE WITH THE AEFI
SURVEILLANCE AND RESPONSE GUIDELINES,2015 AND
ETC.

THIS WRIT PETITION COMING ON FOR ORDERS THROUGH VIDEO CONFERENCING THIS DAY, **CHIEF JUSTICE** MADE THE FOLLOWING:

ORDER

At the outset, we must note here that this Court is dealing with various issues arising as a consequence of the first and second waves of COVID-19. This Court has already passed orders running into more than 800 pages from March 2020 in Writ Petition No.6435 of 2020 dealing with various issues of public importance such as the issue of rights of migrants, the issue of food security to the vulnerable sections of the society, the issue of non-availability of oxygen, vaccines, etc. Though all the issues are being dealt with by this Court in an exhaustive manner, the litigants are filing multiple petitions dealing with the same issues.

2. In the present petition, prayer (3) reads thus:

"3. To direct the Respondent No.1 and 2 to stop mass vaccination process until all the stages of the clinical trials are completed as according to the New Drugs and clinical trial rules 2019 and the National Guidelines for Gene Therapy Product Development and Clinical Trials-2019."

After reading prayer (3), *prima facie*, we felt that though this petition is purportedly filed in public interest, it is against public interest. The reason being, the prayer is to stop vaccination for COVID-19. Therefore, we called upon the learned counsel for the petitioners to argue in support of prayer (3).

3. The first submission made by him is that it is not clear under what authority of law the Government of India has permitted vaccination by administering vaccines COVAXIN and COVISHIELD. His second submission is that without complying with the mandatory provisions of the New Drugs and Clinical Trials Rules, 2019 (for short "the said Rules of 2019") and without completing all the stages of clinical trials, the vaccines have been permitted to be administered. Another submission is that though the vaccines are nothing but Gene Therapy products, the same are being administered without following the National Guidelines for Gene Therapy Product Development and Clinical Trials, 2019 published by the Indian Council of Medical Research, Ministry of Health and Family Welfare, Government of India. He is also relying upon the Seventy Second Report on

Alleged Irregularities in the conduct of trials of Human Papilloma Virus (HPV) Vaccine submitted before the Rajya Sabha. His submission is that if these two vaccines are permitted to be administered, it will lead to a disaster situation as in the case of administration of vaccine in relation to Human Papilloma Virus. He also relied upon a document published by Bharath Biotech relating to COVAXIN which is of 15th January, 2021. He relied upon clause (4) which records that COVAXIN is permitted for restricted use in emergency situation in Clinical Trial mode as per the provisions of the said Rules of 2019. Thus, in short, the submission is that administration of COVAXIN and COVISHIELD to the members of the public is completely illegal and harmful as it is in violation of the said Rules of 2019 and the Guidelines referred above.

4. The learned counsel appearing for the petitioners did not dispute that the vaccination drive commenced across the country in January 2021. Secondly, he is not disputing that more than 18 crore doses of COVAXIN and COVISHIELD vaccines have already been administered throughout the

country. The present petition is filed as late as on 24th May, 2021.

5. We may also note here that paragraph 117 of the petition makes it very clear that the objection of the petitioners is only to two vaccines, COVAXIN and COVISHIELD. In the petition, it is claimed that the first petitioner is an Army officer who is a Defence Scientist and an engineer. However, it is not claimed that the first petitioner is an expert in the field of vaccines. The credentials of the second and third petitioners are not set out in the petition. The very fact that at this stage a prayer is made for stopping mass vaccination shows that this petition is not filed in public interest. As the petition is not filed in public interest, it is not necessary for us to deal with the other prayers.

6. Considering the fact that the first petitioner is a retired Army officer, we had given an option to the learned counsel for the petitioners to consider whether the petitioners want to withdraw the petition. However, he stated that the petitioners have instructed him to argue the petition.

7. Hence, we decline to entertain the petition only on the ground that it is not filed in public interest. Therefore, this is a fit case to impose costs. In fact, this is a fit case to impose exemplary costs as the hearing of this petition has consumed 45 minutes which could have been devoted to many important issues which we wanted to consider today in the main matter such as non-availability of oxygen, food security to the vulnerable sections of the society, etc. Considering the fact that the first petitioner is a retired Army officer, we propose to impose costs payable only by the second and third petitioners quantified at Rs.50,000/-. We had given an option to the learned counsel for the petitioners to tell us to which Fund the costs amount should be transferred. However, he has left it to the Court.

8. Accordingly, we pass the following order:

ORDER

(i) We dismiss this petition only on the ground that it is not filed in public interest;

(ii) We direct the second and third petitioners to pay costs quantified at Rs.50,000/- (rupees fifty thousand) to the Chief Minister's Relief Fund (COVID-19);

(iii) The costs amount shall be paid within a period of one month from today;

(iv) We direct that the petition shall be listed on 28th June, 2021 under the caption of Orders for reporting compliance regarding payment of costs.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

vgh*/bkv