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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.07.2024

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.No.27868 of 2023

and WMP Nos.27366 and 27367 of 2023

and 15970, 15973 and 9746 of 2024

1 Jayaseelan Gopalakrishnan
S/o. T. Gopalakrishnan
20/4 SCCB Colony
Third Street, Mahendrapuri Salem 636 008

2 Mr. Shri Hariharan U.J
S/o. Jayaseelan Gopalakrishnan
20/4 SCCB Colony Third Street
Mahendrapuri, Salem 636 008

.... Petitioners

Vs

1 Principal Secretary to Government
Higher Education (A2) Department
Secretariat, Chennai 09

2 Kit- Kalaingar Karunanidhi Institute of Technology
Through its Principal,
Kannampalayam Post
Coimbatore 641 402

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India

praying to issue a Writ of Certiorarified Mandamus calling for the records

connected with the impugned order passed by the respondent No.1



G.O.(Ms.)No.164, dated 27.08.2021, quash the same with direction on record upon respondents to pay in compensation an amount of INR 100,00,00,000/- (Rupees One hundred Crore) as Exemplary compensation (for loss of 2 years in his life thus Reasonable) Right to life, profession & movement is a fundamental right guaranteed under Article 21 & 19 of the Constitution and for its breach or violation through malice or conscious abuse, a victim is entitled to monetary compensation from the Respondents who are responsible for it. Reference to Supreme Court judgment of Smt. Nilabati Behera alias Lalit... V. State of Orissa and ors. on 24 March 1993 (equivalent citations: 1993 AIR 1960, 1993 SCR (2) 581), quote ‘Award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort.’”

For Petitioners	: Mr.Jayaseelan Gopalakrishnan Party-in-person
For Respondents	: Mr.Jayaprakash Government Advocate – R1 Mr.C.Prakasam – R2



ORDER

WMP No.27366 of 2023 filed seeking permission to file a single Writ Petition is ordered on payment of separate Court fee.

2. There are two petitioners, father/P1 and son/P2, and this Writ Petition is argued by the father in person on both their behalf. P2 had been admitted to a self-financing college/R2 for the B.E. Computer Science course in July, 2019. In March, 2020, the world had shut down on account of the Covid 19 pandemic and classes had been conducted on line.

3. A Government Order dated 27.08.2021 had been passed in G.O.Ms.No.164 Higher Education (A2) Department that dealt with the reopening of classes for higher education and had set out Standard Operating Procedures (SOP) in the form of guidelines. The Government Order reads thus:

ABSTRACT

Higher Education-Re-opening of all Higher Educational Institutions- Standard Operating Procedures / Guidelines - Orders - Issued.

--Higher Education (A2) Department

G.O.(Ms) No.164

Dated: 27.08.2021

*jpUts;Sth; Mz;L- 2052
gpyttUlk;> Mtzp- 11*

Read:

1. G.O. (Ms) No.364, Revenue & Disaster Management (DM-IV) Department, dated 03.05.2021.



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2. G.O. (Ms) No.522, Revenue & Disaster Management
(DM-IV) Department, dated 21.8.2021

ORDER:

In the Government Order first read above, it has been notified that based on the recommendations of the Expert Team of Doctors and Public Health Specialists, directions of Govt. of India, Ministry of Home Affairs, lockdown was imposed by the State Government from 6.5.2021. The Institutions were closed before the start of second wave of COVID-19 pandemic to prevent the spread of infectious disease amongst the students.

2. Based on the review meeting conducted by the Hon'ble Chief Minister to evaluate the COVID-19 prevention activities, in the Government Order second read above, among other things, it has been ordered that all Colleges and Universities will be permitted to conduct classes on rotation basis with effect from 1.9.2021 by following the Standard Operating Procedure for conducting classes.

3. Accordingly, the Government directs that classes for all Colleges / Universities including Arts, Science, (both Shift I and Shift II) Technical, Engineering, Agriculture, Fisheries, Veterinary Colleges shall function from 1.9.2021 following the Standard Operating Procedures appended to this order and as per the schedule below:

<i>Three years UG / PG courses / Diploma courses such as B.A., B.Sc., B.Com, B.L., B.C.A., B.B.A., M.C.A., etc.</i>	<i>Second year</i>	<i>Monday, Wednesday & Friday</i>
	<i>Third year</i>	<i>Tuesday, Thursday & Saturday</i>
<i>Two years PG Courses such as M.A., M.Sc., M.Com., M.B.A., M.E., M.Sc.,</i>	<i>Second year</i>	<i>All 6 days.</i>



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<i>M.L. M.Tech., (Agri) M.V.Sc., etc.</i>		
<i>Four years Degree courses such as B.E., B.Tech., B.Sc., (Agri) etc.</i>	<i>Second year</i>	<i>Monday, Wednesday & Friday</i>
	<i>Third year</i>	<i>Tuesday, Thursday & Saturday</i>
	<i>Fourth year</i>	<i>All 6 days</i>
<i>Five years Degree courses such as B.Arch., B.V.Sc., Law Courses, etc.</i>	<i>Second and fourth year</i>	<i>Monday, Wednesday & Friday</i>
	<i>Third and fifth year</i>	<i>Tuesday, Thursday & Saturday</i>

Further, the Hostels for the above college students shall also be permitted to function, subject to the guidelines prescribed in the Standard Operating Procedure.

(By order of the Governor)

D. Karthikeyan

Principal Secretary to Government

4. The annexed SOP set out several measures to enable the functioning of Universities and Colleges during the time of the pandemic. Thus colleges were required to conduct classes on rotation, such that there would be sufficient distance maintained between the faculty and students. They were directed to put in place measures to contain the spread of the virus both within and without campus including specifically to handle the inflow of students, faculty and



students, disinfection and containment, should there be instances of persons found infected with the virus.

5. As far as hostels were concerned, the direction was that they would be opened only if necessary, and if functional, the college would strictly observe safety and health measures. Students were encouraged to stay elsewhere as far as possible to avoid overcrowding. Masks and proper sanitisation were mandated.

6. Based on the aforesaid directives, two faculty members of R2 institution had been entrusted with the task of collecting the vaccination status of the students and the same was enforced by them through a group formed over the WhatsApp application. Messages were posted on the group to the effect that the students may get vaccinated and produce proof of the same as a pre-condition to attend the college physically.

7. The SOP permitted the conduct of online and in-person classes in rotation. It is the grievance of the petitioners that P2 had been prevented from attending the in-person classes, as he had objected to the collection of data relating to the vaccination status. According to the petitioners such data constituted 'personal data' that was protected.

8. On 22.09.2021, a legal notice was issued by the petitioners to R2 college challenging their insistence on providing vaccination status and



demanding an explanation for their behaviour. On 28.10.2021, P2 is stated to have been '*expelled from the classroom*'. P2 avers that he had attempted even thereafter to attend classes on campus but had not been permitted entry till 22.12.2021. Neither were his specific concerns relating to the conduct of the college in insisting on divulgence of vaccination status, addressed.

9. In the counter filed by the college, there is an allegation that on 22.12.2021, P2 had forcibly entered the rooms of the Principal and the Correspondent without a mask and perhaps without vaccination, (as he refused to confirm his vaccination status) and that he threatened to spread the virus in that area. At this distance in time, these allegations are not verifiable. Suffice it to say that the petitioner has not attended the college after 28.10.2021, as he had not been permitted to enter the campus thereafter for want of vaccination status or adherence to Covid 19 norms.

10. The mainstay of the arguments of the petitioners are that vaccination status constitutes Sensitive Personal Data and Information (SPDI), in terms of the Information Technology Act, 2005. P2 is thus protected from the need to disclose such sensitive data or placing such data in public domain. The petitioners refer to the Universal Declaration on Bioethics and Human Rights: UNESCO dated 19.10.2005, particularly Articles 3 and 5 thereof, which deal with 'Human dignity and human rights' and 'Autonomy and individual



responsibility' respectively, to emphasize bodily autonomy and the respect to be accorded to the same.

11. They would argue that the insistence upon vaccination or declaration of such status is contrary to the right of privacy that vests in every individual. My attention is drawn to the messages in the WhatsApp group which make it clear that only vaccinated students may attend classes physically. The petitioner has been named, among several others, to intimate his vaccination status and details of vaccination doses taken.

12. In the letter dated 22.09.2021, P1 has articulated his grievances regarding the call for such information forcibly. He threatens legal action as against the respondents for violating his son's privacy, emphasizing bodily autonomy and highlighting that the use that such sensitive personal data would be put to, has not been conveyed.

13. He also refers to the judgment of the Hon'ble Supreme Court in *JacobPuliyel V. Union of India and others*¹, where, in conclusion at paragraph 89, the Court has upheld the right of bodily integrity and personal autonomy of an individual. The Bench has stated that no individual can be forced to be vaccinated and that such insistence would be contrary to the mandate of Article 21 of the Constitution.

¹2022 3 S.C.B. 71
<https://www.mhc.tn.gov.in/judis>



14. Reference is also made to the judgment in the case of *K.S.Puttaswamy V. Union of India*², which protects the right of privacy of an individual and sets out three-fold requirements to test those measures of the Government purported to regulate individual rights. The tests are (i) legality, which presupposes the existence of law; (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality, which ensures a rational nexus between the objects and the means adopted to achieve them. According to the petitioners, the impugned actions of the respondents fail on all three counts, particularly the third count of proportionality.

15. Petitioners also rely on a judgment of the United States Court of Appeal for Ninth Circuit in *Health Freedom Defense Fund Inc. V. Alberto Carvalho*³. Some submissions are also made referring to recent scientific technical literature as to the perils of vaccination for covid 19. I see no need to refer to the same both for the reasons that it is extraneous to the subject matter of this Writ Petition, and that this not the appropriate forum where the merits or demerits of the covid vaccination may be debated or decided. I hence restrict the scope of the discussion to the prayer of the petitioner, which is for a Writ of Certiorarified Mandamus quashing G.O.Ms.No.164 dated 27.08.2021 and

² (2017) 10 SCC 127

³ No.22-55908 D.C.No.2:21-cv-08688-DSF-PVC
<https://www.mhc.tn.gov.in/judis>



compensation of a sum of Rs.100 crores for loss of two years of education of P2.

16. In justification of the plea for compensation, P1 would bring to note that a complaint had been filed before the police station praying for police intervention as against the respondents for the same cause of action. The petitioner also moved C.M.P.No.176 of 2022 before the learned Judicial Magistrate IV, Salem under Section 200 Cr.P.C. praying for cognizance to be taken in respect of his complaint.

17. The said Miscellaneous Petition came to be dismissed on 06.09.2022, as against which, CrI.R.C.No.1455 of 2022 had been filed before this Court. After an order adverse to the petitioner was pronounced by the Court, the petitioners had made a plea for return of the educational certificates of P2. Hence, by order dated 13.02.2023, this Court directed R1 college to return all original educational certificates including transfer certificate of the P2 forthwith, to enable him to continue his studies in some other college.

18. R2 has, admittedly, returned all the certificates to him. However, the petitioner is aggrieved by the endorsement 'discontinued' on the transfer certificate. P1 submits that P2 is poised to be a first generation graduate and the reason for the interruption in studies was beyond his control. He has not being able to pursue his education elsewhere on account of the aforesaid endorsement



and three precious years of student life have been lost. Hence the prayer for compensation.

19. Mr.Jayaprakash, learned Government Advocate appearing for R1 defends the impugned Order stating that such measures were necessary in the light of the pandemic. Citing G.O.Ms.No.434, Higher Education (J2) Department dated 23.10.2008, he states that the petitioner may continue his education subject to R2 college issuing a certificate with the endorsement '*by transfer*'. Such endorsement would enable him to continue his studies in the same course for the remainder of the period of the course, in any other self-financing college. R2 college, for whom Mr.Prakasam, learned counsel appears, states that it will have no objection in issuing such a certificate.

20. All that remains is to deal with the challenge to G.O.Ms.No.164 dated 27.08.2021. The World Health Organization (WHO) had declared the onset of COVID – 19 to be a Public Health Emergency of International Concern (PHEIC) on 30.01.2020 and had categorized the outbreak as a pandemic on 11.03.2020. Thereafter, the WHO Emergency Committee on COVID-19, had, on 05.05.2023, recommended to the Director-General of the WHO, such recommendation being accepted, that it was no longer necessary to characterise COVID – 19 as a PHEIC, but that the pandemic was itself not over.



21. The Directorate of Medical Education, in a communication bearing Ref.No.81353/MEII/1/2023 dated 21.11.2023, refers to a meeting held on 20.11.2023 to address various issues in relation to the Covid pandemic. Item 1 in the minutes of the above meeting records that '*the date of starting and ending of the COVID pandemic shall be taken as 24.03.2020 (date of commencement of first lock down) to 04.05.2023 (WHO announcement of closure of pandemic)*'.

22. Today, in July, 2024, the happenings of that period seem almost akin to a dream. The clarity that comes with hindsight, today was certainly absent during that time. All institutions including colleges, were focussed towards containing the pandemic and the large scale destruction that it wrought.

23. The impugned Government Order has been issued by the Revenue and Disaster Management Department. It is the say of R1 that the overview and management of the public health crisis caused by the pandemic came under the ambit of the National Disaster Management Authorities entrusted with the responsibility of enforcing public safety. Their decisions have the compelling requirement of balancing the interests of various groups of the public with the dangers caused by the disaster.



24. While the judgment of the Supreme Court in *Jacob Puliyeel*⁴ calls for protection of bodily integrity and personal autonomy, there is a caveat when it comes to regulation of issues concerning public health. Paragraph 89, where the Court summarises its findings is relevant and is extracted below:

89. In conclusion, we have summarised our findings on the various issues considered by us, below:

.....

*(iii) With respect to the infringement of bodily integrity and personal autonomy of an individual considered in the light of vaccines and other public health measures introduced to deal with the COVID-19 pandemic, we are of the opinion that bodily integrity is protected under Article 21 of the Constitution and no individual can be forced to be vaccinated. Further, personal autonomy of an individual, which is a recognised facet of the protections guaranteed under Article 21, encompasses the right to refuse to undergo any medical treatment in the sphere of individual health. However, in the interest of protection of communitarian health, the Government is entitled to regulate issues of public health concern by imposing certain limitations on individual rights, which are open to scrutiny by constitutional courts to assess whether such invasion into an individual's right to personal autonomy and right to access means of livelihood meets the threefold requirement as laid down in *K.S. Puttaswamy* (supra), i.e., (i) legality, which presupposes the existence of law; (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality, which ensures a rational nexus between the objects and the means adopted to achieve them.*

(iv) On the basis of substantial material filed before this Court reflecting the near-unanimous views of experts on the benefits of vaccination in addressing severe disease from the infection, reduction in oxygen requirement, hospital and ICU admissions,

⁴Footnote 1
<https://www.mhc.in.gov.in/judis>



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mortality and stopping new variants from emerging, this Court is satisfied that the current vaccination policy of the Union of India is informed by relevant considerations and cannot be said to be unreasonable or manifestly arbitrary. Contrasting scientific opinion coming forth from certain quarters to the effect that natural immunity offers better protection against COVID-19 is not pertinent for determination of the issue before us.

(v) However, no data has been placed by the Union of India or the States appearing before us, controverting the material placed by the Petitioner in the form of emerging scientific opinion which appears to indicate that the risk of transmission of the virus from unvaccinated individuals is almost on par with that from vaccinated persons. In light of this, restrictions on unvaccinated individuals imposed through various vaccine mandates by State Governments / Union Territories cannot be said to be proportionate. Till the infection rate remains low and any new development or research finding emerges which provides due justification to impose reasonable and proportionate restrictions on the rights of unvaccinated individuals, 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. It is clarified that in the context of the rapidly-evolving situation presented by the COVID-19 pandemic, our suggestion to review the vaccine mandates imposed by States / Union Territories, is limited to the present situation alone and is not to be construed as interfering with the lawful exercise of power by the executive to take suitable measures for prevention of infection and transmission of the virus. Our suggestion also does not extend to any other directions requiring maintenance of COVID-appropriate behaviour issued by the Union or the State Governments.

..... ,



25. In the case of *K.S.Puttaswamy*⁵ the Supreme Court has settled the position that right to privacy is enshrined in Article 21 of the Constitution of India. That right is one that has to be understood and applied in context, to real life situations. The covid 19 pandemic is one such. In fact, in paragraph 89(iii) of the judgement in *Jacob Puliye*⁶, the Hon'ble Supreme Court provides for a juxtaposition of the right to privacy on the one hand, and the right to bodily integrity and personal autonomy on the other.

26. This is to be achieved by virtue of a balancing act – one that regulates issues of public health concerns by imposing limitations on individual rights. Undoubtedly, such limitations would have to be reasonable, proportionate and commensurate with the danger that is sought to be addressed.

27. The observations of the Court at paragraph 89(v) are to the effect that the data placed before the Court did not establish that transmission of the virus by an unvaccinated person was any more, than by a vaccinated person. As a result, the Court held that the restrictions placed upon unvaccinated individuals by various vaccination mandates by State Governments and Union Territories cannot be said to be proportionate.

28. That judgment has been rendered on 02.05.2022, whereas the impugned Government Order is dated 27.08.2021 when the Country was in the

⁵ Foot Note Supra 2

⁶ Foot Note Supra 1



throes of the pandemic. One must be cognizant of the position that, while in the thick of a universal disaster, all focus and energy would be concentrated upon containing that disaster. Other concerns and issues become collateral.

29. The object of the Disaster Management Act, 2005 is to provide for requisite institutional mechanisms for drawing up, monitoring and implementing disaster management plans. It is intended to facilitate the integration of measures by various wings of the Government for prevention and mitigation of the ill-effects of disasters and for *'undertaking a holistic, coordinated and prompt response to any disaster situation'*⁷.

30. The impugned Government Order has been issued by the Revenue and Disaster Management Department, which was the Nodal Agency, so to say, engaged in the co-ordination of preventive and relief measures during the time of the pandemic. The response to such an agency has to be real-time, addressing each emergency as it arose, fire fighting with various issues as and when they cropped up and thinking ahead in order to ensure that the Department anticipates issues so as to prevent or to contain them.

31. It is the duty of this Department to address the situation as it unfolds and the impugned Government Order has been issued as one of such measures.

⁷Statement of objects and reasons for the Disaster Management Act, 2005
<https://www.mhc.in.gov.in/pdfs>



Correspondingly, it is the duty of a citizen at that point in time to either comply with those measures or to succumb to the consequences.

32. Thus, I find nothing untoward in the least, in the issuance of the impugned Government Order. In fact, that Government Order is not of any relevance today, since the period for which it was in operation, and the need for it, has long elapsed. The measures set out under the SOP were directives to Universities and educational institutions, to guide them on the manner by which the entirety of the student population can be handled safely to optimize that academic year.

33. On account of the trials and tribulations caused by the pandemic, it would be impossible for a population as large as ours to have followed the rigour of an academic schedule through it all but for a certain amount of regulation. Hence the need for a balance that has been sought to be achieved by the impugned Government Order.

34. It is easy for one to state in hindsight, that things could have been done better or differently. However, the legality or otherwise of the impugned Government Order and the requirement of proportionality must be tested concurrent with the times when it was issued and not two years later. The relevant question to be posed is as to whether the impugned G.O. had a



legitimate purpose and whether it has achieved such purpose and my answer is in the affirmative.

35. It is undeniable that vaccination status constitutes SPDI. The petitioner has referred to responses received under Right to Information Act, 2005, where the Public Information Officer confirms that Government stores all vaccination data in a safe and secure digital environment and the data is not shared with any entity outside the environment.

36. However, while testing the Government Order, this Court would be guided by the ground realities of those times. Hence, the measures taken under the impugned Government Order are not found to be irrational or disproportionate to the demands of the pandemic. Challenge to Government Order No.164 dated 27.08.2021 is rejected. Consequently, the plea for compensation is also rejected. However, since the petitioners have been pursuing their plea doggedly and diligently, they are entitled to some relief.

37. The Judgment of the Hon'ble Supreme Court was delivered on 02.05.2022 and the petitioner claims to have made representations thereafter on 30.06.2022, 28.08.2022 and 30.07.2023, which have not found favour of response by the authorities. This Writ Petition has come to be instituted on 17.08.2023 as a last ditch measure. R2 had already expressed that it is ready to handover a transfer certificate with the endorsement '*by transfer*' in the field in



column 12 being '*reason for leaving*'. This would suffice to protect the interests of the petitioner and ensure continuance of his education.

38. R2 is directed to issue a transfer certificate with the endorsement 'by transfer' in column 12 thereof as well as any other documents required to facilitate continuance of the education of P2 in the same course in an alternate self-financing institution, forthwith.

39. As regards the prayer in WMP No.9746 of 2024, for a full scholarship for the education of P2, such a direction cannot be issued by this Court as the criteria for eligibility for scholarship would vary from one scholarship to another and it is unknown as to whether P2 satisfies the criteria for any such scheme/benefit. The petitioners are however at liberty to explore all options/State schemes available for scholarship/educational benefits and, if eligible, make a request in regard thereto before the authorities.

40. This Writ Petition is disposed in terms of this order. No costs. Connected Miscellaneous Petitions are ordered as above/closed.

15.07.2024

Index : Yes
Speaking Order
Neutral citation: Yes
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The Principal Secretary to Government
Higher Education (A2) Department
Secretariat, Chennai 09

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DR.ANITA SUMANTH,J.

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