

BRIEF SYNOPSIS AND LIST OF DATES

The present Writ Petition is being filed against the forcible and compulsory injection of an additional dosage of vaccine as part of introduction and implementation of the 'Measles and Rubella vaccine immunization campaign' ('MR campaign') by the Respondent Nos. 1 & 2 all across India, including in Delhi and area of NCR. The said intervention is being challenged as the same is against the Fundamental Rights of the Petitioners, who are minors and studying a reputed school of south delhi.

Under the said campaign the Respondent No.1 has clearly stated that the vaccine would not be injected into the children without informed consent of parents and in fact the said MR campaign does not state that there is to be any forcible vaccination. However, contrary to such directive and policy of the Respondent No.1, the Respondent No.2 has issued directions to compulsorily inject children in the age group of 9 months to less than 15 years, with an admittedly 'new vaccine', called the MR vaccine (to prevent disease of measles and rubella) and without taking into account the past vaccination history of the child, where in the child has already been vaccinated for the said diseases.

The Respondent No.2 has further issued directions that the said vaccine shall be administered to the children without seeking consent from the concerned child's parent/guardian and without paying heed to the fact that the child is already immunized against Measles and Rubella, through Routine vaccination. The Respondent no.2 vide notification dated 19.12.2018 have directed government, government aided, private and unaided recognized schools across Delhi and NCR region to

compulsorily conduct the said campaign at their premises on different dates starting 16th January 2019.

The Petitioners, through their guardian, in the present petition are challenging the campaign and the notifications as the same violates their fundamental rights guaranteed under Article 14 and 21 of the Constitution of India including but not limited to right to bodily integrity, right to privacy, right to informed, consented medical intervention as upheld by the Hon'ble Supreme Court and various Hon'ble High Courts.

Infact, the conduct of the Respondent No.2 is also contrary to the draft of the Patient Charter prepared by the National Human Rights Commission which has been accepted by the Respondent No.1 and which clearly states that every citizen has a right to information on the proposed medical intervention and that the said medical intervention can only be carried out after the consent of the citizen.

The National Vaccine Policy 2011, under 'Introduction of New Vaccines in UIP', recognizes and directs that in vaccine administration, the concerns of parents are to be adequately addressed. The administration of vaccine through the Impugned MR campaign does not allow consent to be given by parents, much less allay any of the real fears of the parents about the safety of the vaccine and the manner of its administration.

In addition, various news reports from all across the country have shown that the vaccine has resulted in death of many children across various states in India. Death of children who were administered the new vaccine through the campaign have been recently reported from different states, where the campaign has been carried out in a manner identical to that proposed to be carried out in Delhi from 16th January

2019 onwards. The Food and Drug Administration (FDA) has also directed the Respondents to withdraw this vaccine and has directed a study of this vaccine however, the Respondents are yet to do so and are going on with the campaign with the said vaccine in other states. The Petitioners believe that no clinical trials have yet taken place of this vaccine despite it being projected that it is a new vaccine and the entire batch is being imported and not available in the market to enable potential users to know about manufacturer details, etc.

The said campaign has been notified by the Respondent nos. vide Notification dated 19.12.2018 by the Respondent No.2 through the Department of Education ("DoE") [hereinafter referred to as 'Impugned notification/s']. The Impugned notification dated 19.12.2018 clearly directs the schools that the said vaccination is to be administered 'without taking consent of the parent/ guardian of the students.

The Petitioners were merely informed of the said campaign being carried out at the minor Petitioners' school premises vide a school circular dated 16.11.2018. The said school circular informed the parents that the school was under directions from the Respondents to carry out the campaign. No information about reasons for not taking consent, manner of administration of vaccine, source of vaccine etc. was provided to the parents by the Respondent No.2.

Moreover, the 'National Operation Guidelines' for the MR vaccine campaign reflect that the a totally 'new MR vaccine' is being introduced through the said campaign and therefore requires changing over from measles to MR vaccine in the country immediately after the campaign is over. Whereas, the 'handbook for teachers' issued by the Respondent no.1 makes a contrary statement to the effect that the "private doctors in

the country are using the MR/MMR vaccine for children since many years.”

The above contrary statements further reflect that, first, the MR vaccine is a ‘new vaccine’ for which no information is being provided qua its clinical trials, side effects etc. Second, if the said vaccine is being administered to the children already effectively in the country and has considerably brought down cases of measles and rubella with the prevalent MMR vaccine, then why is the new vaccine being compulsorily being given as an ‘additional dose’ to children. Third, the interchangeable use of MMR/MR vaccine in the ‘handbook for teachers’ clearly shows that the said vaccines are the same. Thus, the aforesaid clearly reflects that the Respondents are carrying out the MR campaign without providing cogent, correct and adequate information qua its requirements, efficacy etc. Further, it is not understood why the old vaccine, if the same are not efficacious or effective are not being withdrawn from the market.

It is submitted that since many years India has already introduced injectable MMR (Measles Mumps and Rubella) Vaccine as a compulsory vaccine for all children in the age group of 9 months to 12 years. Thus, the introduction of the new ‘MR Vaccine’ as an additional dose to children, without consent of the parents is clearly unlawful and liable to be withdrawn in its present form.

Furthermore, the Impugned notification dated 19.12.2018 issued by the Department of Education (DoE) is beyond ‘the allocated business of the government as provided under the Constitution of India qua the said Department. The Directorate of Education has gone beyond its power by issuing the said Notification, which concerns the health of children in the country.

The present campaign seems to be some fast-track method of the Respondents concentrating more on quantity rather than quality of the campaign all with a view to gain funding from various health bodies.

The Respondents' direction of not seeking informed consent of the parents prior to injecting the MR vaccine into their ward is also in breach of Article 16 of the UN Convention on the Rights of Child. The said Article is in consonance with the 'right to privacy' as held by the Hon'ble Supreme Court in *K Puttuswamy vs UOI* [(2014) 6 SCC 433] where 'medical information, informational autonomy' are seen as different manifestations of the 'right to privacy'. Furthermore, the Hon'ble Supreme Court held that the 'concerns of privacy arise when the State seeks to intrude into the body of the subjects'. Hence, in light of the said judgement, the present MR campaign is in clear violation of the right to privacy of the minor Petitioner and hence liable to be struck down in its present form.

The severity of the side effects of the MR Vaccine introduced through this campaign have been reported in few States of the Country. In the State of Gujarat in July 2018 four (4) deaths were reported after the children were injected with the MR vaccine in the school. Children have been reported dead in Punjab as well. Furthermore, in the State of Uttar Pradesh (U.P.), a death was reported as also many children were reported seriously sick within hours of being administered the said vaccine in the Districts of Greater Noida, U.P. Further, 2 deaths have also been reported from Nagpur as well, after which the FDA has ordered the MR vaccine be withdrawn.

Hence, the 'MR Vaccine campaign' as introduced in the country is not upto the required and mandated standards of medical intervention, thus requires to be withdrawn.

It is pertinent to note that the Respondents have used the premises of school which is primarily an educational institution for a compulsory consent-free vaccination drive which is in contravention to the established laws of the land.

The vulnerable children of the school have been put under a constant fear of being administered with an injection without the protection of valid informed consent of their parents/ guardians.

It is pertinent to note that the MR Campaign introduced in the country is being represented to be an obligation of India being a signatory to the World Health Organization (WHO) whereas it is reported that the World Health Assembly which is the supreme decision-making body of the WHO has not endorsed any global eradication program qua Measles and rubella. Hence, the present MR campaign is not endorsed supported by the said UN body.

Further, a parent/ guardian has been kept away from any sort of consent, detailed information qua the said vaccine, except a mere circular and an ill-informed information card which is sent by the school informing of the said campaign to be taken place at the school premises on particular dates.

It is submitted that the parent may or may not receive the said circular and may not be able to accompany a child on the scheduled date, in a situation such as this, the child would remain unprotected and hence susceptible to the effects, side effects of the said MR Vaccine.

Hence, in light of the aforesaid it is pertinent that the MR vaccine introduced through the 'MR campaign 2017' by the Respondents be withdrawn with immediate effect.

Hence, the present Writ Petition.

LIST OF DATES

2001- UK Guidance on Best Practice in Vaccine Administration issued which recognizes 'consent' as a necessity in the medical field

2002- Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002 came into force regulating the ethics in relation to consent in the medical world

Dated

NIL Paper published by Dr. Y.M. Fazil Marickar, Principal, Mount Zion Medical College, Former Professor and Head, Department of Surgery, Govt. Medical College Thiruvananthapuram, on 'Law Regarding Medical Practice', which clearly states that 'informed consent' and 'respect for autonomy' in respect of a patient are paramount in the medical field

2007- Year of birth of Ragini Arora, Petitioner no.3(through guardian)

2009 Article published by the National Center for Biotechnology Information (ncbi) (www.ncbi.nlm.nih.gov) authored by OV Nandimath, 'Consent and medical treatment: The legal paradigm in India', which talked of the Supreme Court of India holding that 'it is not just consent or informed consent but prior informed consent, in the medical world, which is required.

2010- Year of birth Hridaan Kumar, minor Petitioner no. 1 (through guardian).
Year of birth of Naisha Gupta, minor Petitioner no. 5 (through guardian)

2011- Date of birth of Riddhi Arora, (through guardian), Petitioner no.4

2011- National Vaccine policy of India that clearly stipulates that concerns of parents are to be addressed came into force

2013- Year of birth of Pranaya Kumar, minor Petitioner no. 2 (through guardian)

2014- Year of birth of Rishaan Gupta, petitioner no. 6(through guardian)

2014- The World Health Organization (WHO) issues a paper on 'Consideration regarding consent in vaccinating children and adolescents between 6 and 17 years old' where the concept of consent to vaccination is elaborated

13/01/2015

and

17/11/2015

The Hon'ble Supreme Court in the case of Kalpana Mehta vs UOI recognizes that prior consent is a necessity for vaccination

2016- News report that since the year 1993 Japan banned the use of MMR(Measles Mumps and Rubella) vaccine in the light of serious adverse health effects on children

2016- Article published by National Center for Biotechnology Information (NCBI) from 'Human Vaccines and Immunotherapeutics' which clearly states that in UK 'consent has to be taken before immunization is undertaken'. It is submitted that in the case of Samira Kohli the Hon'ble Supreme Court followed UK precedents to hold that informed consent was a necessary aspect of medical treatment

Dated

NIL Green Paper published by the United Kingdom (UK) government on 'consent', which recognizes that it is the duty of the health professional administering the vaccination that consent is in place

2017 Operational Guidelines for MR vaccine campaign issued by the Respondent no.1, without any necessary information on its clinical trials etc

- 2017 Letter by the Secretary, Ministry of Health and Family Welfare, Respondent no.1, stating that the MR vaccine campaign is for introduction of a rubella vaccine is being introduced for the first time in India as MR vaccine
- 2017-18 Handbook to teachers issued by the Respondent no.1 regarding their role in the MR vaccine campaign. The said handbook places an obligation on the teacher to provide 'clear answers' to parents regarding queries in relation to the campaign, without the same being medically competent to do the same. The handbook provides information contrary to the statement of the Respondent no.1, in its Operational Guidelines (MR Campaign) regarding the MR vaccine being a 'vaccine in use by private doctors since many years' whereas the Guidelines state it is being introduced for the first time.
- July 2018 News reports of children's death in the State of Gujarat following administration of the MR vaccine through the Impugned MR campaign
- 30.08.2018 Respondent no.1 issues public notice qua a draft of "Charter of Patient's Rights" for public comments, which holds 'right to informed consent' as one of the patient's legal, fundamental rights
- 11/2018 The Respondent no.1 states that vaccine shall be administered after getting consent from parents
- 16.11.2018 Circular issued by the school where the minor petitioner nos. 1,2,4 to 7 study, informing the parents about the MR vaccine campaign which is to take place at the school premises after 16/01/2019.

MR vaccine information card issued by Respondent no.1, provided to parents, which states incorrect information regarding 'no severe side effects' of the vaccine, whereas there are reports that children have died or taken seriously ill after administration of the MR vaccine

06.12.2018 News reports of children reporting sick in hospital after administration of MR vaccine

12.12.2018 Report of a child's death in Uttar Pradesh after forcible administration of MR vaccine and many others reported seriously sick in an Greater Noida, Uttar Pradesh hospital

12.12.2018 Reported death of a child in Maharashtra after administration of vaccine and many other children reports seriously sick in the State

19.12.2018 Contrary to Respondent no.1's direction, a circular is issued by the Respondent no.2 through the Department of Education (DoE) clearly stating that 'no consent' of parents to be taken for administering the MR vaccine to children

28.12.2018 Circular by the School informing the dates of the MR vaccine campaign to take place on 24/01/2019 and 25/01/2019 and that 'all students, other than those.....will be 'necessarily' administered the vaccine'

January

2019 Food and Drug Authority (FDA) has put a stop to two batches of the MR vaccine, introduced through the impugned MR campaign after deaths are reported in Nagpur

Hence the present writ.

6. Rishaan Gupta
Minor
Through Guardian,
1/5 Sarvpriya Vihar,
New Delhi-110016

Petitioner No.6

Versus

1. Union of India
Through the Secretary, Department of
Health and Family Welfare
New Delhi

Respondent No.1

2. Government of NCT(Delhi)
Through Chief Secretary
Secretariat, New Delhi

Respondent No.2

TO,

THE HON'BLE CHIEF JUSTICE AND HIS
COMPANION JUSTICES OF THE HON'BLE
HIGH COURT OF DELHI AT NEW DELHI

THE HUMBLE PETITION OF THE
PETITIONERS ABOVE NAMED

**WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA
FOR THE ISSUE OF A WRIT/ORDER/DIRECTION IN THE NATURE OF
MANDAMUS QUASHING THE NOTIFICATION NO. DE.23(386)/SCH.
BR./2018/1707 DATED 19.12.2018 AND RESTRAINING THE
RESPONDENTS FROM CONDUCTING FORCIBLE VACCINATIONS ON
MINOR CHILDREN, WITHOUT CONSENT OF GUARDIANS**

MOST RESPECTFULLY SHEWETH:

1. The present Writ Petition is being filed seeking quashing of the forcible and compulsory injection of an additional dosage of vaccine as part of introduction and implementation of the 'Measles and Rubella vaccine immunization campaign' ('MR campaign') by the Respondent No. 2 in Delhi under the garb of notification no. de.23(386)/sch. br./2018/1707

dated 19.12.2018 and restraining the respondents from conducting forcible vaccinations, as it is against the fundamental rights of the Petitioners, who are minors studying in a reputed school of New Delhi. A copy of the said notification dated 19.12.2018 is annexed herewith and marked as **Annexure P-1.**

2. The Petitioners herein are all minor children whose fundamental rights are being put at peril and hence aggrieved, by forceful injecting of a vaccine, for which they are already immuned through previous vaccination for the same diseases. The fundamental rights are further breached by the Respondent no.2 issuing a notification to the minors' schools that the consent of their 'natural and legal guardian' shall not be taken for injecting the said vaccine.
3. Under the Impugned MR campaign, the Respondent No.1 has clearly stated that the vaccine would not be injected into the children without consent of parents and in fact the said MR campaign does not state that there is to be any forcible vaccination. A print out from the internet reflecting the Respondent no.1's direction is filed as **Annexure P-2.** However, contrary to such directive and policy of the Respondent No.1, the Respondent No.2 has issued directions to compulsorily inject children in the age group of 9 months to less than 15 years, with an admittedly 'new vaccine', called the MR vaccine (to prevent disease of measles and rubella).
4. The Indian law, in the field of medical jurisprudence, essentially, on consent follows the United Kingdom law. Hence, it becomes imperative to take guidance from the practice in the UK qua vaccination and consent. The UK Guidance on Best Practice in Vaccine Administration issued in 2001, recognizes 'consent' as a necessity in the medical field

was issued in the year. A copy of the UK Best Practice in vaccine administration as published is annexed as **Annexure P- 3**.

5. In the year 2002 the Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002 came into force regulating the ethics in relation to consent in the medical world. A copy of the Regulations are annexed as **Annexure P- 4**.
6. It is submitted that world over, many a medical papers have been submitted, which clearly state that 'informed consent' and 'respect for autonomy' in respect of a patient are paramount in the medical field. One such paper published on 'Law Regarding Medical Practice', is annexed herewith as **Annexure P-5**.

Another reputed paper as published by the National Center for Biotechnology Information on 'Consent and medical treatment: The legal paradigm in India', clearly states that the Supreme Court of India as held that 'it is not just consent or informed consent but prior informed consent, in the medical world, which is required. A print out of the said article is annexed as **Annexure P-6**.

7. The National Vaccine policy of India was enacted way back in the year 2011 and it clearly stipulates that concerns of parents are to be addressed while a vaccine is to be administered. The present campaign is in contravention of the said policy. A copy of the policy is annexed herewith as **Annexure P-7**.
8. It is submitted that in the case of Kalpana Mehta & Ors. Vs UOI & Ors country, the Hon'ble Supreme Court in Kalpana Mehta & Ors. v. UOI & Ors. WP(C) No.558/2012 vide interim orders dated 13.1.2015 and 17.11.2015 has framed questions on the procedure by which a vaccine (HPV vaccine, in that case) was to be administered and thus recognized

the factum that prior informed consent is a necessity for vaccination. Copy of interim orders dated 13.01.2015 and 17.11.2015 are annexed herewith as **Annexure P-8 (Colly)**.

9. Moreover, even the World Health Organization (WHO) has issued a paper on 'Consideration regarding consent in vaccinating children and adolescents between 6 and 17 years old' where the concept of consent to vaccination is elaborated and accepted as a norm. A copy of the paper is annexed herewith as **Annexure P-9**.
10. It is submitted that the ill effects of the administration of the Measles-Rubella vaccine were globally highlighted when Japan decided to put a ban on the use of the same, in light of serious ill effects on children after administration of the same. Print out from the internet confirming Japan's decision to continue with ban of MR vaccine since 1993 is annexed herewith as **Annexure P-10**
11. It is submitted that India while adjudicating on 'consent' in the medical field, clearly held that India, follows the UK law/jurisprudence qua consent. A 'Green Paper' has been published by the United Kingdom (UK) government on 'consent', which clearly recognizes that it is the duty of the health professional administering the vaccination that consent is in place. A copy of the Green Paper is annexed herewith as **Annexure P-11**.
12. In a study carried out on 'consent and vaccination in India', it has been clearly said that consent is essential during vaccinations. A copy of the study under title 'Informed Consent in vaccination in India: Medicolegal aspects' is annexed herewith as **Annexure P-12**.
13. Furthermore, the Respondent no.1 issued Operational Guidelines for MR vaccine campaign, without any necessary information on its clinical

trials etc. A copy of the Operational Guidelines as issued by Respondent no.1 is annexed herewith as **Annexure P-13**.

14. While introducing the MR campaign in India, a Letter issued by the Health Secretary states that rubella vaccine is being introduced for the first time in India as MR vaccine. Whereas, contrary to the said statement, a 'Handbook to Teachers' issued by the Respondent no.1 regarding their role in the MR vaccine campaign is issued which states that the MR vaccine being a 'vaccine in use by private doctors since many years. Furthermore, the said handbook places an obligation on the teacher to provide 'clear answers' to parents regarding queries in relation to the campaign, without the same being medically competent to do the same. A copy of the handbook is annexed as **Annexure P-14** .

15. It is submitted that there are news reports of children's death and serious illness in the States of Gujarat, Punjab, Maharashtra, Uttar Pradesh following administration of the MR vaccine through the Impugned MR campaign. Print out of the said news reports are annexed herewith as **Annexure P-15 (Colly)**.

16. The Impugned MR campaign which does away with prior informed consent' is in contravention of the draft "Charter of Patient's Rights" as issued by the Ministry of Health and Family Affairs, for public comments, which holds 'right to informed consent' as one of the patient's legal, fundamental rights. A copy of the draft charter issued for public comments is annexed as **Annexure P-16**.

17. The Petitioner nos.1,2, 4 to 7's school, issued a circular dated 16.11.2018 informing the parents about the MR vaccine campaign which is to take place at the school premises after 16/01/2019. MR

vaccine information card issued by Respondent no.1, provided to parents, which states incorrect information regarding 'no severe side effects' of the vaccine. A copy of the circular is annexed herewith as **Annexure P-17.**

18. The Respondent no.2, through the Department of Education (DoE), contrary to the direction of Respondent no.1 to seek prior consent of parents, issues a circular, dated 19/12/2018 stating that 'no consent' of parents to be taken for administering the MR vaccine to children.

19. Pursuant to earlier circular of the School, another circular dated 28/12/2018 is issued by School informing the dates of the MR vaccine campaign to take place on 24/01/2019 and 25/01/2019 at the School premises and that 'all students, will be 'necessarily' administered the vaccine'. A copy of the circular is annexed as **Annexure P-18.**

20. It is submitted that following the death of children in Nagpur immediately after administration of the MR vaccine, under the Impugned campaign, it is reported that the Food and Drug Administration (FDA) has put a stop to the MR vaccine and directed sample test to be carried out. A print out of the news report reflecting the same is annexed herewith as **Annexure P- 19.**

21. In light of the aforesaid, the Petitioners therefore urge the following among other grounds in the alternative and without prejudice to each other:

GROUND

A. Because the introduction and implementation of 'MR Campaign' is contradictory to the concept of valid consent prior to any medical intervention on an individual including the child in the country. It

breaches the fundamental rights of the petitioners, who are minors studying in schools within the jurisdictions of this Hon'ble Court. It is settled law declared by the Hon'ble Supreme Court that bodily integrity is an integral part of the right to privacy flowing from Article 21. That even for medical procedures informed consent is a *sine qua non* and without which no medical procedure can be resorted to by any agency (Aarushi Dhasmana v. UOI & Ors (2013) 9 SCC 475, K. Puttaswamy v. UOI (2017) 10 SCC 1 and Common Cause v. UOI (2018) 5 SCC 1). The State is not entitled to violate the bodily integrity of citizens in any manner and specially by attempting to forcibly inject a foreign virus into the immune system of children in the name of vaccination. Admittedly, each vaccination has adverse side effects and in the present case there has also been loss of lives of children all across the country.

- B. Because even with respect to vaccination the Hon'ble Supreme Court in Kalpana Mehta & Ors. v. UOI & Ors. WP(C) No.558/2012 vide interim orders dated 13.1.2015 and 17.11.2015 had framed questions on the procedure by which HPV vaccines were being administered and thus recognized the factum that prior informed consent is a necessity for vaccination.
- C. Because informed consent has been held to be a *sine qua non* for medical intervention of any kind as held by the Hon'ble Supreme Court in the case of Samira Kohli v. Dr. Prabha Manchanda (2008) 2 SCC 1. Thus, there cannot be any forcible medical intervention as is being sought to be done in the present case through a health worker at the premises of various schools. Many schools have also refused to let their premises be used for this activity. A health worker administering the vaccine in a school premises itself raises serious questions of the safety and well-being of the child. There is no precaution taken for dealing with

any sudden adverse reaction to such a vaccine, the notification states that prior to administering the vaccine the child should not be on an “empty stomach” – the notification is silent on who will decide what an “empty stomach” is. The efficacy and safety of the said vaccine is also doubtful in as much as many children have lost their life after taking this vaccine. Infact, it may be noted that countries such as Japan have banned this vaccine.

- D. Because, there is no material on record to show why the past vaccination history of a child should at all be disregarded by the Respondents and instead once again the vaccination should be given to the children who may have already undergone the same vaccination in respect of measles and rubella.
- E. Because, under the said campaign the Respondent No.1 has clearly stated that the vaccine would not be injected into the children without informed consent of parents and in fact the said MR campaign does not state that there is to be any forcible vaccination. However, contrary to such directive and policy of the Respondent No.1, the Respondent No.2 has issued directions to compulsorily inject children in the age group of 9 months to less than 15 years, with an admittedly ‘new vaccine’, called the MR vaccine (to prevent disease of measles and rubella).
- F. Because, the impugned actions violate the fundamental rights of the Petitioners guaranteed under Article 14 and 21 of the Constitution of India including but not limited to right to bodily integrity, right to privacy, right to informed, consented medical intervention as upheld by the Hon’ble Supreme Court and various Hon’ble High Courts.
- G. Because, the conduct of the Respondent No.2 is also contrary to the draft of the Patient Charter prepared by the National Human Rights

Commission which has been accepted by the Respondent No.1 and which clearly states that every citizen has a right to information on the proposed medical intervention and that the said medical intervention can only be carried out after the consent of the citizen.

- H. Because the Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations 2002 namely clause 7.16 and 7.22 clearly state that consent of patients for any treatment is mandatory. Similarly, the Clinical Establishments (Registration and Regulation) Act, 2010 states that a patient has a right to informed consent prior to any medical intervention. The Drugs and Cosmetics Act, 1940 section 122DA read with Schedule Y also recognizes the principle of right to informed consent for any medical intervention. Despite the binding judgments of the Hon'ble Courts and the well-recognized statutory schemes of the Legislature the Respondent No.2 has unilaterally stated that it shall go ahead with the immunization plan without seeking consent.
- I. Because, various news reports from all across the country have shown that the vaccine has resulted in death of many children across various states in India. Death of children who were administered the new vaccine through the campaign have been recently reported from different states, where the campaign has been carried out in a manner identical to that proposed to be carried out in Delhi from 16th January 2019 onwards.
- J. Because, the Petitioners were merely informed of the said campaign being carried out at the school premises vide a school circular dated 16.11.2018 and 28.12.2018. The said school circulars informed the parents that the school was under directions from the Respondents to carry out the campaign. No further information about reasons for not

taking consent, manner of administration of the vaccine, source of vaccine etc. was provided to the parents by the Respondent No.2.

- K. Because, the 'National Operational Guidelines' for the MR vaccine campaign reflect that the a totally 'new MR vaccine' is being introduced through the said campaign and therefore requires changing over from measles to MR vaccine in the country immediately after the campaign is over. Whereas, the 'handbook for teachers' issued by the Respondent no.1 makes a contrary statement to the effect that the "private doctors in the country are using the MR/MMR vaccine for children since many years."
- L. Because, the above contrary statements further reflect that, first, the MR vaccine is a 'new vaccine' for which no information is being provided qua its clinical trials, manufacturing details, side effects etc. Second, if the said vaccine is being administered to the children already effectively in the country and has considerably brought down cases of measles and rubella with the prevalent MMR vaccine, then why is the new vaccine being compulsorily being given as an 'additional dose' to children. Third, the interchangeable use of MMR/MR vaccine in the 'handbook for teachers' clearly shows that the said vaccines are the same. Thus, the aforesaid clearly reflects that the Respondents are carrying out the MR campaign without providing cogent, correct and adequate information qua its requirements, efficacy etc.
- M. Because, since many years India has already introduced injectable MMR (Measles Mumps and Rubella) Vaccine as a compulsory vaccine for all children in the age group of 9 months to 12 years. Thus, the introduction of the new 'MR Vaccine' as an additional dose to children, without consent of the parents is clearly unlawful and liable to be withdrawn in its present form. The notification also does not bring out

nor is there any medically established reason why children who had already been vaccinated are again going to be exposed to another round of vaccination for the same disease. The Respondents have not failed to place, in the public domain the manufacturer details, process of identifying and choosing the manufacturer, funding pattern, adverse effects, process of mitigation of adverse effects, study carried out prior to introduction of the present campaign as a part of informed consent of all stakeholders. In fact the Petitioners believe that clinical trials of the current vaccine have not been undertaken by the Government at all prior to introduction of the vaccine.

- N. Because, due to deaths in Maharashtra, the Food and Drug Administration (FDA) has directed the officials to immediately stop certain batches of the vaccine. However, the press reports indicate that the Respondents are not keen on the same. The severity of the side effects of the MR Vaccine introduced through this campaign have been reported in few States of the Country. In the State of Gujarat in July 2018 four (4) deaths were reported after the children were injected with the MR vaccine in the school, whereas in Punjab, a minor girl was reportedly dead after administration of the same. Furthermore, in the State of Uttar Pradesh (U.P.) many children were reported seriously sick within hours of being administered the said vaccine in the Districts of Greater Noida, U.P. In fact the Petitioner no.3&4's mother, who is a doctor has been a witness to the treatment of these unwell children in the State of U.P.
- O. Because, the Impugned notification dated 19.12.2018 issued by the Department of Education (DoE) is beyond 'the allocated business of the government as provided under the Constitution of India qua the said Department. The Directorate of Education has gone beyond its power

by issuing the said Notification, which concerns the health of children in the country.

- P. Because, the present campaign seems to be some fast-track method of the Respondents concentrating more on quantity rather than quality of the campaign all with a view to gain funding from various health bodies.
- Q. Because, the Respondents' direction of not seeking informed consent of the parents prior to injecting the MR vaccine into their ward is also in breach of Article 16 of the UN Convention on the Rights of Child. The said Article is in consonance with the 'right to privacy' as held by the Hon'ble Supreme Court in K Puttuswamy vs UOI (supra) where 'medical information, informational autonomy' are seen as different manifestations of the 'right to privacy'. Furthermore, the Hon'ble Supreme Court held that the 'concerns of privacy arise when the State seeks to intrude into the body of the subjects'. Hence, in light of the said judgement, the present MR campaign is in clear violation of the right to privacy of the Petitioner nos.1 and 3 and hence liable to be struck down in its present form.
- R. Because, the Respondents have used the premises of school which is primarily an educational institution for a compulsory consent free vaccination drive which is in contravention to the established laws of the land. It is not a hospital or a doctor or pediatricians office which would have required medical facilities in order to cope with an emergency. Vulnerable children of the school have been put under a constant fear of being administered with an injection without the protection of valid informed consent of their parents/ guardians.
- S. Because, the MR Campaign introduced in the country is being represented to be an obligation of India being a signatory to the World

Health Organization (WHO) whereas it is reported that the World Health Assembly which is the supreme decision making body of the WHO has not endorsed any global eradication program qua Measles and rubella. Hence, the present MR campaign is not endorsed supported by the said UN body.

- T. Because, a parent/ guardian has been kept away from any sort of consent, information qua the said administration of the vaccine, source of vaccine etc., except a mere circular which is sent by the school informing of the said campaign to be taken place at the school premises on particular dates.
- U. Because even otherwise an unwilling parent may or may not receive the said circular and may not be able to accompany a child on the scheduled date, in a situation such as this, the child would remain unprotected and hence susceptible to the effects, side effects of the said MR Vaccine.
- V. Because no information has been provided regarding the clinical trial, storage, manufacturer, manufacturing date, expiry dates etc. qua the MR vaccine being injected in the children. No information is also being given on why the existing vaccines that deal with these diseases are not being recognized as effective methods of treatment. Further, if the existing vaccines are not effective then why are they still being permitted to be used. These questions are not answered by the Respondents.
- W. Because the said MR vaccine is being injected into the children by an individual who is not a qualified doctor as per the applicable MCI Rules.
- X. Because the MR Campaign 2017 represents itself to introduce a new vaccine in India which is in contradiction to the information being provided by Respondent No.1 representing that the said vaccine 'is an

old vaccine being used since many years'. If it is a new vaccine then the Petitioners believe to the best of their knowledge that no clinical trials of this vaccine have taken place.

- Y. Because since the MMR vaccine is already in use in the country to prevent the diseases of Measles and Rubella since 1994, hence introduction of a new MR Vaccine as an additional doze should not be a mandatory consent free requirement.
- Z. Because the said notification is liable to be struck down as it is contradictory in its own content and is an arbitrary and unanalyzed use of executive power contrary to the well settled law and the statutory scheme in place.
- AA. Because, the world over it is the accepted norm that vaccination is not to be carried out without informed consent of the patient. However, this principle has been disregarded in the present case for unknown reasons.
- BB. Because, the Respondent No.2 has gone beyond what was authorized by the Central Government for reasons best known to it and thereby has violated the law and endangered the lives of children.
- CC. Because, even though mumps is more infectious, the present vaccine sought to be administered has omitted mumps from the vaccine (MMR) which was incidentally being given earlier. Thus, it is apparent there is not application of mind by the Respondents while formulating the so-called policy.
- DD. Because, respondents have failed to disclose to parents the manufacturer details, process of identifying and choosing the manufacturer, funding pattern, adverse effects, process of mitigation of adverse effects, study carried out prior to introduction of the present

campaign, results of clinical trials if any as a part of informed consent of all stakeholders;

22. That the Petitioners reserve their right to amend, alter or add any other or further grounds at the time of argument.
23. That the cause of action giving rise to the present writ petition has arisen within the jurisdiction of this Hon'ble Court inasmuch as the Respondents have issued the impugned notification within the territorial jurisdiction of this Hon'ble Court and the offices of the Respondents are within the territorial jurisdiction of this Hon'ble Court. Further, the Petitioners are minor children studying a school in New Delhi, within the jurisdiction of this Hon'ble Court. That the Petitioners have not filed any other or similar petition before this Hon'ble Court or any other Court.
24. That the Petitioners are left with no alternative and efficacious remedy but to approach this Hon'ble Court.

PRAYER

It is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- A. Issue a writ order or direction quashing the notification no. de.23(386)/sch. br./2018/1707 dated 19.12.2018
- B. Issue a writ order or direction in the nature of mandamus restraining the respondents from conducting forcible vaccinations on children without consent of their parents;
- C. Issue a writ order or direction in the nature of Mandamus, under Article 226 of the Constitution of India, directing the Respondents to disclose to parents the manufacturer details, process of identifying and choosing the manufacturer, funding pattern, adverse effects, process of mitigation

of adverse effects, study carried out prior to introduction of the present campaign, results of clinical trials if any as a part of informed consent of all stakeholders;

D. Pass any further order that this Hon'ble Court may deem appropriate.

AND FOR THIS ACT OF KINDNESS THE HUMBLE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Drawn & Filed By:

(ABHINAV MUKERJI)
Advocate for the Petitioners
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Panchasheel Enclave-
New Delhi- 110017
Ph: 011- 40509856

Place: New Delhi
Date: 14.01.2019

IN THE HIGH COURT OF DELHI AT NEW DELHI

[EXTRAORDINARY CIVIL WRIT JURISDICTION]

I.A. No. ____ of 2019

in

WRIT PETITION (CIVIL) NO. ____ OF 2019

IN THE MATTER OF:

Master Hridaan Kumar & Ors.

Petitioners

Versus

Union of India & Anr.

Respondents

APPLICATION UNDER SECTION 151 CPC FOR STAY

MOST RESPECTFULLY SHEWETH:

1. That the Petitioners have filed the accompanying writ petition under Article 226 of Constitution of India thereby seeking directions declaring the MR campaign 2017 of the Respondents which does not require the consent of the parents is contradictory provisions of law and hence be withdrawn with immediate effect;
2. That the contents of the accompanying writ petition may kindly be read as part and parcel to the present application as the same have not been repeated herein for the sake of brevity and to avoid prolixity.
3. That the introduction and implementation of MR vaccine through the MR Campaign 2017, in its present form, is contradictory to the concept of valid consent prior to any medical intervention on an individual including the child in the country.
4. That the administration of the MR vaccine on children between ages 9 months to less than 15 years is reported to have had serious fatal side effects which are unanswered by the Respondents. In fact the FDA

Maharashtra has withdrawn the batches of the vaccine due to deaths caused by it as has also been reported in the press.

5. That no information qua the reasons for introduction of a new vaccine is being given to the public as the MMR vaccine is already in use by qualified doctors in the country. To the best of the knowledge, there have been no clinical trials of the new vaccine being administered by the Respondents. There is no information in the public domain how this vaccine has been chosen or criterion for choosing this vaccine as part of a pervasive government vaccination programme. In any event the notification impugned is contrary to settled law in as much as it mandates forced vaccination.
6. That *prima facie* there is a good case in favour of the minor Petitioners and the balance of convenience tilts in favour of the Petitioners and the petitioners have every likelihood of succeeding in the present writ petition. That the petitioners will suffer irreparable harm and injury in case the present MR Campaign 2017, allowing administration of the MR vaccine in children, is allowed implementation in its present form.
7. That in the interest of justice it is necessary to stay the operation of MR Campaign 2017 with immediate effect.
8. That the present application is bonafide and in the interest of justice.

PRAYER

In view of the foregoing submissions the Petitioners pray before this Hon'ble Court may graciously be pleased to:

- a) Pass an ad-interim ex-parte stay thereby staying the operation of MR campaign 2017 of the Respondents which does not require the consent of the parents as it is contradictory to provisions of law and hence be withdrawn with immediate effect; and

- b) Grant ex-parte ad interim stay of notification no. de.23(386)/sch.
br./2018/1707 dated 19.12.2018
- c) Pass any other or further order(s) which this Hon'ble Court may
deem fit and proper in the facts and circumstances of the present
case.

Through

(ABHINAV MUKERJI)
Advocate for the Petitioners
D- 85 (Lower Ground Floor)
Panchasheel Enclave-
New Delhi- 110017
Ph: 011- 40509856

Place: New Delhi
Date: 14.01.2019

IN THE HIGH COURT OF DELHI AT NEW DELHI

[EXTRAORDINARY CIVIL WRIT JURISDICTION]

IA No. ____ of 2019

in

WRIT PETITION (CIVIL) NO. OF 2019

IN THE MATTER OF:

Master Hridaan Kumar & Ors.

Petitioners

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Union of India & Anr.

Respondents

-

**APPLICATION UNDER SECTION 151 CPC FOR EXEMPTION
FROM FILING CERTIFIED/ TYPED/ LEGIBLE/ MARGINS/SMALL
FONTS IN COPY OF ANNEXURES.**

MOST RESPECTFULLY SHEWETH:

1. That the petitioners have filed the accompanying writ petition under Article 226 of Constitution of India thereby seeking directions declaring the MR campaign 2017 of the Respondent which does not require the consent of the parents is contradictory provisions of law and hence be withdrawn with immediate effect.
2. That the contents of the accompanying writ petition may kindly be read as part and parcel to the present application as the same have not been repeated herein for the sake of brevity and to avoid prolixity.
3. That along with the present Writ Petition the Petitioners are filing annexures out of which some of the documents have dim impression and are not legible. Therefore by way of the present application the Petitioners are seeking exemption from this Hon'ble Court from filing certified/ typed/ legible copies of the annexures.
4. That the present application is bonafide and in the interest of justice.

PRAYER

In view of the foregoing submissions the Petitioners pray before this Hon'ble Court may graciously be pleased to:

- a) Exempt the petitioners from filing certified/ typed/ legible copies of the annexures.
- b) Pass any other or further order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

Through

(ABHINAV MUKERJI)
Advocate for the Petitioners
D- 85 (Lower Ground Floor)
Panchasheel Enclave-
New Delhi- 110017
Ph: 011- 40509856

Place: New Delhi
Date: 14.01.2019

6. Rishaan Gupta
Minor
Through Guardian,
1/5 Sarvpriya Vihar,
New Delhi-110016

Petitioner No.6

Versus

1. Union of India
Through the Secretary, Department of
Health and Family Welfare
New Delhi

Respondent No.1

2. Government of NCT(Delhi)
Through Chief Secretary
Secretariat, New Delhi

Respondent No.2

Through

(ABHINAV MUKERJI)
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Ph: 011- 40509856

Place: New Delhi
Date: 14.01.2019

IN THE HIGH COURT OF DELHI AT NEW DELHI

[EXTRAORDINARY CIVIL WRIT JURISDICTION]

WRIT PETITION (CIVIL) NO. OF 2019

IN THE MATTER OF:

Master Hridaan Kumar & Ors.

Petitioners

Versus

Union of India & Anr.

Respondents

NOTICE OF MOTION

Sir,

The enclosed application in the aforesaid matter as being filed on behalf the Petitioners and is likely to be listed on 15.01.2019 or any date, thereafter. Please take notice accordingly.

Filed Through:

(ABHINAV MUKERJI)

Advocate for the Petitioners

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Panchasheel Enclave-

New Delhi- 110017

Ph: 011- 40509856

Place: New Delhi

Date: 14.01.2019

IN THE HIGH COURT OF DELHI AT NEW DELHI

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WRIT PETITION (CIVIL) NO. OF 2019

IN THE MATTER OF:

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Petitioners

Versus

Union of India & Anr.

Respondents

URGENT APPLICATION

Sir,

Will you kindly treat the accompanying application an urgent one in accordance with the High Court Rules and Orders, as urgent orders/directions are prayed for in the accompanying application.

Filed Through:

(ABHINAV MUKERJI)

Advocate for the Petitioners

D- 85 (Lower Ground Floor)

Panchasheel Enclave-

New Delhi- 110017

Ph: 011- 40509856

Place: New Delhi

Date: 14.01.2019

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Ph: 011- 40509856

Place: New Delhi
Date: 14.01.2019

Typed Copy

28th December, 2018

Raghubir Singh Junior Modern School
Humayun Road, New Delhi- 110003

For Classes Nursery to P5

Dear Parent,

Kindly refer to our circular dated 16th, November 2018 and MR Information Card issued by the Ministry of Health and Family Welfare, Govt. of India regarding vaccination campaign for eradication of measles and control Rubella/Congenital Rubella syndrome(CRS).

A team of trained Health Officers from Health Department, NDMC will be conducting vaccination sessions in the School premises, during school hours on 24th & 25th January 2019. All students, other than those with specific medical conditions, will necessarily be administered the vaccine. Parents will be allowed to accompany their wards at the time of vaccination, if they so desire.

We have organized a meeting with NDNC health officials to answer the queries of parents at 11.00 a.m. on Friday, 11th January 2019 in the DD Auditorium of the School. Desirous parents are welcome to attend the meeting.

We seek your cooperation and support in ensuring the success of this campaign.

Thanking you,

Headmistress

Typed Copy

16th, November, 2018

Raghubir Singh Junior Modern School
Humayun Road, New Delhi- 110003

For Classes Nursery to P5

Dear Parent,

In an endeavor to eradicate Measles and control Rubella/Congenital Rubella Syndrome (CRS) by 2020 in the country, the Ministry of Health and Family Welfare, Government of India, is conducting the MR Vaccination Campaign in collaboration with WHO and UNICEF, Aiming at rapidly building up immunity for both measles and rubella in children all across the country, the task is a mammoth one; so all schools have been directed to participate and ensure successful implementation of the campaign.

Starting in Delhi from 16th January 2019, all children aged 9 months to less than 15 years will be provided with an additional dose of MR vaccine, regardless of whether the child has suffered the ailment earlier or has been vaccinated in the past. The campaign dose is in addition to the routine vaccination dose. This additional protection will help to knock out the diseases from the susceptible population. It will also provide a second opportunity for children left out in the routine immunization.

On designated dates after 16th January, 2019, trained Health Officers will conduct vaccination sessions in the school premises, during school hours. All students, other than those with specific medical conditions, will necessarily be administered the vaccine. Being given in 149 countries throughout the world, the MR vaccine given under this campaign is very safe and effective and is not available in the open market.

Information on vaccination dates/time will be given beforehand through a circular. Parents will be allowed to accompany their wards at the time of vaccination, if they so desire.

For further reference, kindly visit the school website- www.rsjms.com and click on the link on the Home Page- MR information, which is an advisory issued by the Ministry of Health and Family Welfare.

We seek your cooperation and support in ensuring the success of this campaign.

Thanking you

Headmistress

“True Copy”