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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2021

CORAM :

The Hon'ble Mr.SANJIB BANERJEE, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.2951 of 2021

Meenakshi Balasubramanian .. Petitioner

-vs-

1.The Union of India,
Rep. by its Secretary,
Ministry of Health and Family Welfare
Room No.348; 'A' Wing, Nirman Bhavan,
New Delhi 110 011.

2.The State of Tamilnadu,
Rep. by its Secretary,
Health and Family Welfare Department,
Fort St. George, Chennai 600 009.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issue of Writ of Mandaus to direct the 1st respondent to
include Persons with Disability and their caregivers as a priory group
for administering COVID-19 vaccine.

For Petitioner

: Mr.A.Yogeshwaran

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For Respondents : Mr.D.Simon
Central Govt. Stdg. Counsel
for R-1

: Mr.V.Jayaprakash Narayanan
State Government Pleader
for R -2

ORDER

(Made by The Hon'ble Chief Justice)

The matter pertains to disabled persons being given priority in the process of vaccination. Unfortunately, the complete lack of action on the part of the Union has delayed the matter and only today certain documents have been filed on behalf of the Union.

2. Pursuant to an observation made by this Court when the matter was last taken up and the Union was not represented, the State is agreeable to provide a separate counter at all vaccination centres run by the Government all over the State to vaccinate only persons with disabilities.

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3. The petitioner seeks to make out that persons with disabilities are more vulnerable and claims that they are at least six times more at risk than others. The petitioner suggests that the age restriction that is otherwise in vogue, should not be applied to persons with disabilities.

4. As of now, the guidelines issued by the Union provide for vaccination to all persons who have crossed the age of 45, irrespective of whether they suffer from any co-morbidity. In addition, frontline workers even below the age of 45 and those who are at risk have been or are being administered the vaccine. However, as far as this Court is informed, vaccination is available only to adults.

5. The Court must be careful in issuing an order so that the good that is sought to be achieved thereby is not undone by an uninformed decision which may have an adverse effect. Accordingly, the statement of the State is recorded that all Government vaccination centres will have a separate counter throughout the day when vaccination is undertaken at such centres exclusively for persons with disabilities. At

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any rate, persons with disabilities should be given priority in being vaccinated even if the numbers do not warrant an exclusive counter being set up at every Government vaccination centre. The Union has relied on a document appended at page 21 of the typed set filed on behalf of the Union on March 19, 2021. The last entry is in the form of a certificate to identify individuals with co-morbidities that enhance the risk of mortality. Item 20 in the list of criteria deals with persons with disabilities due to intellectual disabilities/muscular dystrophy/acid attack with involvement of respiratory system/person with disabilities having high support needs/ multiple disabilities including deaf-blindness.

6. Though the document apparently otherwise restricts the eligibility age of vaccination to 45 years and above, in the current context of all persons 45 years and above being eligible for vaccination, there would be no meaning to provide for an additional certificate if the form is also interpreted to apply only to those who have attained the age of 45. Accordingly, the State is directed to give priority to such persons suffering from disability as indicated in the relevant Annexure, irrespective of whether such person has attained

the age of 45 but subject to a previous reasoned basis being arrived at as to what would be the minimum appropriate age for a person to be vaccinated. Such decision should be taken by the State within the next three days and in consultation with the Union, if necessary. The primary consideration in determining the minimum age would be whether the various vaccines have an adverse impact on infants, children or persons who have not attained adulthood. The manufacturers may also be consulted in such regard as to the adverse effect of the relevant vaccination on persons upto or below a particular age.

7. It needs to be emphasized that every care should be taken to obtain information and arrive at a reasoned decision as to the appropriate age before the vaccination is opened up to persons suffering with disabilities or the kind of disabilities indicated in the relevant document relied upon by the Union. The State may also consider administering vaccine to persons above the age of 18 but suffering from any form of disability as indicated in the Schedule to the Rights of Persons with Disabilities Act, 2016 instead of confining it to the disabilities indicated in the Union's annexure. Every endeavour

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should be made by the State to enable vaccination as expeditiously as possible to protect the lives of persons with disabilities. Immediate steps should be taken by the State to ensure that vaccination centres are accessible to persons with disabilities by constructing ramps or other measures in accordance with the said Act of 2016.

8. W.P.No.2951 of 2021 is disposed of. There will be no order as to costs.

(S.B., CJ.) (S.K.R., J.)
19.04.2021

Index : Yes/No

sra

To

1.The Secretary to Govt. of India,
Ministry of Health and Family Welfare
Room No.348; 'A' Wing, Nirman Bhavan,
New Delhi 110 011.

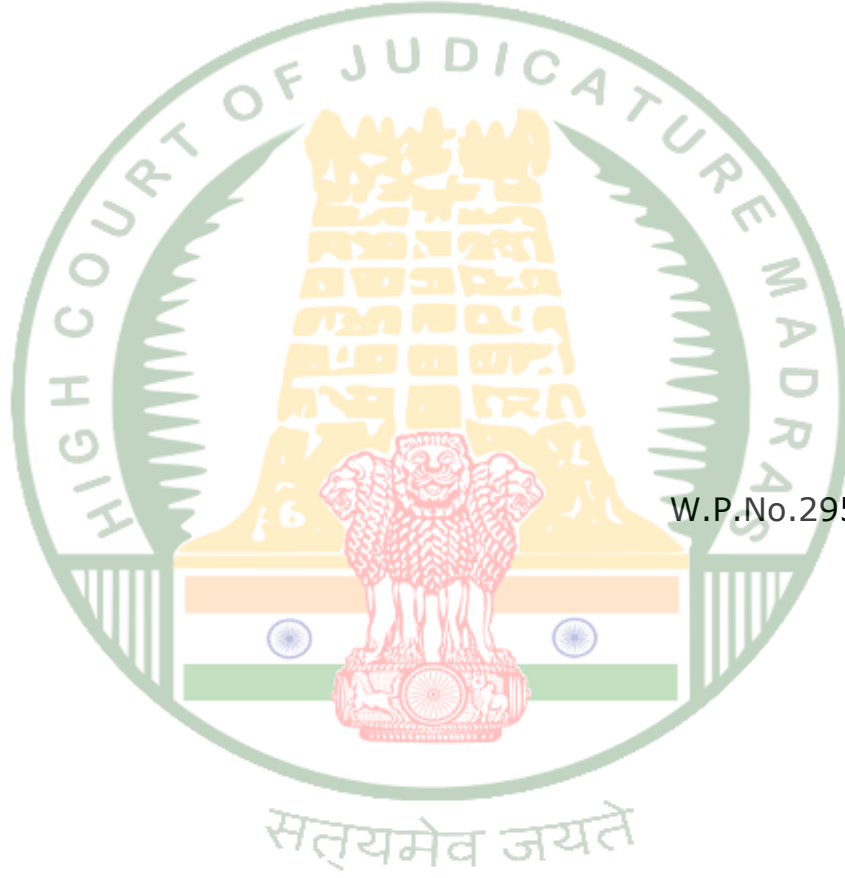
2.The Secretary to State of Tamilnadu,
Health and Family Welfare Department,
Fort St. George, Chennai 600 009.

W.P.No.2951 of 2021

The Hon'ble Chief Justice
and
Senthilkumar Ramamoorthy, J.

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(sra)



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