

UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA
IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

W.P No. _____ **of 2021**

Sivakumar TD,

... Petitioner

VS.

1. State of Tamil Nadu,
Through the Chief Secretary,
Government of Tamil Nadu,
Secretariat, Fort St, George,
Chennai - 600 009
2. The Ministry of Health and Family Welfare,
Through the Principal Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
Secretariat, Chennai 600 009
3. The Dean,
Madras Medical College &
Rajiv Gandhi Government General Hospital
Chennai-600 003
4. The Director of Medical Education,
Directorate of Medical Education,
156, Poonamallee High Rd, New Bupathy Nagar,
Chetpet, Chennai, Tamil Nadu 600031

AFFIDAVIT OF THE PETITIONER

I, Sivakumar TD,

do solemnly affirm and sincerely state as follows:

1. I am the Petitioner herein and, I am well acquainted with the facts and circumstances of the case and am competent to affirm and swear to this Affidavit.
2. I state that am an LGBTIQ (Lesbian, Gay, Bisexual, Trans, Intersex and Queer) rights activist. I have been actively involved in furthering the interests of the LGBTIQ community and conducted several training programmes organised by organisations including TNPWAA, Centre for Counselling, SAATHII, UNDP-TANSACS, etc. to explain the basic concepts such as “gender” and “sexuality” to the main stakeholders such as LGBTIQ groups, mental health professionals, police officials, students, advocates, etc. I state that in the year 2007, I set up and coordinated the Chennai office of “Sangama”, an organisation working towards the betterment of the individuals oppressed due to their gender identities and sexual orientations. I state that from the year 2007, till date, I have been handling the LGBTIQ crisis helpline [REDACTED] to provide prompt and immediate assistance to any person from the community who is in a dire need.
3. I state that in 2012, I co-founded a Non-profit Organisation “Nirangal”, an organisation that focuses on gender and sexuality rights and also works for the welfare of all marginalised communities such as women, children, the oppressed classes, etc. I state that since the year 2014, I have been associated with the South India AIDS Action Programme

(SIAAP), which also works for the empowerment of the marginalised communities by primarily creating awareness of gender and sexuality.

4. I humbly state that I am filing this public interest writ petition for the first time, with my own costs, in my knowledge no such writ petition is pending before this court or any other court and has not been filed relating to the subject matter of this writ petition, I am ready to pay any cost, if any is imposed by this Hon'ble court, I am filing this writ petition with public interest, I have no other motive or oblique reasons for filing this writ petition. I state that my Aadhaar card number is [REDACTED] and I am not an income tax assessee and my PAN card number is [REDACTED]

5. I submit that the present Writ Petition in nature of public interest has been filed before this Hon'ble Court for seeking directions to the Respondent No. 1 & 2 to immediately reopen the transgender clinic at Rajiv Gandhi Government General Hospital in Chennai and to made access to the said hospitals available to the transgender community and also to ensure that transgender persons who are of legal major age (above 18) are not asked to bring their parents or furnish parental approval for the gender-affirmation process.

6. I submit that during the past few months, when I went for Covid relief work, I came to know from the transgender community that the above-mentioned specialty transgender clinic in the Rajiv Gandhi

Government General Hospital at Chennai and Government Rajaji Hospital at Madurai had been non-functional for a year, quoting the reason of pandemic.

Specialty Transgender Clinic in Tamil Nadu

7. I submit that the Department of Health and Family Welfare, Government of Tamil Nadu, through an GO (MS)No.307 dated 09.07.2019, announced an exclusive specialty transgender clinic for transgender persons in Rajiv Gandhi Government General Hospital at Chennai and another one in Government Rajaji Hospital at Madurai. Later, in the same year, it was opened for the use of the transgender community.
8. I submit that the Tamil Nadu is the second state in India to open exclusive clinics for transgender persons. The clinic will be open once in a week that on Friday for the following services which are supposed to be provided at the specialty transgender clinics in Rajiv Gandhi Government General Hospital at Chennai and in Government Rajaji Hospital at Madurai free of cost to transgender community:-

A. Treatment for common ailments

B. Mental Health Care- assessment of gender dysphoria, treat the co-existing mental health concerns and mentally prepare for gender transition.

C. Gender affirmative hormone treatment for trans men and trans women

D. Sex Reassignment Surgeries (SRS) for trans men and trans

women

E. Non-genital surgeries

F. Treatment for STDs

G. Vaccination for Hepatitis, HPV etc

H. Treatment for NCDs

I. Dermatological treatments

J. Urological care

Stages of treatment

9. I submit that the transgender persons who want to go for gender affirmation surgery first have to see the psychiatrist thereafter the psychiatrist, after assessing the transgender person's gender dysphoria, will certify that the persons is eligible for hormonal therapy and gender affirmation surgery, either from Male to female (in the case of trans women) and Female to Male (in the case of trans men).

Hormone Therapy

10. After the psychiatrist provides the letter affirming the client's gender dysphoria, then the client is able to consult an endocrinologist for starting hormone therapy. Hormone therapy is a treatment process for people seeking physical changes in their bodies in order to fit their sense

of gender identity and most of the transgender men and women seek hormone therapy as part of the transition process. There are two types of hormone therapy: feminizing hormones (estrogen) and masculinizing hormones (testosterone). Taking hormone therapy is one of many ways a transgender person can cope with gender dysphoria, and can be part of the gender-affirmation protocol.

11. I submit that hormone replacement therapy is a major milestone for trans men and trans women. Once a trans man has started his medical transition, he must be on hormone therapy for a substantial portion of his life. For this hormone therapy they have to visit the endocrinologist at regular intervals (e.g. quarterly) to take a properly prescribed blood test to check if there are any side effects, and adjust treatment accordingly. Without proper treatment and blood tests they have a high chance of side effects such as heart attacks, strokes, diabetes and increases the risk of cancer to the uterus, ovaries, or breasts.

12. I submit that during the past few months, when I went for Covid relief work, I came to know from the transgender community that the above-mentioned specialty transgender clinic had been non-functional for a year, quoting the reason of pandemic.

13. I submit that several transgender persons in Tamil Nadu took gender affirmative hormone therapy before the pandemic for gender affirmation surgery in Rajiv Gandhi Government General Hospital at Chennai.

Thereafter during pandemic those transgender persons who went through hormone therapy and for further process of pre gender affirmation surgery had reached the said hospitals were informed by the hospitals that the specialty transgender clinic was closed due to Covid restrictions.

14.I submit that the transgender persons who have taken hormone therapy and Gender affirmation surgery before COVID have to go for constant checkup which was now totally made unavailable because of the non-functioning of specialty transgender clinics in Rajiv Gandhi Government General Hospital at Chennai and Government Rajaji Hospital at Madurai.

Testimonies of the trans men and trans women

15.I submit that one trans man named as [REDACTED] as a testimony stated that he has worked as a Covid-19 fever survey check up volunteer in Chennai Corporation, has been taking pre-surgery Hormone therapy from 11.02.2019 till February 2020 at Rajiv Gandhi Government Hospital at Chennai. In furtherance, he approached the Transgender Speciality Clinic in Rajiv Gandhi Government Hospital at Chennai, but the clinic is closed indefinitely due to Covid-19 lockdown and his access to the clinic has been refused. That he has been taking hormonal therapy for a long time his vocal tone, hormonal balance, etc have changed his appearance abruptly. Subsequently, he was facing societal, emotional, and physical pressure both externally and internally. So he was forced to

take Gender Affirmation Surgery immediately during the midst of the pandemic. Thereafter, with no other option left he underwent Gender Affirmation Surgery at a private hospital after spending Rs. 70,000/- by taking a private loan. And now he is Spending Rs. 500/- every month for his post-surgery hormonal therapy at a private hospital. And most important to mention that if he stops from taking hormonal therapy and further treatment regularly, he may face several health disorders such as re-continuing of a menstrual cycle, emotional and hormonal imbalance, to an extent may cause cancer, etc.

16.I submit that one Trans man named as [REDACTED] as a testimony stated that he has been living independently and doing menial jobs for his living. During the pandemic he faced several physical, emotional, social and mental harassment in the workplace and at public places during this pandemic and has been refused with menial job employment because of his mismatching appearance and vocal tone. And he was forced to leave the job now and then. Currently, he is jobless with no income. In the recent past, he has applied for Tamil Nadu Police Constable exam, where they mandatorily required a medical report or medical certificate of surgery for verification. Accordingly in December 2020 he approached Transgender Speciality Clinic in Rajiv Gandhi Government Hospital at Chennai for Gender Affirmation Surgery but the Clinic was closed indefinitely due to Covid -19 restrictions and his access to clinic has been refused. And most important to mention that due

to his infirm economic condition, he cannot consult a private hospital for Surgery and other treatments.

17.I submit that another trans man, [REDACTED] as a testimony stated that he left his home and is living independently. His parents have destroyed his 10th, 12th Marksheet and left him without any financial or emotional support and have declined to accept him. During the pandemic he faced several Physical, emotional, social and mental harassment in the workplace and at public places during this pandemic and has been refused with menial job employment because of his mismatching appearance and vocal tone. In furtherance he approached Transgender Speciality Clinic at Rajiv Gandhi Hospital for his Gender Affirmation Surgery but the Clinic has been closed indefinitely due to Covid-19 restrictions and his access to the clinic has been refused. And most important to mention that due to his infirm economic condition, he cannot consult a private hospital for Surgery and other treatments.

18.I submit that another trans man, [REDACTED] as a testimony stated that he has been working as a painter and doing other menial jobs for living. During the Covid lockdown he has faced several Physical, emotional, social and mental harassment in the workplace and at public places due to his mismatching appearance. That he was facing societal, emotional, and physical pressure both internally and externally. So he was forced to take Gender Affirmation Surgery immediately during the midst of the pandemic. Accordingly, he approached the Transgender

Specialty Clinic in Rajiv Gandhi Government Hospital at Chennai, but the clinic is closed indefinitely due to Covid-19 lockdown and his access to the clinic has been refused. Thereafter, with no other option left he underwent Gender Affirmation Surgery at a private hospital at Tirupur after spending Rs. 80,000/- by taking a private loan. And now he is spending Rs 3000/- for regular hormonal checkup for every 6 months and Rs. 500/- every month for his post-surgery hormonal therapy at a private hospital. And most important to mention that if he stops from taking hormonal therapy and further treatment regularly, he may face several health disorders such as re-continuing of a menstrual cycle, emotional and hormonal imbalance, to an extent may cause cancer, etc.

19. I submit that another trans woman, [REDACTED] as a testimony stated that she is living independently and during this pandemic has lost her previous job and is struggling for her living. She faced several Physical, emotional, social and mental harassment in the workplace and at public places during this pandemic and has been refused with menial job employment because of her mismatching appearance and vocal tone. In furtherance she approached Transgender Speciality Clinic at Rajiv Gandhi Hospital for her Gender Affirmation Surgery but the Clinic has been closed indefinitely due to Covid-19 restrictions and her access to the clinic has been refused. And most important to mention that due to her infirm economic condition, She cannot consult a private hospital for Surgery and other treatments.

20. I submits that i have sent a Email Representation dated 08.07.2021 to the Respondents praying for the immediate re-opening of the Rajiv Gandhi Government General Hospital in Chennai and Government Rajaji Hospital in Madurai and to made access to the said hospitals available to the transgender community and to ensure that transgender persons who are of legal major age (above 18) are not asked to bring their parents or furnish parental approval for the gender-affirmation process.

21.I submits that I have sent a Postal representation dated 08.07.2021 to the Respondents praying for the immediate re-opening of the Rajiv Gandhi Government General Hospital in Chennai and Government Rajaji Hospital in Madurai and to made access to the said hospitals available to the transgender community and to ensure that transgender persons who are of legal major age (above 18) are not asked to bring their parents or furnish parental approval for the gender-affirmation process but till date no response has been shown to my above dated representation.

22. Therefore I have no other alternative and equally efficacious remedy, except approaching this Hon'ble Court through the present Petition under article 226 of constitution of India and seeking appropriate reliefs on the following, among other, grounds.

Grounds

A. Because transgender persons are one of the vulnerable communities in the society and already they are facing a lack of medical facilities and

Health care. Now the closure and denial to access the Speciality transgender clinic especially during covid made them more vulnerable.

B. Because of this hormone therapy every month they have to visit the endocrinologist and to take a properly prescribed blood test to check if there are any side effects, and adjust treatment accordingly. Without proper treatment and blood tests they have a high chance of side effects such as heart attacks, strokes, diabetes and increases the risk of cancer to the uterus, ovaries, or breasts.

C. Because trans persons are living independently without any financial and emotional support from their family members/relatives, they are financially infirm and marginalized and forced to take hormone therapy, gender affirmation surgery and other treatments at a private medical institution.

D. Because the representation dated 08.07.2021 sent by Petitioner to the Respondents regarding immediate re-opening of the Speciality Transgender Clinic at Rajiv Gandhi Government Hospital at Chennai and to made access to the said hospitals available to the transgender community and to ensure that transgender persons who are of legal major age (above 18) are not asked to bring their parents or furnish parental approval for the gender-affirmation process are not considered by the Respondents.

E. Because in the State of Punjab v. M.S. Chawla, it has been held that-the right to life ensured under Article 21 incorporates inside its ambit the right to health and clinical consideration.

F. Because in Suo Motu Writ Petition (Civil) No.7 Of 2020 In Re: The Proper Treatment of Covid 19 Patients and Dignified Handling of Dead Bodies In the Hospitals Etc. the Hon'ble Supreme Court of India has observed in the order dated 18.12.2020 that

“Right to health is a fundamental right guaranteed under Article 21 of the Constitution of India. Right to health includes affordable treatment. Therefore, it is the duty upon the State to make provisions for affordable treatment and more and more provisions in the hospitals to be run by the State and/or local administration are made. It cannot be disputed that for whatever reasons the treatment has become costlier and costlier and it is not affordable to the common people at all.

G. Because according to Article 25(1) of Universal Declaration of Human Rights *“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”.*

- H. Because the Supreme Court in *Vincent v. Union of India*, emphasized that a healthy body is the very establishment of all human activities. Article 47, a Directive Principle of State Policy in such a manner lays pressure on the improvement of general health and denial of medications harmful to health as one of the essential obligations of the state.
- I. Because the section 15 of the Transgender Persons (Protection of Rights) Act, 2019 says that to provide for medical care facility including sex reassignment surgery and hormonal therapy for transgender persons and also to facilitate access to transgender persons in hospitals and other healthcare institutions and centres.
- J. Because the closing the service of the speciality transgender clinic in the Government hospitals especially during the time of pandemic expressly discriminating against the transgender persons to access to the public health care.

Prayer

THEREFORE, in light of the above facts and circumstances, it prayed that this Hon'ble Court may be pleased to:

- i) Issue a writ of mandamus or any other appropriate writ, order or direction to the Respondents to immediately re-open the Speciality Transgender Clinic at Rajiv Gandhi Government General Hospital in Chennai and to made

access to the said hospital available to the transgender community.

ii) For an order directing the Respondents to ensure that transgender persons who are of legal major age (above 18) are not asked to bring their parents or furnish parental approval for the gender-affirmation process.

iii) Pass any other directions/orders which this Hon'ble Court deems fit and proper in the interest of justice and equity.

Solemnly affirmed at Chennai on this

PETITIONER

the thday of July 2021 and signed

BEFORE ME

his name in my presence.

ADVOCATE, CHENNAI

DISTRICT: CHENNAI

**IN THE HIGH COURT
OF JUDICATURE AT
MADRAS**

W.P No. of 2021

AFFIDAVIT

ARUN KASI (D/6017/2018)

PRADEEP RAJA. T (D/6864/2020)

COUNSELS FOR PETITIONER

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