

GAHC040006462021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : PIL 13/2021

1:Madan Mili

Aged about 27 years, Son of Late Kaku Mili, Permanent Resident of Acheso, Dibang Valley, A.P. Pin 792101.

Phone no-9436852425

VERSUS

1:THE UNION OF INDIA and 2 ors

Represented by the Honble Home Secretary, Ministry of Home Affairs, North Block, New Delhi. Pin. 110001

2:The State of Arunachal Pradesh

Represented by the Chief Secretary

Govt. of A.P. Civil Secretariat

Ita

A.P. Pin 791111.

3:The Arunachal State Disaster Management Authority

Represented by its Chief Executive Officer

Directorate of Disaster Management

Daying Ering Colony

Ita

A.P. PIN 791111

Advocate for the Petitioner : Debasmita Ghosh
Ebo Mili
Chanya Bangsia
S. Dey

Advocate for the Respondent : Marto Kato, ASG
R. H. Nabam, Addl. Adv. General, A.P.

**BEFORE
HONBLE MR. JUSTICE NANI TAGIA**

ORDER

Date : 19-07-2021

Heard Ms. D. Ghosh, learned counsel for the petitioner. Also heard Mr. R. Karga, learned counsel appearing on behalf of Mr. M. Kato, learned ASG for the respondent No. 1 and Mr. R. H. Nabam, learned Additional Advocate General representing respondent Nos. 2 & 3.

By means of this Public Interest Litigation, the petitioner has put to challenge 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, to the extent it provides that for developmental works in both public and private sector, temporary permits may be issued provided such persons are vaccinated for Covid-19.

The petitioner contends that as per the RTI Information furnished by the Ministry of Health & Family Welfare, which is available in the website of the Ministry of Health and Family Welfare, Government of India, Covid-19 vaccination is not a mandatory but a voluntary. A copy of the RTI Information available in the website of the Ministry of Health & Family Welfare, Government of India, has been annexed by the petitioner as Annexure 3 to the petition. The

petitioner also refers to an answer given on 19.03.2021 in the Lok Sabha to an Unstarred Question No. 3976 by the Minister of State in the Ministry of Health & Family Welfare, Government of India (Annexure 4 to the petition) stating that there is no provision of compensation for recipients of Covid-19 Vaccination against any kind of side effects or medical complication that may arise due to inoculation. The Covid-19 Vaccination is entirely voluntary for the beneficiaries.

By referring to the fact that the Covid-19 Vaccination is entirely a voluntary exercise at the choice of an individual as indicated in the RTI answer and the answer given in the Lok Sabha by the Minister of State in the Ministry of Health and Family Welfare, Government of India, as referred to hereinabove, the learned counsel for the petitioner has contended that provision under 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, allowing temporary permits to be issued for developmental works in both public and private sector to only those persons who are vaccinated for Covid-19, have interfered with the rights of the citizens provided under Article 19 (1) (d) of the Constitution of India to move freely throughout the territory of India. The learned counsel for the petitioner, therefore, has argued that since the 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, by allowing to issue temporary permits for developmental works in both public and private sector only to persons who have vaccinated for Covid-19 Virus, have interfered with the fundamental rights granted under Article 19 (1) (d) of the Constitution of India and the same may be struck down by this Court in exercise

of power under Article 226 of the Constitution of India.

Mr. R. H. Nabam, learned Additional Advocate General, on the other hand, has submitted that due to the rising cases of Covid-19 positive in the State of Arunachal Pradesh, the restrictions provided in Clause 11 vide 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, are reasonable restriction as the same has been issued with the sole objective of containing the Covid-19 pandemic and its further spread in the State of Arunachal Pradesh.

Issue notice, returnable on 28.07.2021.

As Mr. R. Karga, learned counsel appearing on behalf of Mr. M. Kato, learned ASG for the respondent No. 1 and Mr. R. H. Nabam, learned Additional Advocate General representing respondent Nos. 2 & 3, have entered appearance and accepted notices on behalf of their respective respondents, no formal notice need be issued to them. However, they shall be provided with requisite extra-copies of the petition along with relevant annexure appended thereto during the course of the day.

Heard on the prayer for interim relief.

Ms. D. Ghosh, learned counsel for the petitioner, has prayed for an interim order as the 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 as it discriminates between persons vaccinated and unvaccinated for Covid-19 Virus in so far as issuance of temporary permits for developmental works in both public and private sector, have violated the fundamental rights granted under Article 19 (1) (d) of the Constitution of India to those unvaccinated persons and the order being valid on and from 30.06.2021 to 01.08.2021, the said 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, may be suspended in the meanwhile.

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, appears to have been issued in exercise of powers conferred under Section 22 (2) (H) of the Disaster Management Act, 2005, setting out various directives to be followed in the management of Covid-19 pandemic to remain in force w.e.f. 6.00 p.m. of 30.06.2021 till 5.00 a.m. of 01.08.2021. The object of issuing 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, appears to be to contain Covid-19 pandemic and its further spread in the State of Arunachal Pradesh. It is in that light, vide Clause 11 of the Order dated 30.06.2021, it appears, that vaccinated and unvaccinated persons for Covid-19 virus have been discriminated/classified into 2 (two) groups for the purpose of issuing temporary permits for developmental works in both public and private sector. Clause 11 of the Order dated 30.06.2021 reads as under:

“11. Tourist ILPs shall remain suspended during the period of this order, however for developmental works in both public and private sector, temporary permits may be issued provided such persons are vaccinated for COVID 19.”

While persons who are vaccinated for Covid-19 have been allowed to be issued with a permit to visit Arunachal Pradesh, persons who are not vaccinated with Covid-19 vaccine have not been allowed to be issued with a temporary permit to visit Arunachal Pradesh for developmental works in both public and private sector.

The right granted under Article 19 (1) (d) of the Constitution of India to move freely throughout the territory of India, however, is not absolute and the State may impose a reasonable restrictions on the exercise of the rights under Article 19 (1) (d) of the Constitution of India either in the interest of the general public or for the protection of the interest of the Schedule Tribe. While putting any restrictions, as above, such restrictions, however, must be a reasonable one conforming to the requirement of Article 14 of the Constitution of India as well. Article 14 of the Constitution of India guarantees to every persons the right not to be denied equality before the law or the equal protection of laws. “Equality before the law” means that amongst equals the law should be equal and should be equally administered and that like should be treated alike. Classification of persons into groups for different treatment of such groups is permissible if there is a reasonable basis for such difference. Article 14 of the Constitution of India forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable grounds of distinction. The power of making classification, however, is not without limit. A classification to be valid must be

reasonable. It must always rest upon some real and substantial distinction bearing reasonable and just needs in respect of which the classification is made. In order to pass the test of permissible classification, 2 (two) conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentiation which distinguishes persons or things that are grouped together from others left out of the group; and (ii) the differentia must have a rational relation to the object sought to be achieved by such classification.

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 Vs. State of Mizoram & Ors. 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.”

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.

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.

List it on 28.07.2021.

JUDGE

Comparing Assistant