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IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION CIVIL NO. OF 2003.

In the matter of :

COMMON CAUSE,  
(A Registered Society)  
A-31, West End,  
New Delhi - 110021  
Through its Director,  
Shri H. D. Shourie.

... PETITIONER.

Versus

1. Union of India,  
Ministry of Health & Family Welfare,  
Department of Health,  
Nirman Bhawan,  
New Delhi - 110011.  
Through its Secretary.

2. National Aids Control Organisation,  
9th Floor,  
Chandralok Building,  
36, Janpath,  
New Delhi - 110001  
Through its Project Director.

... RESPONDENTS.

PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF CERTIORARI AND OR MANDAMUS AND OR ANY OTHER DIRECTION DIRECTING THE UNION OF INDIA IN THE MINISTRY OF HEALTH & FAMILY WELFARE AND THE NATIONAL AIDS CONTROL ORGANISATION (NACO) TO INFORM THE COURT ABOUT THE REAL POSITION REGARDING SPREAD AND PRESENT PREVALENCE OF AIDS, MONITORING BEING DONE FOR EXERCISE OF EFFECTIVE CHECK ON THE OPERATIONS OF NACO IN REGARD TO LARGE NUMBER OF NGOs WHICH ARE OPERATING IN RELATION TO THIS PROJECT, STEPS INCLUDING THE PROVISION OF COUNSELLING WHICH ARE BEING TAKEN TO CHECK FURTHER SPREAD OF AIDS, AND ACTION THAT IS BEING TAKEN TO ENSURE THAT HIV-POSITIVE PATIENTS ARE NOT TURNED AWAY BY THE HOSPITALS AND ARE GIVEN PROPER TREATMENT, IN THE CONTEXT OF FUNDAMENTAL RIGHTS OF THE PEOPLE GUARANTEED UNDER ARTICLE 21 OF THE CONSTITUTION OF INDIA.

TO

THE HON'BLE THE CHIEF JUSTICE OF INDIA AND HIS LORDSHIP'S  
COMPANION JUSTICES OF THE HON'BLE SUPREME COURT OF INDIA.

The humble Petition of the Petitioner above named  
MOST RESPECTFULLY SHEWETH :

1. That the Petitioner is a Society duly Registered under Societies Act, 1860 and is engaged in taking up various common problems of the people for securing redressal thereof. The Petitioner Society has also brought to this Court various constitutional problems. The Petitioner has an established locus standi in its capacity as a bonafide public interest organisation for taking up matters of general public importance. The Petitioner is submitting the present public interest petition for consideration of the Hon'ble Court.

2. That the Respondent No. 1 is the overall authority in the matter of health services in the country. Respondent No. 2 is the premier Central Agency for combating and prevention of AIDS virus. It is also expected to monitor the functioning of various NGOs, and other activists/ organisations in the field of AIDS prevention and provision of funds for the purpose.

3. That it has been reported in a write-up which appeared in the "INDIA TODAY" magazine dated 9-12-2002 ( Annexure "P<sub>1</sub>" ) that despite Rs 1,000 crore being spent on AIDS prevention every year, the Respondents have not been able to achieve any success in effectively stoppping the spread of the dreaded AIDS virus. The position, on the contrary, is reported to have become worse. As per Government's own reports the HIV-Positive persons in India have doubled to four million since 1994. According to International Experts the HIV positive persons in India are actually five times this figure i.e., 20 million.

This vast spread of AIDS in the country is a matter of very serious concern.

4. That despite various pronouncements by functionaries of the Government the basic requirements have apparently not been provided. There are no separate treatment centres for the HIV Positive patients; against an estimated requirement of four lakh separate beds for AIDS patients, only four thousand beds are reported to have been provided in hospitals. Even these are not actually being utilised as the HIV-Positive patients are reportedly turned away by general hospitals. This is confirmed by Government of NCT of Delhi as reported in the attached news item which appeared in the Times of India dated 14-1-2003 ( Annexure "p<sub>2</sub>" ). Even the doctors specially assigned to red-light areas are reported to be refusing to treat sex-workers. As per NACO there were 2,524 AIDS deaths during the period 1986-2001. However, according to Director of the Society for HIV - AIDS Lifeline Operation, Manipur (SHALOM), the actual figure is stated to be many times more. Copy of the Human Rights Bulletin of January, 2003, dealing with this subject, is also attached ( Annexure "p<sub>3</sub>" ).

5. That there is apparently no paucity of funds. Sufficient funds are being provided by International Agencies such as International Development Agency, USAID, and Gates Foundation, in addition to private funding and through provision made in the Central Budget. Expenditure of the order of about Rs 1,000 crore, is reported to be incurred annually on this project. These funds are apparently not being properly utilised. The Respondents are reported to have not even set up

any effective control mechanism for monitoring the work of NGOs and other Activists to whom funds are released for taking up measures in the field of AIDS prevention.

6. That the absence of any accountability mechanism is reported to have encouraged establishment of fly-by-night NGOs in the field. It is stated that "everybody from Ministers and Bureaucrats to small-time drug peddlers have set up NGOs". Out of 1800 NGOs operating in relation to this project, as many as 80% are reported to be suspect, many are bogus and others are run by an individual or a family. Though these have been purportedly set up for AIDS prevention, in reality majority of these are reported to be operating for self-aggrandisement.

7. That the NGOs and AIDS activists/workers are reported to be engaged in making money is evident from the complaint of a sex-worker of G. B. Road, Delhi, a red-light area, that the AIDS workers demand a cut of Rs 10/- per packet of contraceptives meant to be distributed free. The act of money-making is further elaborated by an AIDS worker who says that "we were warned ( by a Delhi based NGO who had invited applications from fresh graduates to become Training Officers for HIV AIDS ) that unless we got five members, each donating Rs 250 - Rs 1,000, we would not get our salaries." Such report shows that the AIDS workers are kept busy collecting funds for their salaries than for any genuine work in the field. Such AIDS workers cannot be expected to provide any worthwhile help as they themselves have half-baked knowledge.

8. That 35% of the reported cases in India are in the 15 - 24 age group. This clearly shows that there is lack of proper education and knowledge among this group. This calls for sex-education in schools and colleges. One State Government at least, viz., Andhra Pradesh is reported to have woken up and launched an educational programme aimed at creating awareness about the threat posed by HIV - AIDS in all the 11,464 government and private high schools in the State. Other States need to follow the example.

9. That whereas funds are being disbursed to NGOs without any accountability, Respondents are reportedly not providing any monetary support for production of anti-retrovirals (ARVS) which check the progress of AIDS; these continue to be expensive, at Rs 1,200/- a month per prescription for each patient. Similarly, there is dearth of diagnostic facilities which cost Rs 4,000/- per patient; tests need to be conducted every three months. With nutritional supplements each patient needs to spend Rs 8,500/- a month which most of them cannot afford.

10. That the Petitioner considers that effective monitoring mechanism needs to be urgently set up to check the legitimacy and functioning of NGOs operating in this field, for continuing check on the utilisation of funds allocated for the purpose, for spreading awareness of the dangers of AIDS infection including the utilisation of contraceptives by sex-workers in every part of the country, and for ensuring that requisite steps are taken for proper treatment of the persons who get infected HIV-Positive. The Respondents

need to be directed that steps taken by them in these various fields are reported to the Hon'ble Court in a period of not more than six months and thereafter every six months in the next two years, treating this as a matter of national importance.

11. That the above grounds are being submitted without prejudice to one another and the Petitioner craves leave to add to or to amend the above.

12. That the present Petition is being submitted bonafide and in general public interest.

13. That no other Writ Petition or proceeding has been initiated by the Petitioner in any High Court or the Supreme Court of India on the subject matter of the present petition.

14. That the Petitioner has no alternative equally efficacious remedy in law for the course of action agitated herein.

#### P R A Y E R S

In the above premises it is prayed that this Hon'ble Court may be pleased :

- (1) to issue a writ, direction or order in the nature of mandamus and/or any other writ, direction or order directing the Respondents to start an extensive awareness drive through sex-education and counselling centres about threat posed by AIDS - HIV and submit a six monthly progress report to the Court for 2 years;

(ii) to issue a writ, direction or order in the nature of mandamus and/or any other writ, direction or order directing the Respondents to put in place a mechanism to monitor the work of NGOs and other Activists before disbursing funds, to weed out suspect and bogus NGOs and other organisations so as to ensure that available funds are judiciously utilised for AIDS prevention.

(iii) to issue a writ, direction or order in the nature of mandamus and/or any other writ, direction or order directing the Respondents to set up separate treatment centres/hospitals with required number of beds for providing medical aid to the AIDS-HIV patients.

(iv) to issue a writ, direction or order in the nature of mandamus and/or any other writ, direction or order directing the Respondents to take such steps as to provide subsidised essential medicines and set up diagnostic centres to carry out required tests either free of cost or at subsidised rates;

(v) to pass such other and further orders as may be deemed necessary and proper on the facts and in the circumstances of the case.

FOR WHICH ACT OF KINDNESS THE PETITIONER  
SHALL AS HAS IN DUTY BOUND EVER PRAY.

Petitioner

MS. KAMINI JAISWAL  
ADVOCATE FOR THE PETITIONER

Place: New Delhi.

Dated: 22.01.2003