
(2021) 06 BOM CK 0031

In the Bombay High Court

Case No : Public Interest Litigation (L) No. 9228 Of 2021

Dhruti Kapadia & Anr

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 09-06-2021

Acts Referred:

Citation : (2021) 06 BOM CK 0031

Hon'ble Judges : Dipankar Datta, CJ;G. S. Kulkarni, J

Bench : Division Bench

Advocate : Dhruti Kapadia, Kunal Tiwari, Anil C. Singh, Advait Sethna, Anusha P. Amin, A. Y. Sakhare, Rohan Mirpur, K. H. Mastakar, Geeta Shastri

Judgement

1. The concern that the petitioners, who are practitioners, have raised in this PIL petition is the absence of any policy to vaccinate elderly and disabled

citizens, i.e., citizens who, being more than 75 years of age and completely bedridden, are unable to even step-out of their homes for reaching the

vaccination centres; and citizens, being persons 4-PIL(L)-9228-2021 with disabilities, because of restrictions on movements, are similarly unable to

attend the vaccination centres by stepping out of their homes.

2. We need not, at this stage of the proceedings, refer to all the earlier orders passed on this PIL petition except the orders dated May 19 and 20,

2021.

3. Order dated May 19, 2021 required the Municipal Commissioner or the Additional Municipal Commissioner of the Municipal Corporation of Greater

Mumbai (MCGM) to apprise us whether disinclination of the Central Government to formulate door-to-door policy for elderly and disabled citizens

notwithstanding, the MCGM is prepared to introduce ""door-to- door""

vaccination for such citizens and undertake measures for their vaccination upon making them aware of the after-effects/consequences, under proper medical care and upon obtaining consent of either such citizens (if they are in a position to accord such consent) or their near relatives for being vaccinated in pursuance of the order of this Court. The stand of the MCGM on an affidavit dated May 20, 2021 was to the following effect:

5. The Central Government is yet to come with policy for said 'Door-to-Door Vaccination'. I say that these Respondents have followed all guidelines issued by Central Government as well as State Government of Maharashtra. Till today, there is no policy framed by the Central Government or any guidelines thereof have been issued with that regard. I respectfully submit that Respondent Corporation have always followed guidelines issued by Government of India and State Government. I say that as and when guidelines for 'Door-to-Door Vaccination' are issued by Central Government, the same will be implemented by these Respondent Corporation.

4. The order of May 20, 2021 records the assurance of Mr. Singh, learned Additional Solicitor General appearing for the Union of India that the National Expert Group on Vaccine Administration for COVID-19 (NEGVAC) shall look into the concern for introduction of door-to-door vaccination for elderly and disabled citizens, who cannot step-out from their homes for various reasons and reach the vaccination centres, with the care, compassion, kindness and empathy they deserve. Expressing hope and trust that a positive decision would be arrived at in furtherance of the interest of such elderly and 4-PIL(L)-9228-2021 disabled citizens, we adjourned hearing till June 2, 2021 to enable Mr. Singh place before us the decision of the NEGVAC.

5. A prayer for adjournment having been made by Mr. Singh on June 2, 2021, we had adjourned hearing till June 8, 2021. Yesterday, when the PIL petition was taken up for consideration, Mr. Singh referred to and relied on an affidavit- in-reply of Shri Satyendra Singh, Under Secretary, Ministry of Health and Family Welfare, Government of India (GoI). According to Mr. Singh, the affidavit reflects how the concern raised by the petitioners has been revisited and a policy was adopted for ""near-to-home"" vaccination instead of ""door-to- door"" vaccination, considering the former to be an appropriate solution. Paragraph 3 of such affidavit refers to the unanimous

decision arrived at by the members of NEGVAC bearing in mind risks

which were cited by an Expert Committee. Contents of the said paragraph being relevant, are quoted below: -

3. All the members/experts who participated in the meeting unanimously agreed that COVID-19 vaccination cannot be given at home due to the

issues and risks cited by the Expert Committee, which was constituted under the chairpersonship of Dr. N. K. Arora, Executive Director Inclen Trust

to examine the door-to-door vaccination policy for elderly, specially abled persons. The risks cited by the Expert Committee were as follows:

a. Addressing Adverse Events Following Immunization (AEFI) in a timely and adequate manner.

b. Maintaining protocol of observation of each and every beneficiary for 30 minutes a vaccination.

c. Maintaining cold chain and ensuring vaccine wastage.

d. Exposure of healthcare personnel and frontline health workers to undue pressure of community and security issues in community.

e. Risk of getting COVID-19 infection among vaccinators and mobilizers.

However, NEGVAC agreed that since the especially abled and elderly-those who are bedridden have limited mobility due to their physical condition,

hence there is a need to increase access by bringing vaccination services closer to such community while maintaining all necessary precautions and

safety measures, as per the observation of the Expert Committee and also Operational Guidelines and Advisories issued by the Ministry from time to

time. In compliance with the NEGVAC's decision, Ministry of Health & Family Welfare (MoHFW), Govt. of India has formulated SOPs related to

Near to Home Covid Vaccination Centre ('NHCVC' for short), which have been communicated to States/UTs via letter dated 27th May 2021 and

also uploaded on MoHFW Website and also re-emphasized by Secretary HFW during Video Conferencing held with all States/UTs on 31 st May,

2021. Annexed hereto and marked as 'Exhibit A' is copy of the Detailed Guidelines, circulated to all States and Union Territories.

6. Exhibit-A referred to in paragraph 3 of the said affidavit is the Guidance Note on ""Near to Home COVID Vaccination Centre (NHCVC) for

Elderly and Differently Abled Citizens"" (hereafter referred to as ""the Guidance Note""). Relying on the aforesaid, Mr. Singh contended that the experts

in the field of health and medicare having applied their minds and taken a decision to reach out to the elderly and disabled citizens by directing arrangement of NHCVC, and door-to-door vaccination not being an appropriate solution in the circumstances, the Court may accept the decision of NEGVAC; and, as has been stated in the affidavit, permit the concerned authorities to revisit such decision as and when considered necessary.

7. Due to paucity of time, we could not hear Ms. Kapadia, the first petitioner, yesterday and adjourned hearing till today.

8. The PIL petition upon being called on for consideration, Ms. Kapadia has presented certain documents on screen. She has contended that the decision of NEGVAC to start ""near-to- home"" vaccination instead of ""door-to-door"" vaccination, though is a step forward from the earlier position

taken by the GoI, is not a sound decision since it does not reach out to the elderly and disabled citizens for whom this PIL petition has been instituted.

According to Ms. Kapadia, the decision of NEGVAC does not refer to any measure that is required to be taken under the Guidance Note for vaccinating a bedridden citizen, who cannot even reach the NHCVC.

9. The documents shared by Ms. Kapadia on screen have made startling revelations. Reference was first made by her to a notification dated May 31,

2021 issued by the Health & Family Welfare Department of the Government of Kerala introducing a policy of ""door-to-door"" vaccination to reach

bedridden people. According to Ms. Kapadia, implementation of the policy of ""door-to-door"" vaccination by the Government of Kerala has been in

progress quite smoothly without any complaint of occurrence of any of the risks referred to in paragraph 3 of the affidavit of the Under Secretary,

referred to above. That apart, Ms. Kapadia has referred to documents to show that the Governments of Bihar, Orissa and Jharkhand and the Union

Territory Administration of Jammu and Kashmir have introduced ""door-to-door"" vaccination of bedridden people.

10. Ms. Kapadia has also referred to media reports to the effect that as far back as on March 28, 2021, the MCGM had sought for permission of the

GoI to introduce ""door-to-door"" vaccination but such permission had been declined. It is, therefore, her contention that the MCGM having sought for

permission of the GoI, must be presumed to be ready to start ""door-to-door"" vaccination and having regard to introduction of ""door to door"" vaccination

by the other State Governments, obviously without the permission of the GoI, there is no reason as to why the MCGM ought to wait for a permission

to be granted by the GoI in this behalf.

11. Paragraph 7 of the reply affidavit refers to certain statistics and we deem it appropriate to reproduce it hereunder:

7. It is further stated that the data with regards to AEFI is as follows: - 25309 AEFI Cases have been reported till 28.05.2021 out of which 1186 were

serious and severe AEFI till 28th May 2021. That 475 deaths were reported following Covid 19 vaccination out of total number vaccinated till 28th

May 2021.

12. Referring to paragraph 7 of the affidavit of the GoI, Ms. Kapadia has contended that the number of AEFI is around .003% of the number of

persons vaccinated and, thus, AEFI can form no ground for the disinclination of the GoI to introduce ""door-to-door"" vaccination.

13. Mr. Singh by referring to a document in the compilation of documents placed before us by Ms. Kapadia has invited our attention to another media

report which is to the effect that the Central Government had denied receiving any proposal from the Government of Maharashtra (GoM) for

introducing ""door- to-door"" vaccination.

14. It is heartening to note that the members of NEGVAC did not have a closed mind while taking a decision to re-visit the vaccination strategy/policy.

However, in our prima facie view, Ms. Kapadia is right in her contention that the decision of NEGVAC is silent on the aspect of vaccination of

bedridden citizens. The policy of arranging for vaccination of citizens who can reach the vaccination centres but making absolutely no provision for

bedridden citizens has an element of discrimination laced on it. That apart, COVID-19 is an enemy, which has to be got rid of by vaccination. There is

no other way. If one has to combat COVID-19 treating the situation to be war like, the ""near-to-home"" vaccination policy takes the war against the

enemy to the borders but falls clearly short of a 'surgical strike' on the virus which is the need of the hour and could have been possible by

administering the vaccines to the bedridden. The policy, though formulated by experts, does appear to have a chink in the armoury to combat the

enemy.

15. The need to vaccinate bedridden citizens has also been noticed by a Division

Bench of the Kerala High Court in its order dated June 3, 2021 in

W.P. (C) No. 11312 of 2021 (Benny Antony Parel vs. Union of India). The order refers to a Government Order dated June 2, 2021 which has

included bedridden patients in the priority category for vaccination. The Bench was of the view that if the bedridden patients and senior citizens who

cannot move out of home due to illness or any kind of disability, are not vaccinated from their home, the very purpose of such vaccination would be

frustrated and hence it would be appropriate that the Government makes every effort to ensure that bedridden patients as well as the senior citizens

who cannot move out are provided vaccination at their residence itself. We share the views expressed by the Bench.

16. Be that it may, the disclosures made in Court today by Ms. Kapadia throws up issues, which the GoI, the GoM and the MCGM must clarify.

17. We would, therefore, formulate the following issues with the hope and trust that by the adjourned date of hearing, the relevant Governments and

the MCGM would provide adequate answers: -

(i) Whether the National COVID-19 strategy/policy, which does not specifically permit ""door-to-door"" vaccination of elderly and physically disabled

citizens, can be deviated from by individual State Governments and ""door-to-door"" vaccination introduced by them without receiving a green signal in

this behalf from the GoI?

Â (ii) If indeed permission from the GoI is not necessary for introduction of ""door-to-door"" vaccination, why does the MCGM need permission for

introducing ""door-to-door"" vaccination from the GoI?

(iii) Whether the MCGM has approached the GoI for permission for introducing ""door-to-door"" vaccination and such proposal has been met with a

refusal?

Â (iv) Whether the GoM is inclined to follow the Kerala model, if it is not the requirement of law to obtain permission from the GoI for introduction of

door-to-door"" vaccination?

18. Stand over to June 11, 2021.

19. Since we have been informed by Mr. Singh that a new Standard Operating Procedure is in the pipeline, the same may be produced on the

adjourned date if the same is ready for circulation and implementation.