



CHECK-SLIP

DISTRICT: **IMPHAL WEST**

CASE NO.:

CATEGORY CASE: **PIL**

S.B./D.B. ✓

CODE NO.: **10194**

(Tick which is applicable)

Signature of 1st D.A.

1. Court fee due :- **NO**
Court fee paid :- **YES**
Deficit; if any :- **NO**
2. Filed within limitation
Condonation petition (if any) :- **NO**
3. Related information for Caveat
Matching :- **NO INFORMATION**
4. Vakalatnama filed :- **YES**
5. Certified Copy of the
Order/Judgment, if required filed :- **NO**
6. Affidavit/Verification proper :- **YES**
7. Form in proper :- **YES**
8. Any other defect (to be named) :- **NO**
9. Mobile No. :- **8119942783**
10. E-mail ID :- **akhamromilla@gmail.com**

CASE READY/DEFECTIVE
(Tick which is applicable)

Signature of the Stamp
Reporter

Signature of Supdt.
(Filing)

NO. HCEA/CS/2020/

(2)

PART - I

(Declaration to be incorporated in case of Bail Application)

1. No. of Bail Application on behalf of the :-
accused in respect of the above case
pending in High Court or any other Court.
2. In case of Anticipatory Bail Application, :-
state whether any earlier application was
rejected, if yes, give details.

Signature of the Accused
or Person authorized by the accused

PART - II

TO BE FILLED BY THE ADVOCATE

(To be transmitted to the Deputy Registrar (G&C) along with a copy of cause title
to be supplied by the Petitioner/Appellant)

Filing Receipt/Case No. Category Code No.
Similar matters pending on disposal of involving commons/similar question of law, if any, with the case
numbers:

PENDING

DISPOSED DATE OF DISPOSAL

(i)

(ii)

(iii)

(iv)

(v)

(Additional sheet may be attached as per requirement)

Advocate

ADVOCATE
For Appellant/Petitioner

Mobile No.

819942783

FIRST COPY

DISTRICT:IMPHAL WEST

STATE:MANIPUR

CODE:10194

IN THE HON'BLE HIGH COURT OF MANIPUR

AT IMPHAL

PIL NO. OF 2021

Thangjam Santa Singh alias Santa Khurai

..... Petitioner

Versus

**State of Manipur, through the Chief Secretary,
and 7 (seven) others.**

.....Respondent

I N D E X

Sl. No.	Annexure	Particulars	Date	Page No.
1.		Synopsis		A-B
2.		List of Dates		C-F
3.		Writ Petition		1-50
4.		Affidavit		51
5.	Annexure –	True copy of the	26.12.2020	53

	A1	article titled, "Santa Khurai's Efforts towards the Manipur queer community"		
6.	Annexure – A2	True copy of the article, titled "Rescuing traditional queerness: An interview with Santa Khurai" dated 1.9.2020 published in Heinrich Boll Stiftung	04.9.2020	55
7.	Annexure – A3	A true copy of the article titled, "Manipur's foremost	30.11.2017	68

		transgender activist Santa Khurai looks back at the movement she helped shape" dated 30.11.2017 published in The Sentinel		
8.	Annexure- A4	True copy of the written representation to the Hon'ble Chief Minister, Manipur by the petitioner	13.07.2021	72
9.	Annexure – A5	True copy of the Scheme Guidelines for Chief Minister's COVID-19	13.07.2021	74

		Affected Livelihood Support Scheme		
10.	Annexure – A6	True copy of the order issued by Commissioner (Education-S) Government of Manipur	19.04.2021	79
11.	Annexure – A7	True copy of the order for physically closing the schools	01.06.2021	80
12.	Annexure – A8	True copy of the media statement of CDC Report titled, "Indicators for Dynamic School Decision making"	15.09.2020	81

13.	Annexure – A9	True copy of the report by Melissa Eddy in the New York Times	29.10.2020	23
14.	Annexure – A10	True copy of the article titled 'Minimal transmission of SARS-COV-2 from pediatrics COVID -19 cases in primary schools, Norway, August to November 2020' authored by Lin T Brandal and others in 26(1) Eurosurveillance journal	07.01.2021	87
15.	Annexure –	True copy of the	02-07-2021	

	A11	WHO Statement		93
16.	Annexure – A12	True copy of the order issued by Special Secretary (Home)	30.06.2021	98
17.	Annexure – A13	True copy of the report substantiating the vaccination status in Manipur from Times of India (prepared on the basis of data from the Ministry of Health and Family Welfare)	13.05.2021	99
18.	Annexure – A14	True copy of the order dated 23.06.2021 by Meghalaya High	23.06.2021	102

		Court in Registrar General v. State of Meghalaya		
19.	Annexure – A15	True copy of the order dated 13.07.2021 in PIL No. 34/2021	13.07.2021	110
20.	Annexure – A16	True copy of the article in <i>Scroll.in</i> by Sandhya Srinivasan dated 07.04.2021 titled “Compulsory Covid-19 vaccination won’t help”	07.04.2021	113
21.	Annexure – A17	True copy of the press release to ensure availability of	18.07.2021	122

		food grains		
22.	Annexure – A18	True copy of the news report dated 10.06.2021 titled 'No vaccination, no rice: Susindro'	10.06.2021	123
23.	Annexure – A19	True copy of the press release issued by Chief Secretary	16.07.2021	125
24.	Annexure – A20	True copy of the Manipur Epidemic Diseases (Enforcement of COVID-19 Guidelines) Amended Regulation, 2021	20.04.2021	126
25.	Annexure –	True copy of the	19.07.2021	

	A21	order allowing for additional activities		127
26.	Annexure – A22	True copy of the images of the police force resorting to extra- constitutional and extra-legal measures		128
27.		Vakalatnama		
28.		Notice		

Dated/Imphal

The 17th August, 2021

Akham Romilla

(Sd/-)

Advocate Ms. Akham Romilla

SYNOPSIS

Four issues associated with the government's management of COVID-19 pandemic are raised in this PIL. The first is regarding the denial of the right to education for children in government and government aided schools in the State. A continued suspension of physical classes violates the fundamental right of the children in the state of Manipur under Article 21-A and their statutory rights under the Right to Education Act, 2009. This is in the context of the medically supported evidence that children are the least risk groups for COVID-19 infections. Secondly, priority is being given to vaccinated persons for opening shops etc., vide **Annexure A9** and distribution of food grains. Such a measure is highly exclusionary and violates the fundamental rights of the unvaccinated persons. Thirdly, the police have resorted to extra-legal punishments and penalties for the violators of COVID-19 guidelines including beating, public humiliation

-B-

etc. Fourthly, the direct payment scheme under **Annexure-A5** must be extended to persons possessing any government issued id card. These issues warrant the immediate interference of this Hon'ble Court. Hence, this writ petition.

-C-

LIST OF DATES

26.12.2020	True copy of the article titled, "Santa Khurai's Efforts towards the Manipur queer community"
1.9.2020	True copy of the article, titled "Rescuing traditional queerness: An interview with Santa Khurai" dated 1.9.2020 published in Heinrich Boll Stiftung
30.11.2017	A true 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
13.07.2021	True copy of the written representation to the Hon'ble Chief Minister, Manipur by the petitioner
13.07.2021	True copy of the Scheme Guidelines for Chief Minister's COVID-19 Affected Livelihood Support Scheme
19.04.2021	True copy of the order issued by

	Commissioner (Education-S) Government of Manipur
01.06.2021	True copy of the order for physically closing the schools
15.9.2020	True copy of the media statement of CDC Report titled, "Indicators for Dynamic School Decision making"
29.10.2020	True copy of the report by Melissa Eddy in the New York Times
07.01.2021	True copy of the article titled 'Minimal transmission of SARS-COV-2 from pediatrics COVID -19 cases in primary schools, Norway, August to November 2020' authored by Lin T Brandal and others in 26(1) Eurosurveillance journal
02-07-2021	True copy of the WHO Statement
30.06.2021	True copy of the order issued by Special Secretary (Home)
13.05.2021	True copy of the report substantiating the vaccination status in Manipur from Times of India (prepared on the basis of data

- E -

	from the Ministry of Health and Family Welfare)
23.06.2021	True copy of the order dated 23.06.2021 by Meghalaya High Court in Registrar General v. State of Meghalaya
13.07.2021	True copy of the order dated 13.07.2021 in PIL No. 34/2021
07.04.2021	True copy of the article in <i>Scroll.in</i> by Sandhya Srinivasan dated 07.04.2021 titled "Compulsory Covid-19 vaccination won't help"
18.07.2021	True copy of the press release to ensure availability of food grains
10.06.2021	True copy of the news report dated 10.06.2021 titled 'No vaccination, no rice: Susindro'
16.07.2021	True copy of the press release issued by Chief Secretary
20.04.2021	True copy of the Manipur Epidemic Diseases (Enforcement of COVID-19 Guidelines) Amended Regulation, 2021

-F-

19.07.2021	True copy of the order allowing for additional activities
	True copy of the images of the police force resorting to extra-constitutional and extra-legal measures

BEFORE THE HON'BLE HIGH COURT OF MANIPUR AT
IMPHAL

P.L. NO. _____ OF 2021

- Adv. Akhonor Rindor

To

The Hon'ble Chief Justice Mr. P.V. Sanjay Kumar and His
Lordship's Companion Judge of the same Court.

IN THE MATTER OF:

An application filed under Article
226 of the Constitution of India for
the issuance of a writ in the nature
of mandamus and/or any other
appropriate writ or order or
direction of the like nature that this
Hon'ble Court deems fit and
proper.

IN THE MATTER OF:

Infringement of the Fundamental
Rights guaranteed under the

Comm. of Affidavit
High Court of Manipur
Imphal (Manipur)

-2-

Articles 14, 19, 21 and 21A of the
Constitution of India and a petition
praying for the enforcement of the
said rights

IN THE MATTER OF:

Thangjam Santa Singh (47years)
alias Santa Khurai, d/o Late Th..
Modhu Singh, Khurai Thoidingjam
Leikai, P.O, P.S - Porompat,
Imphal East, Manipur - 795010

.....PETITIONER

-VERSUS-

*State of Manipur
through*

- Adv. A.K. Rorilla

1. The Chief Secretary

Government of Manipur

Secretariat, P.O & PS Imphal,

-3-

Imphal West District, Manipur-
795001.

2. The *Director*

Department of Social Welfare

Government of Manipur,

Secretariat, P.O & PS Imphal,

Imphal West District,

Manipur-795001.

3. The Director General of Police

DGP Control Room, Old Jail
Road, Manipur - 795001

4. The Director

Directorate of Health Services

Government of Manipur,

P.O & PS Imphal, Imphal West

District, Manipur-795001.

5. The Commissioner (Edn./S)

Education (School) Department,

-4-

Government of Manipur,
Secretariat, P.O & PS Imphal,
Imphal West District, Manipur-
795001.

6. The Principal
Secretary/Commissioner/Secretar
y, Department of Consumer
Affairs, Food and Public
Distribution(CAF&PD)
Government of Manipur, P.O &
PS Imphal, Imphal West District,
Manipur-795001.

..... RESPONDENTS

The humble petition of the named petitioner:

Most Respectfully Sheweth:

1. That, the petitioner before Your Lordships is a citizen of India by birth who is currently residing in Khurai. As such, the

petitioner is entitled to all the rights, privileges and protections guaranteed to him/her by the Constitution of India and the laws made thereunder. The petitioner has no personal interest in the litigation and that the petition is not guided by self-gain or for gain of any other person/institution/body and that there is no motive other than of public interest litigation in filing the writ petition.

2. That, the writ petition has been filed for the benefit of the following groups of marginalized communities: persons in the state of Manipur having difficult/no access to vaccination, children from classes 1 to 12 and persons subject to violence at the hands of the police force and persons not possessing ration cards/and other cards mentioned in clause 3.2 of **Annexure A5(infra)**. Since these groups are unable to approach the court, this writ petition is being moved in public interest.

3. That, the petitioner humbly submits that, the first respondent is the Government of Manipur. The second respondent is the Home Department responsible for general administration including regulation and maintenance of the police force. The third respondent is the Director General of Police. The fourth respondent is the Department of Health Services. The fifth^h respondent is the Education Department concerned with closing and opening of schools in the state. The sixth respondent is the Department of Consumer Affairs, Food and Public Distribution dealing with distribution of food grains in the state.

4. That, the Petitioner is a transgender rights activist from the state of Manipur. She belongs to the 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 and

marginalized communities in general 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 close to 2000 transgender 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. Previously, the petitioner has moved writ petition No. 275/2021 before the Supreme Court challenging the blood donation guidelines prohibiting TGPs from donating blood. The case is admitted and pending before the Supreme Court.

True 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 – A1**; true copy of the article, titled "Rescuing traditional

A1 A2 A3 A4 A5 A6 A7 A8
-9-

queerness: An interview with Santa Khurai” dated 04.9.2020 published in Heinrich Boll Stiftung is annexed herein and is marked as Annexure – A2, and a true 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 – A3.

5. That, the petitioner humbly submits that she has also written a representation to the Hon’ble Chief Minister, Manipur vide a letter dated 13.07.2021, raising some of the

issues raised in the writ petition. However, no response is received so far.

True copy of the letter dated 13.07.2021 is produced herein and marked as **Annexure-A4.**

6. That, it is submitted that the COVID-19 pandemic led to serious threat to livelihood of several marginalized communities. The plight of transgender persons has been significant. In Manipur, they have been suffering from innumerable hardships as a result of lockdowns from time to time and loss of employment due to the pandemic.

7. That, due to the second wave in the country and the rise of active cases in Manipur, a curfew was put in place since 18 July 2021. This curfew is now extended. The governmental actions during the pandemic has resulted in the violation of

fundamental rights of the persons in Manipur at least as regarding the three issues identified below.

I. INCLUSION OF TRANSGENDER PERSONS FOR COVID CASH RELIEF OF RS. 5000/-, WITHOUT INSISTENCE OF RATION CARDS AND ON PRODUCTION OF ANY OTHER GOVERNMENT ID

8. That, it is humbly submitted that the government has recently issued a Scheme for financial assistance during COVID to vulnerable groups called the Chief Minister's COVID-19 Affected Livelihood Support Scheme. This Scheme provides direct cash transfers of Rs.5000/- to identified families who have been directly affected by the pandemic. This does not include transgender persons, who have been one of the most affected as all their traditional forms of livelihood are taken away due to the lockdowns and curfew,

and they need financial support and hence must also be included within the said scheme.

True copy of the Scheme Guidelines for Chief Minister's COVID-19 Affected Livelihood Support Scheme dated 13.07.2021 is produced herewith and marked as

Annexure – A5.

9. That, further, under clause 3.2 inclusion criteria of the Scheme, the beneficiary must be holders of any of the cards/documents mentioned therein. However, many persons from the marginalized communities in Manipur especially transgender persons, do not possess the cards/documents mentioned under clause 3.2. Limiting the direct transfer to persons covered under clause 3.2 deprives a significant section of persons from availing the scheme, in particular transgender

persons. Therefore, clause 3.2 must be read as including any govt. issued ID card. A declaratory relief is sought as regarding Annexure A5 to expand the beneficiaries to include transgender persons and also those in possession of any of the cards/documents under clause 3.2.

II. PHYSICAL RE-OPENING OF SCHOOLS

10. That, few issues associated with the government's management of COVID-19 pandemic are raised in this PIL. The first is regarding the denial of the right to education for children in government and government aided schools in the State. Since March 2020, there have been no classes for children in all government and government aided schools in Manipur. Since physical schools have been closed, the private, unaided schools in the State have started online classes for children. However, government and government aided schools have not started online classes for children. Further a large section of children attending government schools also do not

have access to laptops, i-pads or smartphones and internet, to be able to access online classes. This has resulted in a complete violation of the right to education for children in these classes.

11. That, physical classes which were going on for classes 11 and 12 were suspended via an order issued by Commissioner, Government of Manipur on 19.04.2021. In June 2021, all schools (government, government aided and private) were ordered to be physically closed by an order of the Commissioner (Education Schools).

True copy of the order dated
19.04.2021 issued by
Commissioner (Education-S)
Government of Manipur is
produced herewith and marked
as **Annexure - A6;** and true

-15-

copy of the order dated 01.06.2021 for physically closing the schools is produced herewith and marked as

Annexure – A7.

12. That, as is well-known, the schools remained closed since the national lockdown in March 2020. The lockdown was extended in April and May 2020 under directions of the Ministry of Home Affairs, Government of India. From January 27, the state government took a decision to re-open the schools for classes 9 to 12. In March 2021, after ascertaining the situation, the commissioner (Education-S), government of Manipur directed opening of schools for classes 6 to 8. However, for children studying in classes 5 and below, the schools remained and continue to remain closed. School classes are the least priority for the government s in spite of the fact that children remain the least risky group for

COVID-19. The children are suffering from a continued violation of their basic right to education.

13. That, it is submitted, for example, the children studying in the following schools are put to immense prejudice for either the suspension of physical classes or confining classes to online mode. For illustrative purposes, the list of certain schools, the children whose parents with which the petitioner had a personal interaction is given below. Children from working class homes and marginalized backgrounds, school-going is immensely important and enables growth, social life and personal development. (The names of children are not provided in the interest of their privacy).

- (i) Lamlong Higher Secondary School, Imphal East
- (ii) Lamlong Primary School, Imphal East
- (iii) Lamlong Higher Secondary School, Imphal East
- (iv) Khurai Primary School, Imphal East

(v) S. Ibobi Primary School, Khurai Sajor Leikai,
Imphal East

14. That, it is unfortunate that when many other sectors have been opened and started working in a phased manner, government and government aided schools are not receiving the priority that they require. In comparison, it is particular to note that countries having high numbers and lockdowns took specific care to ensure that schools and physical classes are not shut down completely. The Centre for Disease Control and Prevention and the World Health Organisation have also been advocating reopening of schools since many months and held that it is critical for schools to open as safely and as quickly as possible for in-person learning.

True copy of the media
statement of CDC Report titled,
“Indicators for Dynamic School

-18-

Decision making” dated
15.9.2020 is annexed herein as
Annexure – A8.

15. That, it is submitted that children are facing the threat of dropping out and possibility of never returning to schools again due to their particular socio-economic situation. Perpetuating school closure has a disastrous impact on children’s life and future. According to a *Livemint* report, “Unesco recently released a projection covering 180 countries, estimating that 24 million children may not return to education in 2020 due to the pandemic. The largest share of learners at risk of not returning to school are in south and west Asia.” (‘Out of school children likely to double in India due to coronavirus’, Seethalakshmi S, 16 August 2020).

16. It is submitted that the persons from marginalized communities are the worst sufferers of suspension of physical

classes. For example, according to the 2011 census, the number of Transgender persons in Manipur was estimated to be 1343, including 177 children, 40 persons belonging to Scheduled Castes and 378 belonging to Scheduled Tribe categories at that time. A majority of them do not have access to digital technology and online resources to access educational materials. Therefore, the suspension has created and demonstrated a significant digital inequity in the state.

17. That, according to a New York Times Report, “Medical experts point to many things they now know that were unknown back in the spring: with proper precautions, the rate of coronavirus transmission in schools is relatively low, especially among the youngest students; children who do get infected tend to have mild symptoms; and measures like mask-wearing, social distancing and air circulation are more effective than they had predicted.” Medical experts all over the world unanimously agree that the transmission rate of the

disease among children is the least. A medical study conducted among children also show that the transmission is minimal.

True copy of the report by
Melissa Eddy in the New York
Times dated 29.10.2020 is
marked herewith as Annexure
- A9.

18. That, the transmission of COVID-19 in primary schools has been reported to be negligible. In an article titled 'Minimal transmission of SARS-COV-2 from pediatrics COVID -19 cases in primary schools , Norway, August to November 2020' authored by Lin T Brandal and others report: "With preventive measures implemented in schools, we found minimal child-to-child (0.9%, 2/234) and child-to-adult (1.7%, 1/58) transmission, supporting that under 14 year olds are not the drivers of SARS-CoV-2 transmission."

-21-

True copy of the article titled 'Minimal transmission of SARS-COV-2 from pediatrics COVID -19 cases in primary schools, Norway, August to November 2020' authored by Lin T Brandal and others in 26(1) Eurosurveillance journal is marked herewith as **Annexure - A10.**

19. That, a statement from the World Health Organization's Regional Office for Europe has stated that "Despite most countries offering remote learning, the learning loss and impact of not being in school have been challenging for children. This is particularly so for vulnerable and marginalized children." said Afshan Khan, UNICEF Regional Director for Europe and Central Asia. "We need to work

together throughout the summer to ensure that children can go back to school safely and catch up with their learning.”

True copy of the WHO Statement dated 02-07-2021 is annexed herein and is marked as Annexure- A11.

20. That, the continued closure of schools leads to violation of the right to education of children guaranteed under Article 21-A and the Right to Education Act, 2009.

III. NON - VACCINATED PERSONS CANNOT BE DENIED ACCESS TO ENTITLEMENTS:

21. That, on 30 June 2021, an order was issued by Special Secretary (Home), Government of Manipur to prioritize “opening of institutions, organisations, factories, shops, markets, private offices etc. where its employees and workers are Covid vaccinated. This would also apply to NREGA job card holders and workers of government/private projects.”

-23-

True copy of the order dated 30.06.2021 issued by Special Secretary (Home), is annexed as **Annexure-A12**.

22. That, it is submitted that access to vaccines suffers from numerous problems and the order dated 30.06.2021 annexed as **Annexure-A12** is issued without considering factors impeding access and compromising vaccine equity. While efforts are being taken by the respondents to ensure vaccine distribution, the rate of vaccination still remains low. As of 23 July 2021, only 30% of the population has received the first dose. The percentage of fully vaccinated persons stands at a low of 3.87%. In this context, giving priority to vaccinated persons is highly exclusionary and amounts to discrimination under Articles 14 and 15 of the Constitution.

True copy of the report substantiating the vaccination


Comm. of Affidavit
High Court of Manipur
Imphal (Manipur)

status in Manipur from Times of India (prepared on the basis of data from the Ministry of Health and Family Welfare) is produced herein and marked as

Annexure – A13.

23. That, a policy brief by the WHO dated 13.04.2021 says:

“In the absence of a sufficient, reliable vaccine supply that would permit every eligible member of the general public to be vaccinated, a mandate for the general public would fail to address ethical consideration regarding sufficient supply. Even if there is a sufficient, reliable vaccine supply, policy-makers should consider whether mandatory vaccination of the general population is necessary and proportionate to achieve intended public health goals (ethical consideration 1).”

24. That, considering the rate at which vaccination is being done in the State of Manipur, the abysmally low number of

persons vaccinated and the problems of significant obstacles in access to vaccines, a mandatory vaccination requirement for opening of certain facilities is unjustified. In order to encourage and improve vaccination, the Respondents should have vaccination information and awareness camps, and improve access to vaccination in the State, especially for marginalized groups, instead of prohibiting access to activities and livelihoods for people who are not vaccinated.

25. That, recently, the Hon'ble Meghalaya High Court in *Registrar General v. State of Meghalaya* has issued an order in PIL No.6/2021 dated 23.6.2021 that a welfare policy for vaccination must not infringe with the right to life. It was held categorically that: "The welfare nature of the State isn't for coercive negative reinforcement by seizing their right to livelihood, proscribing them to earn from their occupation and/or profession without any justification in the garb of public interest, but lies in walking together with concerted

efforts attempting to effectuate a social order as mandated under Article 38 by approaching the people directly by engaging them in one-to-one dialogues and dwelling on the efficiency and the positive aspects of administering of the vaccine without compromising its duty under Article 47 nor abrogating its duty to secure adequate means of livelihood under Article 39(a). Therefore, right to and the welfare policy for vaccination can never affect a major fundamental right; i.e., right to life, personal liberty and livelihood, especially when there exists no reasonable nexus between vaccination and prohibition of continuance of occupation and/or profession.”

True copy of the order dated
23.06.2021 by Meghalaya High
Court in Registrar General v.
State of Meghalaya is produced
herewith and marked as

Annexure- A14.

26. That, this Hon'ble Court has also made an order dated 13.07.2021 in PIL No. 34/2021 in a similar issue stating that:

"Restraining people who are yet to get vaccinated from opening institutions, organizations, factories, shops, etc., or denying them their livelihood by linking their employment, be it NREGA job cardholders or workers in Government or private projects, to their getting vaccinated would be illegal on the part of the State."

True copy of the order dated 13.07.2021 in PIL No. 34/2021 is produced herewith and marked as Annexure A15.

27. That, it is submitted that coercion in vaccination by these means will increase hesitancy, not reduce it. Making access to livelihood as done by the impugned order leads to serious infringements on the right to dignity and livelihood, by compromising the ability to earn.

-28-

True copy of the article in *Scroll.in* by Sandhya Srinivasan dated 07.04.2021 titled "Compulsory Covid-19 vaccination won't help" is produced herewith and marked as **Annexure - A16.**

28. That, in addition to the vaccine priority in the case of opening of shops and firms, vaccination is insisted for grant of basic needs such as food grains. A press release was issued on regarding the distribution of food grains during the Curfew period. A copy of the press release to ensure availability of food grains is produced herewith and marked as **Annexure A17.** The authorities have been insisting for vaccination before grant of food grains. To show this aspect, a copy of the news report dated 10.06.2021 titled 'No vaccination, no rice: Susindro' is produced herewith as **Annexure A18.** The report

has reproduced the statement from the Member of Legislative Assembly that “the benefit of PMGKY food grains will not be given to any person in Khurai constituency from next month in case he/she does not get inoculated against Covid-19”. The right to food and receiving food grains and rations cannot not be made conditional on vaccination when there is inequitable access to vaccination.

True copy of the press release
dated is annexed as

Annexure-A17.

True copy of the news report
dated 10.06.2021 is annexed as

Annexure-A18.

29. That, it is submitted that a large number of other persons are being denied basic facilities such as ration/rice by stating their non-vaccinated status. Therefore, lack of vaccination has

led to violation of basic rights for the citizens of Manipur, by depriving their right to live with dignity under Article 21.

IV. STATE VIOLENCE DURING LOCKDOWN AND CURFEW

30. That, due to the pandemic situation, a total curfew was imposed by the State for a period of 10 days from 16.07.2021. A copy of the press release issued by Chief Secretary, State Executive Committee, Manipur imposing a total curfew of 10 days from 16.07.2021 (**Annexure A19**). In April, a regulation was issued by the government for prescribing enforcement of COVID-19 guidelines, namely, Manipur Epidemic Diseases (Enforcement of COVID-19 Guidelines) Amended Regulation, 2021), (**Annexure – A20**). Penalties are prescribed in the said regulation for violation of certain guidelines such as quarantine guidelines, failure to wear mask in public places etc.

-31-

True copy of the press release issued by Chief Secretary dated 16.07.2021 is annexed as

Annexure-A19

True copy of the Manipur Epidemic Diseases (Enforcement of COVID-19 Guidelines) Amended Regulation, 2021 is annexed as

Annexure – A20

True copy of the order allowing for additional activities dated 19.07.2021 is annexed as

Annexure -A21

31. That, it is submitted that as per **Annexure A21**, several facilities are open, even during the times of curfew. According to the same, e-commerce delivery, access to officials and

workers of railway projects, road development projects etc. are permitted. In these circumstances, the refusal to prioritise school opening is a flagrant violation of the right of the children to study and participate in a community life together. It is also highly disproportionate considering the losses to the children in terms of intellectual and social development.

32. That, moreover, in the guise of enforcing the covid-19 guidelines, the police force has been resorting to extra-constitutional and extra-legal measures. For example, the police is punishing the alleged violators with sit-ups, push-ups on the street and beating them in public. Lathi charge also takes place to drive the violators away. In the images 1 and 2, people are required to stand with one leg raised. In image 3, persons are being punished in the public openly. Images 4 to 6 show people being openly beaten. Images 4 to 6 are taken from a Facebook page *Meeyamgi Kho - Lao* by one *Okendra Waikhom*. They are screenshots taken from an uploaded video.

It is pertinent to note that the media reporting and articles on this issue is abysmally low disabling the petitioner from producing such articles/ reports. These actions by the police are illegal and require to be curbed at the earliest. In the guise of COVID guidelines, the police cannot punish the violators, on their own. They cannot act as the jury, judge and the executioner. There are no powers prescribed on them under the Criminal Procedure Code or any other law in force to punish violators on their own, instead of charging persons under relevant law and subjecting them to due procedure.

True copy of the images substantiating these aspects is produced as **Annexure A22**).

GROUND

- A. THAT the Scheme Guidelines of the Chief Minister's COVID-19 Affected Livelihood Support Scheme, issued vide Notification dated 13.7.2021 not being extended to transgender

persons as beneficiaries, deprives them of their livelihood. As held by the Hon'ble Supreme Court in *NALSA Vs Union of India* (AIR 2014 SC 1863), it noted the centuries of discrimination faced by transgender persons and held that “...[a]rticle 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...Discrimination on the ground of sexual orientation or gender identity, therefore, impairs equality before law and equal protection of law and violates Article 14 of the Constitution of India.” Therefore, it is duty of the Respondents to secure rights of the Transgender Persons in this time of the pandemic.

B. THAT under the said Scheme, the possession of one of the cards mentioned under clause 3.2 is mandatory for availing the direct cash transfer benefit of Rs. 5000/- which includes ration cards and other cards such PM Kissan card, or other cards. Many transgender persons do not have ration cards or these other cards and the lack of possession of the card should not lead to deprivation of the benefits provided by the Respondents. Several persons from the marginalised communities especially transgender persons do not possess ration cards or other cards mentioned therein due to the change of their name and gender identity and also because of being thrown out of their homes and families. Hence, the said clause must be read as including any government id card so as to prevent any exclusion so that marginalised communities especially transgender persons can avail the benefits.

C. THAT as a result of suspension of physical classes, children are losing touch with structured learning, which is possible in

the school. As per studies, more than 80% of children are unable to access any online education or structured learning opportunities. Hence children especially those who belong to the poor and marginalized groups in society, are unable to access structured learning opportunities. Depriving them of structured learning opportunities, stunts their physical, mental and intellectual development. This is directly contrary to Article 21-A and the aims of the Right to Education Act (in particular, section 3) which confer right to education (structured learning) in India between ages 6 and 14 years.

D. THAT, it is submitted that closure of schools also has an impact on the nutrition of children. This long closure of schools is leading to the aggravation of poor nutrition amongst children. Malnutrition stunting has increased. For many children, the hot cooked mid-day meal provided in the school is the most important source of nourishment, hence continued denial of cooked mid-day meal is infringement of the right of

children. The mid-day meal scheme is statutorily supported by the National Food Security Act, 2013. A continued denial of nutritious meal violates the fundamental rights of children studying in these schools.

E. THAT, it is pertinent to note that closure of schools has different impact on children depending on their socio-economic and other background. Children from poor neighbourhoods for example, rely wholly on the education provided from the government schools. They do not have any other alternative such as private tuition, online classes to rely on. Access to mobile and internet connectivity also depends on one's economic resources. Therefore, children from poor households and marginalised communities are indirectly discriminated due to the impugned actions of school closure by the respondent government. The number of children from backward communities cannot be overlooked. Indirect discrimination was recently recognised by the apex court in *Lt.*

Col. Nitisha v. Union of India 2021 SCC OnLine SC 26, under Articles 14 and 15 of the Constitution. Hence, the action of school closure is liable to be struck down as unjust and illegal.

F. THAT all over the world, schools are being opened. Research has suggested that the elderly is more vulnerable to the virus and children, especially young children are less susceptible to the virus. Keeping primary schools closed, when the harm from closure, as explained, is very high, and the risk from opening is very low, is overall detrimental to the safety, security, health, nutrition, learning and development of children. Closure of all schools for children in Manipur amounts to a violation of the right to education guaranteed under Article 21A of the constitution.

G. THAT as held by the Hon'ble Supreme Court in *Society*

for Unaided Private Schools v. State of Rajasthan (2012) 6 SCC 1, under Article 21A of the constitution, the State has to provide to all children by law the right to “free and compulsory education” and Article 21A contemplates the right to education to be child centric. The right to compulsory education means that no child will be deprived of her right to education until 14 years. Now, schools can be re-opened and by not reopening them, they are deprived of the education guaranteed under Article 21A to all children, is restricting and hindering the right to compulsory education of the children (*Mohini Jain v. State of Karnataka* 1992 AIR SC 1858 and *Unni Krishnan and Ors. v. State of Andhra Pradesh and Ors.*, AIR 1993 SC 2178 and the UN Convention on the Rights of the Child (UNCRC) signed and ratified by India).

H. THAT giving priority only to vaccinated persons in access to basic entitlements is highly arbitrary where vaccine equity and access are ensured is different from societies and communities

in India, where no such equity prevails. Access to vaccination remains a large problem for the elderly, backward castes and tribes, persons from the rural areas and the poor. A policy of vaccine priority assumes that everyone has equal access to resources, which is absent. Giving such a priority indirectly discriminates against persons who belong to these groups, for no fault of their own. Persons who are not vaccinated or shops where all employees are not vaccinated will be forced to remain closed, for reasons not fully attributable to them, since access to vaccine depends on a number of socio-economic and other factors. This affects the livelihood of persons to a significant degree. Access to vaccine still remains a problem for the people in Manipur, like the rest of India. Marginalised communities such as transgender persons, the elderly and bed-ridden, daily wage labourers etc. are finding it difficult to access vaccines and travel to vaccine centres. Therefore, distribution of food grains or opening of shops conditional on vaccination puts serious burdens on them.

I. THAT, It is submitted that The National Food Security Act was passed in 2013. It imposes obligations on state and central governments jointly to ensure adequate supply of food grains. It has been also held that there exists a right to free ration even without ration cards in *Swaraj Abhiyan v. Union of India* (2016) 7 SCC 498 that “As far as the present case is concerned, there is no doubt that provision of food grains as per the provisions of the NFS Act is a statutory obligation on the State.” It was further held: “In this context, it would be inappropriate for the State Governments to deprive any household in drought affected areas of the requisite food grains merely because they do not have a ration card. We find substance in the contention of learned counsel for Swaraj Abhiyan that in grave and emergent situations such as those in the drought affected areas, the requirement of a ration card for obtaining food grains can only be considered a procedural requirement and that requirement should be substituted with a

valid identity card or any appropriate proof of residence that is acceptable to the functionaries in the State Governments, who need to construe such a condition open-handedly and without being tight-fisted." Therefore, the state authorities cannot insist for any conditions including vaccination for distribution of food grains.

J. THAT, without recognising the socio-economic conditions of persons and the inherent problems of access, denial of facilities such as food grains and opening of facilities for non-vaccinated persons amount to indirect discrimination under Articles 14 and 15 of the Constitution. In *Col. Nitisha* (supra), it was held: "...the doctrine of indirect discrimination is founded on the compelling insight that discrimination can often be a function, not of conscious design or malicious intent, but unconscious/implicit biases or an inability to recognize how existing structures/institutions, and ways of doing things, have the consequence of freezing an unjust

status quo. In order to achieve substantive equality prescribed under the Constitution, indirect discrimination, even sans discriminatory intent, must be prohibited.” Therefore, Annexure A9 to the extent impugned is liable to be struck down.

K. THAT, it is submitted that as evident from the images produced as part of the writ petition, police violence has tremendously increased during curfew/ lockdown in the State. The persons are being subject to public humiliation, mistreatment and punishment as per the whims and fancies of the authorities. Such a power is not provided for in any of the relevant laws in force including the Criminal Procedure Code. The police have no competence to award punishment even if the persons violate the guidelines. The police authorities are bound to register the offences and subject the violators to the due process of the law. Subjecting them to extra-legal

punishment violates the rights to a dignified life and liberty under Article 21 of the constitution.

L. THAT, in *Prakash Singh v. Union of India*, (2006) 8 SCC 1, the apex court laid down various directions for a structural reform of the police force in the country. The court looked down upon police excesses and arbitrary arrests and detentions. The court noted the recommendations of the Sorabjee Committee for “.. a Public Complaints Authority at district level to examine the complaints from the public on police excesses, arbitrary arrests and detentions, false implications in criminal cases, custodial violence etc. and for making necessary recommendations.” The instant case is a classic example of police excesses during the lockdown/curfew in the guise of enforcing COVID-19 guidelines. The pandemic does not license the authorities to act outside the law and violate fundamental rights under the Constitution. Extra-judicial punishments and actions are

contrary to the guarantee of a dignified life under Article 21 of the Constitution. (See *Menaka Gandhi vs. Union of India*, 1978 (1) SCC 248, *Vikram Deo Singh Tomar vs. State of Bihar* 1988 (Supp) SCC 734, *Arvinder Bagga v. State of UP and Ors.* AIR 1995 SC 117, *Dr. Mehmood Nayyar v. State of Chattisgarh & Ors.* (2012) 8 SCC 1.)

M. THAT whatever be the alleged infraction of the law, the action of the state must be proportionate to the need for infraction. The apex court in *In K S Puttaswamy v. Union of India* (2017) 10 SCC 1 has held that to determine the validity of a state action violating fundamental rights, the action must be sanctioned by law, necessary in a democratic society and proportionate to the need of interference. The impugned orders in the instant case fail to meet this test and must be set aside. Forcing the children to stay at home in spite of the abysmal risk of COVID-19 infections among children is disproportionate to the measure taken. For more than a year,

the children are denied the right to education, personal development, self-growth and development of their personality. The losses are disproportionate to the supposed public health aim that the state seeks to achieve. Similarly, forced vaccination for priority opening of establishments also fails to meet the three-tier test laid down. Therefore, the impugned orders are liable to be set aside to the extent sought.

PRAYER

In view of the averments and grounds above, it is therefore prayed that this Hon;ble Court may be pleased:

- i. To issue a writ of mandamus or an order directing the Respondents to include within the Scheme Guidelines of the Chief Minister's COVID-19 Affected Livelihood Support Scheme, issued vide Notification dated 13.7.2021 transgender persons as beneficiaries;

- ii. To set aside the Scheme Guidelines of the Chief Minister's COVID-19 Affected Livelihood Support Scheme, issued vide Notification dated 13.7.2021 to the extent that the inclusion criteria under clause 3.2 is limited to ration cards and other cards listed therein and to declare that the clause must be extended to persons not having ration cards but any other valid government ID;
- iii. To direct that the last date for application of the Chief Minister's COVID-19 Affected Livelihood Support Scheme, issued vide Notification dated 13.7.2021 be extended beyond 7th August 2021, and transgender persons who do not have ration cards but have any other government ID be allowed to apply for the same and be provided the two instalments of cash relief for Rs. 5000/-;
- iv. To issue a writ of mandamus or any other writ directing the Respondents to physically open all the government and government-aided schools and conduct classes, while deploying all the safety measures and social; distancing,

hygiene (washing/soap), wearing masks, physical distancing, quarantining etc.;

- v. To issue a writ of mandamus or any other appropriate Writ directing the Respondents to resume distribution of cooked mid-day meals to students in the government schools;
- vi. To declare that no person can be denied of access to food grains and rations on the ground of not being vaccinated;
- vii. To issue a writ of certiorari quashing Government Order No. H-1601/6/2020/HD dated 30.06.2021, to the extent to which it directs priority for opening of institutions, organisations, factories, shops, markets, private offices etc. where employees are vaccinated;
- viii. To direct the respondents to conduct awareness camps for vaccination, and to provide access to vaccination especially for marginalized groups, with both pre-vaccination and post-vaccination counselling and health care;
- ix. To declare that the persons who are charged for violation of COVID-19 guidelines are not liable to extra-judicial

punishment/ penalties or torture, harassment or humiliation in the form of beating or other forms by the police officers/ other authorities under the state;

- x. To issue a writ of mandamus directing the respondents to pass appropriate orders strictly ordering the police officers and other authorities to treat persons violating the COVID-19 guidelines strictly as per law without subjecting them to any extra-judicial penalties or torture, humiliation or harassment;
- xi. To issue any other appropriate order/direction which the Hon'ble court deems fit and proper in the facts and circumstances of the case.

And for this act of kindness your humble petitioner, as in duty bound shall ever pray.

INTERIM RELIEF:

- i. To direct the respondents to ensure distribution of food grains to the needy without insisting for vaccination, immediately, subject to the result of the writ petition;
- ii. To direct that the last date for application of the Chief Minister's COVID-19 Affected Livelihood Support Scheme, issued vide Notification dated 13.7.2021 be extended beyond 7th August 2021, and transgender persons who do not have ration cards but have any other government ID be allowed to apply for the same;




Signature of the petitioner

Dated 12/08/2021



By Advocate: Akham Romilla

Research & Drafting Assistance: Adv. Thulasi K. Raj


Counsel for Petitioner
High Court of Manipur
Imphal (Manipur)

- 91 -




AFFIDAVIT

I, Thangjam Santa Singh, aged about 47 years, alias Santa Khurai, d/o Late Th.. Modhu Singh, resident of Khurai Thoidingjam Leikai, P.O, P.S - Porompat, Imphal East, Manipur, do hereby solemnly affirm and take oath as under :-

1. That, I am the petitioner in the accompanying Public Interest Litigation and as such am well acquainted with facts of the case and therefore I do swear this affidavit on my own behalf.
2. That, the said Public Interest Litigation has been drafted by my counsel under my instruction and on my own behalf.
3. That, the annexures annexed in the accompanying Writ Petition are the true copies of the originals thereof.

VERIFICATION

Verified at Imphal, on this the 19th day of August, 2021
that the contents of the above affidavit and the accompanying Writ


CONFIDENTIAL
High Court of Manipur
Imphal (Manipur)

- 52 -

Petition from paras No.1 to ³² are true to the best of my knowledge and the rest of contents of the accompanying writ petition are believed to be true and correct by me and that nothing material has been concealed thereof.



DEPONENT/PETITIONER

Identified by :-

Akham Romilla
Advocate. 19/08/2021

Solemnly affirmed before me this the
.....19th..... day of August 2021.
The declarant is identified by
.....ADV. AKHAM ROMILLA.....
personally not known to me.

I certify that I read over and explained
the contents to the declarant and that the
declarant seemed perfectly to understand
them.

P. Aring 19/8/21
High Court of Manipur
Imphal (Manipur)