

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/WRIT PETITION (PIL) NO. 142 of 2021

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NISHANT BABUBHAI PRAJAPATI & 4 other(s)
Versus
UNION OF INDIA & 2 other(s)

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Appearance:

MR. AUM M KOTWAL(7320) for the Applicant(s) No. 1,2,3,4,5
MS SHREE KOTWAL(11177) for the Applicant(s) No. 1,2,3,4,5
MR DEVANG VYAS, Learned ASG for the Opponent(s) No. 1
MR KM ANTANI, AGP for the Opponent(s) No. 2
G H VIRK(7392) for the Opponent(s) No. 3
MR SIMRANJITSINGH H VIRK(11607) for the Opponent(s) No. 3

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CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 17/12/2021

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

सत्यमेव जयते

1. By this Writ Application filed in public interest, the writ applicants
- residents of Ahmedabad have prayed for the following reliefs :

“A. Your Lordships may be pleased to admit and allow the
present writ petition;

B. Your Lordships may be pleased to issue a writ of certiorari
or any order or direction in that nature to quash and set
aside the Circular No.31 dated 17.9.2021 issued by
Municipal Commissioner, Ahmedabad Municipal
Corporation in the interest of justice;

C. Your Lordships may be pleased to stay the implementation, execution and operation of the Circular No.31 dated 17.9.2021 issued by Ahmedabad Municipal Corporation in the interest of justice.

D. Your Lordships may be pleased to grant any other and further reliefs as deemed fit to serve the ends of justice.”

2. Thus, it appears that the writ applicants herein claiming to be public spirited citizens, seek to question the legality and validity of the Circular No.31 dated 17.9.2021 issued by the Ahmedabad Municipal Corporation in public interest, which reads, thus;

*“Ahmedabad Municipal Corporation
Central Office of the Municipal Commissioner
Sardar Patel Bhavan, Danapith, Ahmedabad – 380 001
Circular No.31, Dt.17.9.2021*

The Head of all the departments including the Zonal Office are hereby informed that a mass vaccination drive has been initiated by the Ahmedabad Municipal Corporation, and in that regard, all the Zonal Offices, Sub-Zonal Offices of the Ahmedabad Municipal Corporation as well the Corporation buildings, City Civil Centers, A.M.T.S., B.R.T.S., Kankaria Lake Front, Kankaria Zoo, Sabarmati River Front, Libraries, Gymkhana, Swimming Pools, AMC Sports Complexes, are hereby instructed to examine/verify the Covid vaccination certificate of the citizens before giving them entry into such buildings/ complexes/places.

From 20.09.2021, Monday, necessary arrangements will have to be made if the persons above the age of 18 years, who are eligible for vaccination and who have not yet taken the first dose of the vaccine, as well as those who are eligible for taking the second dose but have not yet taken the same, they should be given admission at the above places only after proper verification of their documents. Moreover, those visitors/citizens who have not yet taken any dose of the vaccine, they should not be allowed to enter.

Persons/visitors visiting the Ahmedabad Municipal Corporation as well as the above places shall have to keep with them a copy of the first/second dose Covid-19 vaccination certificate into their mobile or a hard copy of the same as well as the identity card.

*Signature
Mukeshkumar
Municipal Commissioner”*

3. The decision taken by the Ahmedabad Municipal Corporation in public interest is to first launch a grand campaign of vaccination. People should be made aware at any cost that they need to get vaccinated. The Circular further provides that in the buildings, City Civic Center, AMTS, BRTS, Kankaria Lake Front, Kankaria Zoo, the citizens access to Sabarmati River Front, Library, Gymkhana Swimming Pool, AMC Sports Complex, entry shall not be permitted unless and until the person seeking entry shows a certificate of both the doses of vaccination.

4. Mr.Aum M. Kotwal, the learned counsel appearing for the writ applicants, would submit that the Ahmedabad Municipal Corporation could not have issued such a Circular as it is beyond their authority or jurisdiction. He would submit that the Supreme Court has made it clear that the vaccination is voluntary.

4.1 Mr.Kotwal has also placed reliance on two decisions;

- (i) Registrar General v. State of Meghalaya, rendered in PIL No.6 of 2021, decided on 23.6.2021; and
- (ii) Re Dinthar Incident Aizawl v. State of Mizoram & Others, rendered in WP(C) 37/2020, decided on 2.7.2021.

5. Mr.G.H. Virk, the learned counsel appearing for the Corporation would submit that the Circular has been issued in the larger public interest to ensure that there is no third wave of the Covid pandemic. He would submit that a new variant in the form of Omicron is spreading fast and is very contagious. The Corporation would not like to take any chance.

6. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that we should not entertain this Public Interest Litigation and reject the same in

limine. Assuming for the moment that some action or order or circular is without jurisdiction or not in accordance with law, still a Writ Court in exercise of its extraordinary jurisdiction may decline to interfere in larger public interest. We clarify that we do not agree with the submission of the learned counsel that the Circular is without any authority of law or jurisdiction.

7. We hail the decision of the Corporation to create this awareness amongst the people at large and take all necessary steps and precautions to ensure that the people may not have to face the wrath of a third wave in the form of Omicron. This Writ Application fails and is hereby rejected.

8. We expect the Ahmedabad Municipal Corporation to meaningfully implement the Circular.

9. We expect the citizens of the State of Gujarat not to invoke the writ jurisdiction of this High Court with such flimsy Writ Application in the name of public interest. None of the citizens should interfere at this crucial stage when it comes to administration with respect to management of Covid-19 pandemic. On the contrary, as law abiding citizens, we expect them to extend full co-operation to the authorities. One should not forget the worst of the nightmares given by the Covid-19 continuously for a period of two years.

10. We take this opportunity of making a fervent appeal to all the citizens of the State of Gujarat to get themselves vaccinated, if not yet till this date. It is very essential to get vaccinated with two doses as prescribed to protect themselves from the threat of Covid-19, more particularly the new variant, namely, Omicron. It's time for people to take the third dose of booster.

V.J. SATWARA

(J. B. PARDIWALA, J)**(NIRAL R. MEHTA, J)**