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## **BOMBAY HC ON MANDATING RT-PCR TESTS OF UNVACCINATED EMPLOYEES**

### **A. Introduction**

The Bombay High Court (**HC**), in *Deepak Kumar Radbeshyam Khurana* case,<sup>1</sup> upheld circular issued by Mumbai Port Trust (**MTP**). It held that reasonable restriction can be imposed on the fundamental right to carry out trade and occupation.

### **B. Brief Facts:**

1. Petitioners are the employees of Mumbai Port Trust (**MPT**). They challenged MPT's Circular dated June 15, 2021, which mandated that unvaccinated employees will be permitted to attend office only on submission of RT-PCR test report and fresh report must be produced once every 10 days.
2. Petitioners claimed that majority of them had chosen against Covid-19 vaccination due to personal reasons; vaccine imposition is discriminatory; and differential treatment is violative of their fundamental rights.
3. Reliance was placed on a response to an RTI Application from the Ministry of Health & Family Welfare<sup>2</sup> and the decision in *Common Cause* case<sup>3</sup> to contend that taking Covid-19 vaccination is a voluntary act.
4. Petitioners argued that a meaningful distinction cannot be made between vaccinated and unvaccinated persons as they may both transmit Covid-19 at the same rate alleging that this distinction has no rational nexus with the objective of protecting employees.
5. MTP rejected the Petitioners' contentions claiming that vaccination provides a strong measure of protection against infection and transmission of Covid-19. Respondent submitted that it had not mandated vaccination but only insisted on RT-PCR Test report, which was reasonable.

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<sup>1</sup> *Deepak Kumar Radbeshyam Khurana and Ors. vs. Mumbai Port Trust and Ors.* (21.12.2021 - BOMHC) : MANU/MH/4224/2021.

<sup>2</sup> Response from Ministry of Health & Family Welfare, Government of India dated March 9.

<sup>3</sup> *Common Cause (A Registered Society) vs. Union of India (UOI) and Ors.* (08.09.2021 - SC) : MANU/SC/0614/2021.

### C. Order and Reasoning:

1. HC took into account the contentions of the Petitioners and analysed the decisions in *Re: Dintar Incident*,<sup>4</sup> *Madan Mili, Registrar General*,<sup>5</sup> *High Court of Meghalaya*<sup>6</sup> and others and held that the cases cited do not pertain to the issue in the instant case. The HC observed that, unlike the cases relied on by the Petitioners, the question in the instant case was regarding RT-PCR Test and not mandatory vaccination.
2. HC analysed the research material, including medical opinion by international and state agencies and governments submitted by MTP and held that it is logical and reasonable to regard unvaccinated persons as posing significantly higher risk of infection and transmission of Covid-19 than vaccinated persons. HC stated that it is untenable to content that vaccinated and unvaccinated persons stand on the same footing.
3. It held:

*“Given that unvaccinated persons pose a greater risk of transmission of Covid-19 than vaccinated persons, it is reasonable for a large organization such as the MPT to require a higher degree of checking and monitoring of the Covid-19 status of unvaccinated persons. The requirement for unvaccinated employees to periodically produce RT-PCR test Reports certifying that they are free from Covid19 is therefore a reasonable restriction on the fundamental rights of the Petitioners to carry out their occupation or trade. It also cannot be said to be arbitrary or to have no rational nexus with the object sought to be achieved by the measure.”*

4. On the Petitioners’ contention that they were not willing to pay for the RT-PCR Test, the Court held:

*“...(W)e are convinced that persons taking a conscious decision not to vaccinate themselves are effectively deciding to place themselves at a greater risk of contracting and/or transmitting the disease than a vaccinated person. While the Petitioners’ decision not to take the vaccination is well respected, that does not mean that they are ipso facto entitled to the same treatment as that given to vaccinated persons by the MPT. It is reasonable on the part of the MPT to take the position that persons choosing not to vaccinate themselves must themselves bear the recurring cost of providing RT-PCR Reports...”*

### D. Conclusion

This judgement clarifies the position on mandating RT-PCR test in case of unvaccinated employees. It permits an employer to impose reasonable restrictions on its unvaccinated employees *i.e.*, mandating RT-PCR test report in the interest of protecting its employees.

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<sup>4</sup> *Re Dintar Incident vs. State of Mizoram & Ors.* WP(C) No.37 of 2020.

<sup>5</sup> *Madan Mili vs. Union of India & Ors.* PIL No.13 of 2021.

<sup>6</sup> *Registrar General, High Court of Meghalaya vs. State of Meghalaya* PIL No.6 of 2021.