

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (CIVIL) NO.7455 OF 2001

IN THE MATTER OF:

Naz Foundation

----Petitioner

Versus

Govt. of N.C.T. and others

-----Respondents

Reply Affidavit on Behalf of Respondents 4 and 5

I, M.L.Soni, having office at Ministry of Health & Family Welfare, National AIDS Control Organisation, 9th Floor, Chanderlok Building, 36, Janpath, New Delhi-110001, do here by solemnly affirm and state as under:

1. That I, in the capacity of Under Secretary to the Government of India, Ministry of Health & Family Welfare, National AIDS Control Organisation and having gone through the records of the case, I am as such competent to depose by the present affidavit
2. That the paras of the Writ Petition which are not specifically admitted hereunder may be deemed to have been traversed and denied.
3. The strategy adopted by the National AIDS Control Organisation for prevention and control of HIV/AIDS in India is submitted as under:

There are populations identified to be at a greater risk of acquiring and transmitting HIV infection due to a high level of risky behaviour and insufficient capacity or power for decision making to protect

themselves from infection. Such population also known as High Risk Groups, broadly including men who have sex with men (MSM), female sex workers and injecting drug users.

(a). The strategy for preventing and the further transmission of infection includes:

i Making the general population and high risk groups through strategic IEC (Information Education Communication) & BCC (Behaviour Change Communication) providing them with the necessary tools and information for protecting themselves from HIV infection.

ii. Motivating safer sexual practices by reducing sexual partners, being faithful to a single partner abstaining from casual sex and the correct and consistent use of condoms.

iii. Controlling sexually transmitted infections (STIs) among high risk groups along with promoting use of condoms as preventive measure.

iv. Peer education and community participation (being the essential component of primary health care).

v. Ensuring availability of safe blood and blood products; and

vi. Reinforcing the traditional Indian moral values of abstinence delayed sexual debut till marriage and fidelity among youth and other impressionable groups of population.

(b) To create an enabling socio-economic environment so that all sections of population can have access to proper information, health care and counseling services to protect themselves from the infection and at the same time empower families and communities to provide better care and support to people living with HIV/AIDS.

(c) Improving services for the care of people living with AIDS both in hospital and at homes through community care.

4. It is submitted that the report of the expert group on size estimation of population with high risk behaviour for NACP-III planning, January 2006 estimated that there are about 25 lakh MSMs (Men having sex with men). The National Sentinel Surveillance Data 2005 shows that more than 8% of the population of MSM are infected by HIV while the HIV prevalence among the general population is estimated to be lesser than 1%. Given the high vulnerability of MSMs to HIV infection, NACO has developed programmes for undertaking targeted interventions among them. These projects are implemented by NGOs with financial support from NACO. Presently 1,46,397 MSMs (60%) are being covered through 30 targeted interventions. Under these targeted intervention projects, the objectives are to:

- a. reduce number of partners and by bringing about a change in their behaviour;
- b. reduce their level of risk by informing them about providing access to condoms;
- c. providing access to STD services.

These population are mostly reluctant to reveal same sex behaviour due to the fear of law enforcement agencies, keeping a large section invisible and unreachable and pushing the infection underground, making it difficult for us to access them. Thus, while the National Baseline BSS (Behaviour Surveillance Survey) of 2002 data shows that

68.6% MSM population are aware about methods of preventing infection only 36% of them use condoms.

5. It is submitted that the enforcement of section 377 of IPC can adversely contribute to pushing the infection underground, make risky sexual practices go unnoticed and unaddressed. The fear of harassment by law enforcement agencies leads to sex being hurried, leaving partners without the option to consider or negotiate safer sex practices. As MSM groups lack "safe place" and utilise public places such as railway stations etc, they become vulnerable to harassment and abuse by the police. The hidden nature of MSM groups further leads to poor access to condom, healthcare services and safe sex information. This constantly inhibits/impedes interventions under the National AIDS Control Programme aimed at preventing spread of HIV/AIDS by promoting safe sexual practices by using condoms or abstaining from multipartner sex etc.
6. It is submitted that for prevention of HIV/AIDS it is essential that there should be an enabling environment where the people involved in risky behaviour may be encouraged not to conceal information so that they are provided total access to services of National AIDS Control Programme.
7. It is submitted that as far as the transmission of HIV infection is concerned, it is related to multiple sexual partners in respect of heterosexual or homosexual behaviour, requiring change of lifestyles towards abstinence, faithful to partner and/ or the correct and consistent use of condoms. Every effort is being made to promote these messages.

VERIFICATION

Verified at New Delhi on this day of July 17, 2006 that the contents of my above affidavit are true and correct and nothing has been concealed therein.

DEPONENT

M.L.SONI

Under Secretary to the Government of
India, National AIDS Control
Organisation, Ministry of Health and
Family Welfare, New Delhi-110001