

**HIGH COURT OF BOMBAY AT GOA.**

**MISC. APPLICATION NO. 1197 OF 2021 (FILING)  
AND  
MISC. APPLICATION NO. 1201 OF 2021 (FILING)**

**IN  
PIL WRIT PETITION NO.1173 OF 2021(Filing)**

STATE OF GOA	....Applicant
IN	
MR. ARMANDO GONSALVES	
AND ANOTHER	.... Original
Petitioners	
V/S.	
STATE OF GOA AND OTHERS	... Original Respondents

Shri D. Pangam, Advocate General with Ms. Maria Correia, Addl. Govt. Advocate for the Applicant-State.  
Shri Aakash Rebello, Advocate for the respondents.  
Shri Nigel Costa Frias, Advocate for the petitioners in PIL WP No. 1174 of 2021(Filing).

**CORAM: M.S. SONAK &  
SMT. M.S. JAWALKAR, JJ.**

**DATE: 18<sup>th</sup> MAY, 2021.**

**P.C.:**

Heard the learned Advocate General for the State of Goa and  
the learned counsel for the petitioners in this PILWP.

2. Both these applications seek the vacation of our order requiring the State to ensure that persons entering into the State of Goa possess a COVID-19 negative certificate obtained by them for a maximum of 72 hours before seeking entry into the State of Goa. In the alternate, the State urges that a waiver be granted in respect of persons who are employed in Goa and travel between the neighboring States and the State of Goa daily subject to such persons being thermally scanned and producing proof of employment at the respective check posts.

3. Earlier vide our orders dated 11/05/2021 and order dated 12/05/2021, we had modified our earlier interim direction and waived the above requirement in respect of the following persons:

- a) Persons entering Goa for availing emergency medical treatment (see paragraph 6 of our first order dated 11/05/2021)
- b) Persons traveling in goods vehicles for the supply of certain specified essentialities (see paragraph 3 of our second order dated 11/05/2021)
- c) Persons traveling in goods vehicles making supplies into the State of Goa, subject to the condition that such goods vehicles will have maximum of two, driver and one cleaner /helper and further, such persons will have to be scanned with the help of thermal guns to detect whether they display any symptoms related to COVID -19 ( see paragraph 12 of our order dated 12/05/2021).

4. At the outset, we clarify that the waiver granted by our second order dated 12/05/2021 is wider than the waiver in our second order dated 11/05/2021. Therefore, the later order will over ride and prevail over our first order and the conditions set out in our later order, in the context of all goods vehicles, will have to be complied with. To this extent our second order dated 11/05/2021 stands modified / clarified.

5. At this stage, we must record that the State, right from the beginning, was resisting the restriction of requiring persons to possess a COVID -19 negative certificate for entry into the State of Goa. So much so that despite our clear and unambiguous direction dated 06/05/2021, made after the consideration of the submissions made by the learned Advocate General, the District Magistrates of the two districts comprising the State of Goa, proceeded to issue orders dated 08/05/2021, virtually defying our orders and proceeding to carve out, either by themselves or otherwise, the exceptions in favour of the following :-

- a) Persons who are residents of Goa;
- b) Persons who are entering into Goa for work;
- c) Persons who have full vaccination certificate;

6. The aforesaid modification of our orders by the two District Magistrates of their own accord or otherwise, was quite a serious and unfortunate matter. Only because the learned Advocate General did not even defend the action of the two District Magistrates and assured immediate amends

that we did not pursue this serious and unfortunate matter any further.

7. The learned Advocate General submits that the restrictions imposed by our order dated 6.5.2021 are quite disproportionate and occasion serious prejudice to residents of Goa who wish to enter into Goa as well as the persons who wish to enter into Goa for purposes of their daily work. He submits that Goa is a small state and has to rely upon its neighboring States of Maharashtra and Karnataka for supplies, labor, and workforce. He submits that the restriction is affecting the economy of Goa and the smooth operation of industries, including industries concerned with combating the COVID-19 epidemic.

8. The learned Advocate General further submits that the procedure for obtaining a COVID -19 negative certificate is quite cumbersome that even laboratories everywhere are overburdened, issuing such certificates. He submits that even the ICMR has taken the cognizance of this position and issued an advisory dated 04/05/2021 against insisting upon RTPCR test of healthy individuals undertaking interstate, domestic travel to reduce the load on the laboratories.

9. The applications made by the State contend that as of

10.05.2021, hardly 0.25 % of the travelers entering Goa were tested COVID -19 positive and availing medical facilities in the State of Goa; that even the RT-PCR tests are not foolproof and therefore, there is no guarantee that a person with a negative certificate, will not spread the epidemic; that there is a tremendous strain on the State's enforcement agencies and the enforcement of this new restriction will only increase such strain; that setting up of facilities at the borders for testing, checking, etc, will result in long queues and cause chaos and delay. The application also stated that there are no restrictions imposed by the States of Maharashtra and Karnataka for the workforce entering into the respective States from Goa.

10. The learned Counsel for the Petitioners have opposed the State's application. Petitioner No.1 Mr. Armando Gonsalves in Writ Petition No.1173 of 2021(Filing) has filed a detailed affidavit countering the grounds set out in the State's application as also most of the grounds now urged by the learned Advocate General in support of the application. Mr. Aakash Rebello reiterated the position in the course of his submissions made today before us.

11. Mr. Nigel Costa Frias, the learned counsel for the petitioner in PIL WP No. 1174 of 2021(Filing) endorsed the contentions of Mr. Rebello and added that no blanket waiver as prayed for may be

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granted. He submitted that at the highest the State may be permitted to present a suitable protocol in respect of the workforce so that the interest of the industries involved in combating the epidemic and the interest of the health of residents of Goa is protected. He submits that the workforce involved in industries that have no nexus with combating the epidemic may not be permitted to enter into the State of Goa without a negative certificate.

12. Having duly considered the rival contentions as well as the material placed before us by both the parties, we do not feel that any case has been made out by the State for us to vacate our interim direction, particularly now that we have already modified our interim direction by granting a waiver in cases of medical emergencies and transportation of supplies in the State of Goa. The reasons set out in our orders dated 06/05/2021, 11/05/2021, and 12/05/2021 are not repeated but may be treated as a part of this order, particularly because no proper material has been placed by the State to rebut the material on which our reasoning was based. In addition, we set out briefly further reasons for dismissing the State's applications.

13. The categories of “*residents of Goa*” or “*persons coming for work into Goa*” are too vague and ambiguous in the context of the issues with which we are presently concerned. Further, it is not as if

such persons are barred entry into Goa. The only requirement is that even such persons, along with others, must have a COVID-19 negative certificate to enter into the State of Goa. If a waiver is to be granted based upon such vague and ambiguous classification, then, there will be no meaning to the restrictions directed by us in the public interest. The State, which solemnly pleads overburden when it comes to implementation of our present directions, has not even bothered to explain whether it is in a position to verify from each potential entrant whether such entrant is indeed a resident of Goa or coming into Goa for some work. The plea of the State Government, if accepted, would virtually frustrate the interim directions issued by us in the public interest and having regard to the fact that the State of Goa had reported a positivity rate of almost 51.46% as on 06/05/2021 when the order was made.

14. On 06/05/2021, 3869 positive cases were reported and the number of COVID-related deaths was also 58. The positivity rate was one of the highest, if not, the highest in the entire country. Even as of yesterday i.e. on 17/05/2021 though the positivity rate has fallen to 32.66%, the same is perhaps the highest in the entire country. This application for waiver, therefore, cannot be regarded as being made in any public interest or to find some balance between arresting the spread of the epidemic and legitimate economic concerns.

15. Seeking waiver in respect of residents of Goa or persons coming for work into Goa overlooks the unfortunate fact that the coronavirus makes no distinction between the residents of Goa or persons entering for work into Goa and the other persons left out from these groups. The sole object for directing the restriction in the first place was to resist the spread of the epidemic and to reduce the spiraling positivity rate. The classification as proposed by the State has no nexus whatsoever with such an object. Based upon such vague and even irrational classification, no case is made out to grant the State's application, in the form in which the same is presently made.

16. The ICMR advisory dated 04.5.2021 upon which reliance was placed by the learned Advocate General, no doubt, deserves weight and consideration. This advisory provides that the need for RTPCR tests in healthy individuals undertaking interstate domestic travel may be completely removed to reduce the load on the laboratories.

17. But it must be remembered that the advisory was issued on 04/05/2021 in the context of the general position of the epidemic throughout the country. To that extent, the focus of the advisory was not on the peculiar situation in the State of Goa. Here, almost 2000 deaths have been reported since the epidemic raised its ugly head in March 2020, out of which, almost 1000 deaths took place in the last



10 days or thereabouts. The position of the State-run medical facility i.e. GMC was too horrendous to recall, particularly, in the context of overstretched demand on medical infrastructure, oxygen, and even the medical and paramedical staff. Besides, these very advisory advocates against non-essential travel by symptomatic individuals and compliance with COVID-19 appropriate behavior by asymptomatic individuals undertaking essential travel. This advisory also provides that any individual presenting with fever with or without cough, headache, breathlessness, body ache, the recent loss of taste or smell, fatigue, and diarrhea be considered as a suspect case of COVID-19 unless proven otherwise by confirmation of another etiology. This very advisory advocates several other measures to combat the epidemic.

18. Mr. Rebello, also drew our attention to the affidavit of Mr. Gonsalves, in which he has quoted Dr. Balram Bhargava, the Head of ICMR. He has also placed on record the source of this quotation i.e. an interview published in “The Hindu” dated 12/05/2021. Dr. Bhargava is reported to have stated that the Districts reporting a high number of infections to remain locked down for another 6-8 weeks to control the spread of the rampaging disease. He stated that currently, 3/4<sup>th</sup> of India's 718 districts have what is known as a test-positivity rate of about 10%, including major cities like New Delhi, Mumbai,

and the tech hub of Bengaluru. He states that the high positivity districts should remain shut. If they come to 5% from 10% (positivity rate), they can open, but that has to happen. Referring to the capital Delhi he stated that the positivity rate had reached around 35% but has now fallen to 17%. Dr. Bhargava states *“if Delhi is opened tomorrow, it will be a disaster.”*

19. According to us, the State cannot rely upon a particular clause of the advisory and ignore the rest. The State, cannot point out to the advisory about the need for no RTPCR test in every healthy individual but ignore the advisory on avoidance of non-essential travels and the parameters to determine suspect cases. The State has to rely upon the ICMR advisory for one purpose, then, the State cannot ignore the other parts of the very same ICMR advisory. Having regard to the positivity rate, which was 51.46% as of 06/05/2021, there was no justification for the State Government not insisting upon a negative certificate from a person seeking to enter into the State of Goa. Even as of 17/05/2021, the positivity rate, though reduced, stands at 36.02%. These figures suggest that the positivity rate is one of the highest, if not the highest, in the entire country. Having regard to the statement of Dr. Bhargava, the Chief of ICMR, and all such factors borne out of the record, there is no case made out to either vacate or vary our interim direction.

20. In the original MCA No.1197 OF 2021 no details were furnished of the workforce proposing to daily enter into Goa from the neighboring states of Karnataka and Maharashtra. However, in MCA No.1201 of 2021, it is set out that the workforce of approximately 1992 enters from the state of Karnataka and 3443 from the State of Maharashtra.

21. In so far as the State of Maharashtra is concerned the latest order dated 12/05/2021 has been placed before us and that states that any person entering the State of Maharashtra by any mode of transport will have to carry a negative RTPCR test report which has to be issued for up to maximum of 48 hours before its time of his entry into Maharashtra. Similar restrictions have been placed even on drivers, cleaners, and helpers in cargo carriers.

22. The aforesaid means that even if the workforce of approximately 3443 is permitted to enter into the State of Goa without a negative RTPCR certificate, then, such workforce will require a negative RTPCR certification from the State of Goa to enter into Maharashtra in the evening. This will not be possible daily, as long as the restrictions imposed by the State of Maharashtra continue to remain in force. At this stage, therefore, the State, on its own, should not have pressed for variation insofar as the workforce, from Maharashtra is

concerned.

23. Insofar as the workforce from the State of Karnataka is concerned, we have perused the order dated 07/05/2021 issued by the Government of Karnataka, inter alia, on the movement of individuals to and from the State of Karnataka. From the perusal of the same, it transpires that what is mostly permitted is the travel in case of emergency or for effecting essential supplies. It is not clear as to whether the workforce from Karnataka, can actually travel into the State of Goa and thereafter return on the same day without proof of vaccination or an RTPCR negative certificate.

24. In our order dated 06/05/2021 we had granted the said liberty to provide for a proper protocol that will balance the interest of the workforce, industry as well as arrest the spread of the epidemic. The learned Counsel for the petitioners pointed out the similar protocol in the State of Maharashtra where an RTPCR certificate was given validity of 15 days, in case of some specified categories of persons. Further safeguards are provided by way of checking at the borders for symptoms, etc. The State has not come out with any such protocol before us despite the liberty. Instead what is sought is a blanket waiver, or in any case, a waiver without addressing the concerns of public health.

25. There are hardly 8 entry points by road in the State of Goa. Therefore, the contention-based upon strain on the service personnel, cannot be accepted. In fact, the strain will be much lesser if the entrants produce a negative RTPCR certificate. In any case, looking at the positivity rate of 36.62% as of 17/05/2021, no case is made out for a blanket waiver or a partial waiver as prayed for in these applications.

26. On one hand, there is material on record that the medical infrastructure in the State is quite over-stressed. On the other hand, if there are no restrictions, whatsoever on the entry into the State of Goa, then, this medical infrastructure will completely collapse. The statistics pointed out in this application are misleading because they refer to the tested cases which itself may be few. The tested cases are not restricted to entrants by road alone. The statistics ignore the untested and asymptomatic cases. Therefore, based on the statistics referred to in the application, no case is made out for variation or vacation of our interim order.

27. Mr. Rebello has also referred to the affidavit of Mr. Gonsalves which has set out the details of restrictions placed by several other States, in the matters of entry of persons without possessing RTPCR negative certificate. The affidavit and the material on which the

averments in paragraph no.14 thereof are based, indeed indicates that several States including small States have made the requirement of negative RTPCR certificate mandatory for entry into the State.

28. Mr. Rebello, did attempt to urge that these applications were motivated and the main reason for seeking waiver was to promote tourism in the State of Goa. According to us, this is neither the occasion nor is there any necessity to go into such aspect, now that the State has made it clear that they seek no waiver in respect of tourists proposing to enter into the State of Goa. Accordingly, we do not wish to go into this contention of Mr. Rebello.

29. The applications do not refer to the current positivity rate, number of deaths, and other such statistics depicting the sorry state in which we are presently in. The applications do not refer to the threat of a third wave, which haunts the people of this state already battered by the severe onslaught of the second wave.

30. The Misc. Civil Application No. 1201 of 2021 cites only one instance concerning the Galaxy Hospital at Mapusa. Besides that, no other details are provided. Despite the liberty, no protocol was presented before us to balance the interest of the workforce and industry on one hand and the spread of the epidemic on the other.

31. At this stage, it is necessary to note that we have already granted necessary waivers in respect of medical emergencies and transportation of supplies into Goa. The same waivers will continue to operate until further orders subject no doubt to the conditions specified in our order dated 12/05/2021.

32. For all the aforesaid reasons, we dismiss both these applications. However, we once again grant the State liberty to come up with a proper protocol restricted to the entry of the workforce into the State of Goa by providing appropriate safeguards. Based upon such protocol, liberty is granted to the State to once again apply for variation of our order to the extent it concerns the entry of workforce into the State of Goa.

M.S. JAWALKAR,J.

M.S. SONAK,J.

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