

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. _____ OF 2021

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

1. Thangjam Santa Singh

Also known as Santa Khurai

Khurai Thoidingjam Leikai

P.O, P.S - Porompat, Imphal East,

Manipur – 795010

...Petitioner

Vs.

1. Union of India

Ministry of Health and Family Welfare

Nirman Bhawan, Maulana Azad Road,

New Delhi, Delhi—110108

Represented by its Secretary

...Respondent No.1

2. National Blood Transfusion Council

(“NBTC”) 9th Floor, Chanderlok Building

36, Janpath, New Delhi – 110001

Represented by its President

and Chairperson

...Respondent No.2

3. National Aids Control Organisation

9th Floor, Chanderlok Building

36, Janpath, New Delhi – 110001

A PUBLIC INTEREST LITIGATION FILED UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR ENFORCEMENT OF THE FUNDAMENTAL RIGHTS OF THE PETITIONER FOR ISSUANCE OF WRIT/ WRITS, ORDER, DIRECTION, WRIT BEING IN THE NATURE OF DECLARATION, DECLARING CLAUSE 12 OF GENERAL CRITERIA UNDER BLOOD DONOR SELECTION CRITERIA OF THE GUIDELINES FOR BLOOD DONOR SELECTION AND BLOOD DONOR REFERRAL, 2017 DATED 11.20.2017 TO THE EXTENT IT EXCLUDES TRANSGENDER PERSONS, MEN HAVING SEX WITH MEN AND FEMALE SEX WORKERS FROM BEING DONORS, AS BEING UNCONSTITUTIONAL AND IN VIOLATION OF ARTICLES 14, 15 AND 21 OF THE CONSTITUTION; AND FOR ISSUANCE OF WRIT/ WRITS, ORDER, DIRECTION, WRIT BEING IN THE NATURE OF DECLARATION, DECLARING CLAUSE 51 OF GENERAL CRITERIA UNDER BLOOD DONOR SELECTION CRITERIA OF THE GUIDELINES FOR BLOOD DONOR SELECTION AND BLOOD DONOR REFERRAL, 2017 DATED 11.10.2017 TO THE EXTENT IT PERMANENTLY DEFERS TRANSGENDER PERSONS, MEN HAVING SEX WITH MEN AND FEMALE SEX WORKERS FROM BEING DONORS ON ACCOUNT OF BEING AT RISK OF HIV INFECTION AS BEING UNCONSTITUTIONAL AND IN VIOLATION OF ARTICLES 14, 15 AND 21 OF THE CONSTITUTION

TO,

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

THE HUMBLE PETITION OF THE
PETITIONERS ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. The Petitioner, who is a member of the transgender community, is filing the present Writ Petition in public interest, on behalf of all transgender persons, challenging constitutional validity of the Guidelines on Blood Donor Selection and Blood Donor Referral, 2017 dated 11.10 2017 issued by the National Blood Transfusion Council (NBTC) and National Aids Control Organization (NACO), Ministry of Health and Family Welfare, Government of India which permanently defers transgender persons, female sex workers and men having sex with men, from donating blood and being blood donors. Such a prohibition is a violation of the right to equality, dignity and life under Articles 14, 15 and 21 of the Constitution. Hence, the Petitioner is filing the present public interest litigation praying for issuance of writ/ writs, order, direction, writ being in the nature of declaration, declaring clause 12 of general criteria under Blood Donor Selection Criteria of the Guidelines for Blood Donor Selection and Blood Donor Referral, 2017 dated 11.20.2017 to the extent it permanently excludes transgender persons, men having sex with men and female sex workers from being donors, as being unconstitutional and in violation of Articles 14, 15 and 21 of the Constitution; and also for issuance of writ/ writs, order,

direction, writ being in the nature of declaration, declaring clause 51 of general criteria under Blood Donor Selection Criteria of the Guidelines for Blood Donor Selection and Blood Donor Referral, 2017 dated 11.10.2017 to the extent it permanently defers transgender persons, men having sex with men and female sex workers from being donors on account of being at risk of HIV infection as being unconstitutional and in violation of Articles 14, 15 and 21 of the Constitution.

PARTICULARS OF THE PETITIONER

2. The Petitioner is a transgender activist from the State of Manipur. She belongs to a Manipuri indigenous transgender community called as “Nupi Maanbi”. She is a writer, poet, artist and a gender rights advocate. The Petitioner herein is a well-known transgender activist. Her work for the betterment and welfare of the trans community has gained acknowledgment in the entire region of North East India. She has contributed to the field of transgender rights especially for their legal rights. The petitioner has helped transgender persons to get gender recognition documents, helping them to self-identify their chosen gender. During the COVID 19 pandemic she has been active in organizing relief work for the transgender community in Manipur and distributed rations to close to 2000 trans persons including trans men and women. The Petitioner is also the Secretary of the State level Apex body for queer persons known as the “All Manipur Nupi Maanbi Association” (AMANA). The Petitioner is the first person to set up a trans beauty salon in Manipur which is run and managed by transgender persons. She has also worked

immensely in providing better employment and livelihood opportunities for the transgender persons. The Petitioner was also invited to be a part of the Universal Periodic Review, a working group session of the United Nations Human Rights Initiative held in Delhi. She has been working on connecting mental health professionals with transgender persons so that members of the community who need counselling and treatment have access to professionals. Her work has created a wide visibility for the transgender community in the North east region.

That the complete name and address of the Petitioner is as mentioned herein above. The email address of the Petitioner is santakhurai888@gmail.com. That the PAN Card No. of the Petitioner is FPLPS3592N and that she has income of approximately Rs. 300000 per annum.

That the Petitioner is filing the present public interest litigation under Article 32 of the Constitution of India for the larger interest of the Trans community and female sex workers and she does not have any personal gain, private motive or oblique reason in filing the present Petition.

That there are no civil, criminal or revenue litigation involving the petitioner which has or could have a nexus with the issues involved in the PIL.

The Petitioner submits that since she is challenging the constitutional validity of a guideline i.e. Guidelines on Blood Donor Selection and Blood Donor Referral, 2017 dated 11.10

2017 issued by the National Blood Transfusion Council (NBTC) and National Aids Control Organisation(NACO), Ministry of Health and Family Welfare, Government of India no representation to any authority is warranted before invoking the powers of this Hon'ble Court under the provisions of Article 32 of the Constitution of India.

A copy of the article titled, "Santa Khurai's Efforts towards the Manipur queer community" dated 26.12.2020 published in The Sentinel is annexed herein and is marked as **ANNEXURE – P/1 (Pages ... to ...)**

A copy of the article, titled "Rescuing traditional queerness: An interview with Santa Khurai" dated 1.9.2020 published in Heinrich Boll Stiftung is annexed herein and is marked as **ANNEXURE – P/2 (Pages To)**

A copy of the article titled, "Manipur's foremost transgender activist Santa Khurai looks back at the movement she helped shape" dated 30.11.2017 published in The Sentinel is annexed herein and is marked as **ANNEXURE – P/3 (Pages To)**

3. That the Respondents are various departments and agencies of the Union of India and fall within the ambit of "State" under Article 12 of the Constitution and are amendable to the writ jurisdiction of this Hon'ble Court under Article 32 of the Constitution of India.

BRIEF FACTS

4. The brief facts and background giving rise to the filing of this petition are narrated below:

- i. That during the 1980s when the HIV/AIDS epidemic outbreak occurred, in many countries, a lifetime ban on blood donations on transgender persons and men who had sex with men (MSM) was implemented. However, this was due to an outdated policy based on the stigma and stereotype associated with transgender persons and men having sex with men and sex workers. This was also due to there not being enough facilities for testing for HIV/AIDS and the negative stereotypes that these categories of persons are high risk, as they were thought to be promiscuous, engaging in unsafe sex and having multiple partners.
- ii. That on 11.10.2017 the Respondents No. 2 and 3 being the National Blood Transfusion Services and the National Aids Control Organization under the Ministry of Health and Family Welfare issued guidelines for Blood Donor Selection & Blood Donor Referral (hereinafter, referred as the “Guidelines”). The donor selection criteria as elaborated in the guidelines would be applicable to all the donors who wish to donate their blood, red cells, platelets and plasma. These Guidelines under the “Blood Donor Selection Criteria” state in Serial No. 12 that a donor shall not be among others, transgender persons, men who have sex with men and female sex workers, as they are considered ‘at risk’ for HIV and are permanently deferred or prohibited from being eligible as donors for blood or plasma. The relevant clauses in the “Blood Donor Selection Criteria” of the Guidelines are as follows:

S.No.	General Criteria	Recommendations
12	Risk Behaviour	The donor shall be free from any

		<p>disease transmissible by blood transfusion, as far as can be determined by history and examination.</p> <p>The donor shall not be a person considered “at risk” for HIV, Hepatitis B or C infections (<u>Transgender, Men who have sex with men, female sex workers</u>, injecting drug users, persons with multiple sexual partners or any other high risk as determined by the medical officer deciding fitness to donate blood).</p>
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S.No.	HIV Infection/AIDS	Recommendations
51.	<p>At risk for HIV infection (<u>Transgender, Men who have Sex with Men, Female Sex Workers</u>, injecting drug users, persons with multiple sex partners)</p>	Permanently defer

A true copy of the Guidelines for Blood Donor Selection and Blood Donor Referral, 2017 dated 11.10.2017 is annexed hereto and marked as **ANNEXURE – P/4** (Pages To)

- iii. That due to the above mentioned impugned guidelines, transgender persons, female sex workers and gay men who would fall under the category of men having sex with men are permanently prohibited from being donors for blood or plasma. The Guidelines as they are issued by the Respondents, are sent to all State Blood Transfusion Councils, blood banks and public and

private hospitals which follow them scrupulously. Due to these Guidelines which prohibit transgender persons, female sex workers and gay men from donating blood, they are barred from donating blood and are unable to do so, even when their family members, relatives, loved ones and community members need blood to save their life and their blood group is matching and are denied this ability to do this.

- iv. This has been reported widely, as many transgender persons, female sex workers and gay and trans men have repeatedly sought for the opportunity to donate blood to their loved ones and have been refused.

A copy of the news article titled, 'No blood from you, you're LGBTQ' dated 18.7.2017 published in DNA is annexed herein and is marked as **ANNEXURE – P/5** (Pages To).

A copy of the news article titled, "India's LGBTQ Can't Donate Blood For The Most Bizarre Reason, According To An RTI Reply" dated 21.7.2017 in ScoopWhoop is annexed herein and is marked as **ANNEXURE – P/6** (Pages To)

A copy of the news article titled, "Blood not needed if you're gay: The stigma attached to Mumbai blood banks" dated 26.9.2018 published in the Business Standard is annexed herein and is marked as **ANNEXURE – P/7**(Pages To)

A copy of the news article titled, "Pride and Prejudice: SC gives equality, but blood banks don't want 'gay donors' dated

26.9.2018 in Times Now is annexed herein and is marked as **ANNEXURE – P/8**(Pages To)

- v. It is submitted that all blood donated by all donors is screened for infections such as HIV, Hepatitis and other transmittable diseases infections irrespective of donors and units that are found to be unsuitable for transfusion are discarded. Hence, prohibiting/permanently deferring certain categories of persons from being blood donors is completely arbitrary and violative of their constitutional rights.

BLOOD DONOR GUIDELINES REVISED IN OTHER COUNTRIES

- vi. Many countries, considering the new data available, have reformed their policies and moved away from such bans.
- vii. In the United Kingdom, in July 2017, the Advisory Committee on the safety of Blood, Tissues and Organs published its Donor selection Criteria Report. This Report recommended a 3-month deferral for blood and plasma donation after sex between men or sex with a person who has received money or drugs for sex and no deferral or ban for transgender persons.

A copy of the Expert Summary of the Donor selection Criteria Report by the Advisory Committee on the safety of Blood, Tissues and Organs dated July 2017 is annexed herein and is marked as **ANNEXURE – P/9** (Pages To)

- viii. In the United States, the Food and Drug Administration (“FDA”) has revised its recommendations for blood donors. As per the FDA’s 1992 recommendations, there was a lifetime deferral for men having sex with men and sex workers. Based on its new data available, the new FDA recommendations have no prohibition on transgender persons from being blood donors, and have a 3-month blood donor referral for men having sex with men since their last MSM contact and 3-month deferral for commercial sex works since their last sexual contact.

A copy of the “Revised Recommendations for Reducing the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products- Guidance for Industry” issued by the US department for Health and Human Services, Food and Drug Administration dated August 2020 is annexed herein and is marked as **ANNEXURE – P/10** (Pages.... To)

- ix. Like the United States, many other countries around the world are reviewing restrictions on blood donations by gay and bisexual men imposed during the 1980s HIV/AIDS crisis, with some removing blanket bans and others reducing waiting periods. Denmark and Northern Ireland have also cut their deferral periods for blood donation by gay men.
- x. It is submitted that Brazil’s Supreme Court ruled recently in May 2020 has held that a 12-month deferral period for gay and bisexual men to give blood is

unconstitutional and discriminatory given modern blood-screening technology and Brazil's government will have to treat gay and bisexual men the same as heterosexual men when donating blood.

A copy of the news article titled, "Brazilian Court lifts Restrictions on gay and Bisexual Men Giving Blood" dated 2.5.2020 in Reuters in Rio de Janeiro is annexed herein and is marked as **ANNEXURE – P/11** (Pages.... To)

- xi. In other countries there is an individual approach taken to the potential donor. Heterosexual men who have had multiple sexual partners and unprotected sex during the last month, are also considered as "high risk" candidates. This individual assessment policy is not discriminatory and can assess potential donors regardless of their gender identity and sexual orientation and strictly based on what is described as "risky sexual behavior".

COVID PANDEMIC AND THE NEED FOR BLOOD AND PLASMA DONORS

- xii. As blood supplies have come under pressure due to the coronavirus pandemic, there is more need for blood and plasma donations. Given the COVID-19 crisis, where blood transfusions are needed more than ever for emergency and elective surgeries and treatments, it is more critical than ever for members of the transgender community to rely on the generosity of their family and community members to meet the demands for getting

life-saving blood to those affected by the pandemic. Due to the virus, many members of the community who needed blood were unable to get it from their trans relatives and loved ones due to the Guidelines. Transgender persons who have been requesting to donate blood during the pandemic when their community and family members needed blood for emergency medical treatment were refused due to the permanent deferral under the Impugned Guidelines. Persons who are barred are not even able to donate plasma for research for COVID 19, due to this prohibition.

- xiii. It is submitted that blood donor guidelines need to be based on an individualized system for all donors based on actual and not perceived risk and it should not be based on identities. The present impugned Guidelines are stigmatizing as they are not based on how HIV transmission actually works, nor are they based on the actual risks specific activities but are based only on the identities of donors such as whether they are transgender, gay or bisexual men or female sex workers. A large number of transgender persons are sex workers, and hence they are covered under both exclusions of being transgender as well as being female sex workers and permanently prohibited from being donors.

QUESTION OF LAW

5. That the present writ petition involves the following substantial questions of law:

A. **WHETHER** imposing a prohibition on transgender persons, men having sex with men and female sex workers from being blood donors in the impugned Guidelines violates the rights to equality and non-discrimination under Articles 14 of the Constitution because such prohibition is only on the basis of their gender identity and sexual orientation and not based on any intelligible differentia which would disqualify them from being eligible as donors?

B. **WHETHER** the prohibition on transgender persons, men having sex with men and female sex workers from being blood donors in the impugned Guidelines amounts to discrimination under Article 15 of the Constitution on the basis of sex, as they are excluded from being blood donors, solely on the basis of their gender identity, sexual orientation and on the basis of their sex and hence deserves to be set aside?

C. **WHETHER** the impugned Guidelines are in violation of the Article 15 as held by this Hon'ble Court in *NALSA v. Union of India*, (2014) 5 SCC 438, that discrimination on the ground of sex under Articles 15 and 16, therefore, includes discrimination on the ground of gender identity and that the expression "sex" used in Article 15 is not just

limited to biological sex of male or female but intended to include people who consider themselves to be neither male nor female” and hence excluding transgender persons and rendering them ineligible for blood transfusion solely on account of their gender identity violates Articles 14 and 15 of the Constitution?

- D. **WHETHER** the exclusion of persons on the basis of their gender identity and sexual orientation is arbitrary, and unreasonable when all blood units are tested for infectious diseases including Hepatitis B, Hepatitis C, and HIV/AIDS and hence, permanently excluding them from donating blood and categorising them as high-risk only on the basis of their gender identity and sexual orientation is violative of their right to be treated equally as other blood donors?
- E. **WHETHER** assumptions based on stereotypes which lead to discrimination and subordination can be permitted to continue and that by excluding and prohibiting transgender persons, men having sex with men and female sex workers, from donating blood under the impugned Guidelines, they are denied equal dignity under Article 14 as they are deemed less worthy and subordinate in social participation and healthcare?
- F. **WHETHER** such subordination is particularly pronounced given that the Respondents do not presume that heterosexual persons are also as likely to have HIV and would be high – risk regardless of how many sexual

partners they may have had or whether they have engaged in unprotected oral, anal, or vaginal sex and hence such exclusion in the impugned Guidelines is discriminatory and violative of Article 14 of the constitution?

G. **WHETHER** the exclusion in the impugned Guidelines are made purely on the basis of the negative stereotypes and assumptions that transgender persons, men having sex with men and female sex workers are infected with HIV as they are 'promiscuous' and are having unsafe sex and that such negative stereotypes amount to discrimination under Article 15 of the constitution?

H. **WHETHER** a blanket prohibition against transgender persons, men having sex with men and female sex workers from donating blood and plasma, to their loved ones, family members and relatives is discriminatory and is grounded in stigma against transgender persons and not on any data or scientific rationale despite there being tests to detect HIV and is thus a violation of their right to life and autonomy under Article 21 of the Constitution?

GROUND

6. That the Petitioner has filed the present Writ Petition seeking protection of their fundamental rights on the following grounds:

A. THAT excluding transgender persons, men having sex with men and female sex workers permanently from being

blood donors violates their rights to equality and non-discrimination under Articles 14 of the Constitution.

B. THAT the impugned Guidelines by stating that the donor shall not be a person considered 'at risk' for HIV and permanently excluding transgender persons, men having sex with men and female sex workers as being from within this category and excluding them from donating blood amounts to discrimination on the basis of sex under Article 15 of the Constitution. It is now a settled position of law as held in *NALSA v. Union of India*, (2014) 5 SCC 438 and in *Navtej Johar v. Union of India* (2018) 10 SCC 1 that discrimination on the ground of sex under Article 15 would include discrimination on the basis of gender identity and sexual orientation and hence, excluding them only because they are transgender or engaged in same sex relationships, without any examination of actual risk of HIV, amounts to discrimination under Article 15 of the Constitution.

C. THAT this Hon'ble Court in *NALSA v. Union of India*, (2014) 5 SCC 438 has underlined that transgender persons shall have the full rights to be treated as equal citizens. The constitutional requirement to treat transgender persons with equal respect and non-discrimination and held that:" *Equality includes the full and equal enjoyment of all rights and freedom. Right to equality has been declared as the basic feature of the Constitution and treatment of equals as unequals or unequals as equals will be violative of the basic structure of the Constitution. Article 14 of the*

Constitution also ensures equal protection and hence a positive obligation on the State to ensure equal protection of laws by bringing in necessary social and economic changes, so that everyone including transgender persons may enjoy equal protection of laws and nobody is denied such protection. Article 14 does not restrict the word 'person' and its application only to male or female. Hijras/transgender persons who are neither male/female fall within the expression 'person' and, hence, entitled to legal protection of laws in all spheres of State activity, including employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizen of this country." The treatment as equal citizens would include being allowed to be blood donors and not be discriminated on the basis of their gender identity.

D. THAT the impugned Guidelines in excluding transgender persons, men having sex with men and female sex workers, do not meet the test of intelligible differentia and rational aim under Article 14 of the Constitution if the aim is to ensure that safe blood is available for donation. As held by this Hon'ble Court in *State of W.B. v. Anwar Ali Sarkar*, AIR 1952 SC 75: "*In order to pass the test of permissible classification two conditions must be fulfilled viz. (i) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others left out of the group, and (ii) that the differentia must have a rational relation to the objects sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the*

Act are distinct and what is necessary is that there must be nexus between them." If the intention behind the Guidelines is to facilitate safe and sufficient supply of blood with minimal risk of infections amongst donors and make the act of blood donation safe, it has no rational nexus with excluding these categories of persons as donors. Every unit of blood donated is tested for HIV and all infectious diseases including Hepatitis B, Hepatitis C, Malarial Parasite and HIV/AIDS and the risk of all persons can be minimised by taking information of their last high risk sexual contact and having a temporary deferral if necessary from the date of such contact. Therefore, completely excluding them from donating blood simply because they are transgender, homosexual or sex workers is a violation of their right to equality under Article 14 of the Constitution.

E. THAT the impugned Guidelines excluding transgender persons and men having sex with men from being blood donors is made based on false and negative stereotypes and assumptions that transgender persons and homosexual men are promiscuous, have unsafe sex, have multiple sexual partners and have HIV/AIDS and not based on facts or actual risk. Such negative stereotypes are unlawful as it subordinates transgender persons and homosexual men as being inferior only on the ground of their gender identity and sexual orientation, and amounts to discrimination under Article 15 of the Constitution on the ground of sex as held by this Hon'ble Court in *Navtej Johar v. Union of India* (2018) 10 SCC 1 where it was held that:

“...discrimination will not survive constitutional scrutiny when it is grounded in and perpetuates stereotypes about a class constituted by the grounds prohibited in Article 15(1). If any ground of discrimination, whether direct or indirect is founded on a stereotypical understanding of the role of the sex, it would not be distinguishable from the discrimination which is prohibited by Article 15 on the grounds only of sex. If certain characteristics grounded in stereotypes, are to be associated with entire classes of people constituted as groups by any of the grounds prohibited in Article 15(1), that cannot establish a permissible reason to discriminate. Such a discrimination will be in violation of the constitutional guarantee against discrimination in Article 15(1).”

F. THAT a blanket prohibition against transgender persons, men having sex with men and female sex workers from donating blood, to their loved ones, family members and relatives is discriminatory and is grounded in stigma against transgender persons and men having sex with men, and not based on any data or scientific rationale. The recommendations on Blood Donor Guidelines in many countries of the world over have changed their donor recommendations and have not imposed any prohibition of transgender persons, have opted for shorter period such as 3 months deferrals in case of female sex workers and gay men from their last high risk sexual contact and hence the impugned clauses in the Guidelines are liable to be struck down.

G. THAT assumptions based on stereotypes which lead to discrimination and subordination cannot be permitted to continue. By excluding and prohibiting transgender persons, men having sex with men and female sex workers, from donating blood under the impugned Guidelines, they are denied equal dignity under Article 14 as they are deemed less worthy and subordinate in social participation and access to healthcare. This subordination is particularly pronounced given that the Respondents do not presume that non-transgender persons and non-LGBTQI persons are also as likely to have HIV and would be high – risk regardless of how many sexual partners they may have had or whether they have engaged in unprotected oral, anal, or vaginal sex. Therefore, prohibiting only transgender persons and men having sex with men and female sex workers from being donors on a mere presumption that they might be more likely to be infected and high-risk amounts to a violation of dignity and freedom by imposing limitations, disadvantages or burdens through the stereotypical application of presumed group characteristics rather than on the basis of individual circumstance. As held by this Hon’ble Court in *Indian Young Lawyers’ Association v. State of Kerala*, (2019) 11 SCC 1 “*Human dignity postulates an equality between persons. The equality of all human beings entails being free from the restrictive and dehumanizing effect of stereotypes and being equally entitled to the protection of law. Our Constitution has willed that dignity, liberty and equality serve as a guiding light for individuals, the state and this Court. Our Constitution marks a vision of*

social transformation. It marks a break from the past – one characterized by a deeply divided society resting on social prejudices, stereotypes, subordination and discrimination destructive of the dignity of the individual”

- H. THAT the impugned Guidelines excluding transgender persons, men having sex with men and female sex workers and prohibiting them from being able to be blood donors affects their membership in society and denies them participation in society by being able to donate blood when needed and being considered worthy human beings which deprives them their right to a life with dignity as guaranteed under Article 21 of the Constitution and hence, deserve to be set aside.
- I. THAT it is further submitted that the definition of ‘Significant risk’, as per Section 2(v) of the HIV-AIDS (Prevention and Control) Act, 2017, means the presence of significant risk body substance (such as blood, semen, vaginal secretions, breast milk, tissue etc) or a circumstance of constituting significant risk for transmission (sharing infected needles, sexual intercourse with an affected person, during child birth by an HIV +ve mother, transfusion of infected blood or other circumstances where any significant risk body substance, other than breast milk, of an HIV positive person, comes in contact with mucous membranes including eyes, mouth or nose, including open wounds, puncture wound injuries, person with dermatitis condition etc). The above classification of significant risk is subjective, depends on

case-to-case basis and not based on gender or a community, which is in the case of the present NACO guidelines.

J. THAT restricting transgender persons and persons of different sexual orientations are already vulnerable, with little education, poverty, lack of employment and inaccessible welfare facilities, thus, depriving them of access to health care will further ostracize them. This Hon'ble Court in *NALSA v. Union of India* AIR 2014 SC 1863 had recognised the fundamental right of transgender persons as citizens of the country to possess an equal right to realise their full potential as human beings. Hence, the impugned guidelines barring transgender persons from blood donations would further ostracize them and contribute to their social subordination and violates their right to a dignified life under Article 21.

K. THAT internationally when many other countries have not placed any permanent deferments/ prohibitions on transgender persons from being included as blood donors and even restrictions for men having sex with men and female sex workers are limited restrictions based on their last contact, the impugned guidelines imposing a permanent deferment/ ban is in contravention of health and safety recommendations on blood donor guidelines accepted by the medical community globally and need to be set aside.

7. That the Petitioners have not filed any other petition before this Hon'ble Court or any other court seeking the same relief.

PRAYER

In view of the facts and circumstances stated hereinabove, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

- A. Issue writ/ writs, order, direction, writ being in the nature of declaration, declaring clause 12 of general criteria under Blood Donor Selection Criteria of the Guidelines for Blood Donor Selection and Blood Donor Referral, 2017 dated 11.10.2017 to the extent it excludes transgender persons, men having sex with men and female sex workers from being blood donors, as being unconstitutional and in violation of Articles 14, 15 and 21 of the Constitution;
- B. Issue writ/ writs, order, direction, writ being in the nature of declaration, declaring clause 51 of general criteria under Blood Donor Selection Criteria of the Guidelines for Blood Donor Selection and Blood Donor Referral, 2017 dated 11.10.2017 to the extent it permanently defers transgender persons, men having sex with men and female sex workers from being blood donors on account of being at risk of HIV infection as being unconstitutional and in violation of Articles 14, 15 and 21 of the Constitution; and

C. Grant such other reliefs as this Hon'ble Court may deem fit and proper in light of the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL,
AS IN DUTY BOUND EVER PRAY

DRAWN BY:

DRAWN & FILED BY:

Adv. Thulasi K. Raj

(ANINDITA PUJARI)

ADVOCATE FOR THE PETITIONER

SETTLED BY:

(JAYNA KOTHARI)

SENIOR ADVOCATE