

ITEM NO.5

COURT NO.1

SECTION PIL

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO(s). 535 OF 1998

SAHARA HOUSE

..... Petitioner(s)

VERSUS

U.O.I. & ORS

..... Respondent(s)

(With office report)

WITH W.P(C) NO. 311 of 2003

(With appln.(s) for directions and permission to file
addl.documents and office report)

W.P(C) NO. 512 of 1999

(With appln.(s) for ad interim orders and amendment of the
petition and impleading party)

W.P(C) NO. 61 of 2003

(With office report)(for final disposal)

Date: 01/10/2008 These Petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE P. SATHASIVAM

Mr. Naveen R. Nath, Adv. (A.C.)

For Petitioner(s) Ms. Kamini Jaiswal, Adv.(NP)

In W.P.(C)NO.61/03

WP(C) 311/03

Mr. Jai Singh, Adv.

Ms. Rita, Adv.

For Ms.Jyoti Mendiratta, Adv.

For Respondent(s) Mr. Gopal Subramanim, ASG

Ms. Sunita Sharma, Adv.

Mr.Aman Ahluwalia, Adv.

Ms.Pia D'Mello, Adv.

Ms.Asha G.Nair, Adv.

Mr.Ranjan Mazmudar, Adv.
For M/s. Corporate Law Group, Advs.

State of
Karnataka

Mr. Amit Kr.Chawla, Adv.
for Mr.Sanjay R.Hegde, Adv.

Mrs. Hemantika Wahi, Adv.
Mr. Somnath Padhan, Adv.

Mr.Sunil Kumar Singh, Adv.
Mr.Anuvrat Sharma, Adv.

A.P.

Mr.Manoj Saxena, Adv.
For Mr.T.V.George, Adv.

UPON hearing counsel the Court made the following
ORDER

Mr.Gopal Subramaniam, learned Additional Solicitor General appearing for Union of India has filed an affidavit duly sworn to by the Joint Director of National Aids Control Organisation (NACO), New Delhi with a comprehensive report as to the measures to be taken by the various hospitals (both government and private), NGOs and other associations connected with the treatment to be given to the HIV/AIDS patients and the Government of India (Ministry of Health & Family Welfare) has already issued an Office Memorandum dated 26th August, 2008 to this effect and the same has been sent to all the State Governments/Union Territories for implementing the scheme. We direct all the State Governments/Union Territories to comply with the directions in the said O.M. and the NATO to submit a progress report to this effect

within a period of four months. Respondent nos.37-38 may file their suggestions regarding the scheme suggested by the Union of India. If any modification is required for the scheme, the same shall be given

effect to and a further report may be submitted.

List in the end of January, 2009.

(G.V.Ramana)
Court Master

(Veera Verma)
Court Master

**T-11020/29/1998/NACO(Admn ART)
Government of India
Ministry of Health and Family Welfare
National AIDS Control Organization**

6th Floor, Chandralok Building,
36 Janpath, New Delhi-110001
Dated :26th August , 2008

OFFICE MEMORANDUM

Sub: Comprehensive care for PLHA's at ART centres – directive reg.

In a Public Interest Litigation, the Hon'ble Supreme Court of India reviewed the steps taken by National AIDS Control Organisation, Ministry of Health and Family Welfare, Government of India to combat HIV/AIDS and the services being provided to PLHA's. In this regard, the Supreme Court has issued directives for enhancing the extent and efficacy of treatment administered to PLHAs.

Attention of all concerned is drawn towards the following directives:

1. ***“At present, 172 ART centres are functional. All category A & B districts shall be covered in a phased manner and ART centres shall be established in these districts”.***

Action Taken: All states must ensure that all A & B category districts have at least one fully functional ART centre. Status of ART centre in the states must be reviewed accordingly, so that ART services are made available in all A & B category districts by March 2009.

2. ***“A plan for link ART centres has been formulated and put into operation by NACO. NACO is directed to ensure that all districts which have a critical mass of patients on ART shall have a link ART centre. NACO shall ensure that 650 Link ART centres shall be made functional by 2010.”***

Action Taken: All states must identify the sites for Link ART centres based on NACO guideline and intimate the same to NACO for issue of administrative sanction, so that necessary refurbishment and training of manpower at Link ART centres can be undertaken. The Link ART centres need to be operationalised at the earliest so that PLHAs do not have to travel long distance to get ART.

3. ***“Presently 139 CD4 machines are installed in the country to take care of 172 centres, by way of a sample transport mechanism for centres without CD4 machines. The sample is transported by the lab technician who brings back the report also after testing at the Nodal Centre. NACO has also entered into a comprehensive maintenance contract with effect from May 2007 with an agency for maintenance of the CD4 machines and stringent damage clauses have been inserted to ensure that repair and maintenance of these machines is done in a timely and efficient manner. The facilities shall be extended by NACO as more centres are opened up and the sample transport mechanism will be further expanded”.***

Action Taken: All states must identify the sites for future ART centres as per Global fund Rd IV / VI targets so that CD 4 machines can be procured accordingly. As you are aware that NACO has entered into a comprehensive maintenance contract for CD4 machines, hence, it must be ensured that any fault / break down in the CD4 machines is rectified at the earliest. It should be ensured that all People Living with HIV/AIDS (PLHAs) and Children Living with HIV/AIDS (CLHAs) with ART centres undergo a CD4 test as per National ART Guidelines.

4. ***“ART centers will be maintained by the Central and State Governments in a clean and hygienic manner and shall provide clean drinking water, seating arrangement and clean toilets facility to all PLHA”.***

Action Taken: All ART centres should have adequate space, waiting area, sitting arrangement, clean toilet facility and water drinking. The one time non recurring grant of Rs. 4.5 Lakh and recurring grant Rs. 1.5 lakh per year provided by NACO to ART centre should be utilized for providing these facilities. Requests for requirement of additional grants for this purpose should be forwarded to National AIDS Control Organisation (NACO). The centre should be refurbishment in a manner to provide good ambiance at the centre. Since, hospitals are under the control of State Governments, it must be ensured that adequate space is provided for the ART centres.

5. ***NACO and all State Governments are directed to immediately create a mechanism for redressal of grievances at ART centres. NACO shall post the names and contact details of its Regional Coordinators as well as the Nodal Officers heading an ART Centre on its website and these will be made available to INP+ also. Further, a committee will be constituted in every State, to be chaired by the Secretary, Health of the State Government/ Medical Education and consisting of among others, representatives of PLHA networks; this Committee shall meet every quarter and act as a grievance redressal mechanism. This mechanism will ensure that issues such as improper facilities, shortage of medicines, non-functioning of machines, delays etc are brought to the attention of the Nodal Officer, Regional Coordinator as well as NACO in a systematic manner for timely response.”***

Action Taken: (a) All ART centre should have a complaint box so that the PLHAs can put their complaint if any into the box. The Nodal Officers should review the complaints weekly and take the necessary action in a timely manner.

(b) At the state level a committee should be constituted for redressal of grievances at ART centre and to routinely review functioning of the ART centres. The Committee shall be headed by the Health Secretary of the State and shall consist of Project Directors of the SACS, Director of Medical Education, Director Health Services, and the Nodal Officers of the ART centre. The committee may also include a representative of NACO, either the regional coordinator or anyone from NACO directly and a representative from the local NGO/ Network of +ve People. The Committee should meet every once in two months and ensure that the grievances if any are sorted out. A communication in this regard was sent to all States by Director General, NACO in the month of April 2008.

6. ***“Union of India is directed to ensure that drugs for treatment of Opportunistic Infections, in accordance with the NACO lists, will be available free for all PLHAs without any difficulty”***

Action Taken: NACO has already initiated procurement of drugs for Opportunistic Infections at regional level through State agencies with experience in this regard. Project Directors of SACS must ensure that these drugs are procured & supplied to all ART centre urgently.

7. ***“Union of India is directed to ensure that testing kits shall be available without any shortfall”***

Action Taken: The SACS must ensure that adequate quantity of HIV test kits are available at all ICTCs and there is adequate buffer stock of test kits. Access to testing is a crucial component of National AIDS Control Programme and availability of kits is the key factor for increasing the testing for HIV.

8. ***“Union of India and all the State Governments shall ensure that in all Public Hospitals, PHC’s, CHC’s and the like, PEP drugs and material shall be provided (free of cost) to all Doctors, nurses and hospitals staff so that, under no circumstances, is a PLHA denied treatment on the ground that such equipment and material are not available. The State Governments shall ensure that all health workers are provided a safe working environment and that PEP will be easily accessible and available”***

Action Taken: It must be ensured that adequate quantity of gloves, masks, gowns and other material for universal work precaution are available in the hospitals and patient are not denied treatment due non availability of such material. The hospitals must have the protocol and drugs for PEP in case of accidental needle stick injury to health care workers. The protocols, desk reference and posters in this regard have already been sent to all States and should be widely disseminated.

9. ***“All Doctors and nurses in the public sector and the private sector are directed to immediately familiarize themselves and comply with the protocols and policies as prepared by NACO. The Medical Council of India, Dental Council of India and the Nursing Council of India shall take steps to disseminate the NACO protocols and policies on their respective websites as well as on the websites of the State Medical and Nursing Councils. Further, the Medical Council of India as well as the Nursing Council of India shall ensure that these protocols are made part of the teaching curriculum/reading material at and disseminated to all Medical and Dental colleges as well as other institutions for training of nurses and other health care professionals. The Medical Council of India, Dental Council of India and the Nursing Council of India are directed to file a compliance report within six weeks”***

Action Taken: The SACS must ensure there is a wide dissemination of NACO protocols to both public and private health facilities. Steps are being taken to ensure that these protocols are made part of the teaching curriculum in medical, nursing and dental colleges through respective Councils viz. Medical Council of India, Nursing Council of India and Dental Council of India etc.

10. ***“All Doctors, nurses and hospital staff, whether in the public sector or private sector shall treat PLHA in a professional and humane manner, treating them always with dignity and care. No Doctor or nurse shall refuse to treat a PLHA on account of his/her positive status. In treating a PLHA, there shall be no discrimination or stigma whatsoever”.***

Action Taken: It must be ensured that there is no discrimination or stigma to PLHA's at health care facilities or otherwise. The cases of denial of services to positive patients should be viewed seriously and action initiated in all such cases.

11. ***“Doctors in the private sector, in particular, are directed to immediately familiarize themselves with the NACO's comprehensive protocols and policies with regard to care and treatment, which are available on NACO website. NACO approved ART regimen have proven to be cost effective, safe and PLHA have shown good response to these regimen. The private practitioners should use these cost effective regimen in the first instance and other regimens should be prescribed only in cases where these cannot be used for the reasons of toxicity/failure etc. The Medical Council of India and the Consumer Courts are to take a strict view of private practitioners who take advantage of the illiteracy and poverty to prescribe wrong or unnecessary regimes of drugs or charge exorbitant amounts. Irrational prescriptions using wrong dosages/wrong combinations shall be dealt with severely and appropriate action taken”.***

Action Taken: The SACS should ensure that doctors in private or public sector are sensitized / trained on NACO protocols on care & treatment. This can be done through association like Indian Medical Association, branches of Association of India, Surgeons of India, Indian Academy of Paediatrician, FOGSI etc. Strict action must be taken on all irrational prescriptions of ART. All advertisements offering potential cure for HIV must be banned and such organizations should be dealt with strictly, as there is no proven cure available for HIV/AIDS so far.

12. ***“The State Governments shall strictly abide by NACO policies and guidelines regarding counselling. Counselling will be done in a meaningful manner, spending time on each individual PLHA in an atmosphere that provides privacy and confidentiality”.***

Action Taken: The SACS must ensure that the quality of counselling offered at all ICTCs and ART Centres is of the highest standard. The counsellor must spend adequate time with each patient and ensure that confidentiality is maintained. The quality of counselling ultimately affects the adherence to therapy and outcome of the patient.

13. ***“A status report shall be filed by NACO, which is directed to act as a nodal agency on behalf of the Government of India, before this Court every three months on the steps taken by the Central Government pursuant to these directions”.***

Action Taken: All States must send a report on these issues every two months so that NACO can file a status report every three months to the Hon'ble Supreme Court.

14. ***“All State Governments, Medical Council of India, Dental Council of India and Nursing council of India shall file compliance reports as directed within six months”.***

Action Taken: All State Governments, Medical Council of India, Dental Council of India and Nursing Council of India should send compliance report as directed by the Court within six weeks.

All concerned are requested to ensure strict compliance to the above directives.

This issues with the approval of Secretary (Health & FW), Ministry of Health and Family Welfare, Government of India.

(Under Secretary to the Government of India)

1. Project Director, State AIDS Control Society of all States/UTs/Municipal Corporations.
2. Principal Secretary/Secretary(Health & FW) of all States.
3. Director (Medical Education), Directorate of Health Services, of All States.
4. Director (Health Services), Directorate of Health Services, of All States.
5. Nodal Officer, All ART Centres.
6. Regional Coordinators (CST).
7. All NACO officials.
8. The Additional Solicitor General, India.

Copy for information:

1. PPS to HFM
2. PPS to MOS(H&FW)
3. PPS to Secy. (Health & FW)
4. PPS to DGHS
5. PS to AS & DG, NACO.

(Under Secretary to the Government of India)

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO.535 OF 1998

SAHARA HOUSE

Petitioner(s)

VERSUS

U.O.I. & ORS

Respondent(s)

(With office report)

With W.P. (C) No.512 of 1999

(With appln(s) for amendment of the petition, directions,
impleading party and ad-interim orders)

W.P. (C) No.61 of 2003

(With office report)

W.P. (C) No.311 of 2003

(With appln(s) for directions, permission to file additional
documents and office report)

Date: 01/10/2010 These Matters were called on for hearing
today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN
HON'BLE MR. JUSTICE SWATANTER KUMAR

For Petitioner(s)

In WP 535/1998:

Mr. Naveen R. Nath, Adv. (A.C.)

In WP 512/1999:

Mr. Chander Uday Singh, Sr. Adv.
Ms. Shivangi, Adv.
Mr. Naveen R. Nath, Adv.

In WP 61/2003:

Ms. Kamini Jaiswal, Adv.

Mr. Sandeep S. Parekh, Adv.
Mr. Abhimanue Shrestha, Adv.
Mr. D.P. Singh, Adv.

In WP 311/2003: Mr. Colin Gonsalves, Sr. Adv.
Mr. Tariq Abeed, Adv.
Ms. Jyoti Mendiratta, Adv.

For Respondent(s) Mr. Ashok Bhan, Adv.
Mr. Subhash Kaushik, Adv.
Mr. Arvind Kumar Sharma, Adv.

Mr. Sudhir Kumar Gupta, Adv.

Mr. Abhinav Mukerji, Adv.

Mr. T.S. Doabia, Sr. Adv.
Mr. Aman Ahluwalia, Adv.
Mr. Manpreet Singh Doabia, Adv.
Mr. Vikas Bansal, Adv.
Ms. Sadhana Sandhu, Adv.
Ms. Pia Singh, Adv.
Mr. D.S. Mahra, Adv.
Ms. Sunita Sharma, Adv.
Mr. Aman Verma, Adv.

Mr. Janaranjan Das, Adv.

Mr. Ranjan Mukherjee, Adv.
Mr. S. Bhowmick, Adv.
Mr. S.C. Ghosh, Adv.

Mr. T.V. George, Adv.

Mr. G. Prakash, Adv.
Ms. Beena Prakash, Adv.
Mr. V. Senthil, Adv.

Ms. Sushma Suri, Adv.

Mr. Anuvrat Sharma, Adv.
Ms. Alka Sinha, Adv.

Mr. Naresh K. Sharma, Adv.

Mr. T. Harish Kumar, Adv.

Mr. P. Prasanth, Adv.
Mr. V. Vasudevan, Adv.

Mr. Pragyan P. Sharma, Adv.
Mr. P.V. Yogeswaran, Adv.

Mr. Gopal Subramaniam, SG.
Mr. T.S. Doabia, Sr. Adv.
Mr. Aman Ahluwalia, Adv.
Ms. Sadhana Sandhu, Adv.
Mr. Manpreet Singh Doabia, Adv.
Ms. Pia, Adv.
Mr. Vikas Bansal, Adv.
Mr. D.S. Mahra, Adv.

Ms. A. Subhashini, Adv.

Mr. Ansar Ahmad Chaudhary, Adv.

Mr. Khwairakpam Nobin Singh, Adv.
Mr. Sapam Biswajit Meitei, Adv.

Mr. T.C. Sharma, Adv.

Mr. V.G. Pragasam, Adv.
Mr. S.J. Aristotle, Adv.
Mr. Praby Ramasubramanian, Adv.
Mr. L.A.J. Selvam, Adv.

Mr. Edward Belho, Adv.
Ms. K. Enatoli Sema, Adv.
Mr. Rituraj Biswas, Adv.

Mr. Sanjay V. Kharde, Adv.
Ms. Asha G. Nair, Adv.

Mr. Janaranjan Das, Adv.

Mr. P.N. Ramalingam, Adv.

Mr. Ravindra Keshavrao Adsure, Adv.

Mr. Sanjay R. Hegde, Adv.
Mr. Ramesh Kumar Mishra, Adv.
Mr. Krutin Joshi, Adv.
Mr. Abhishek Malviya, Adv.

Mr. Tara Chandra Sharma,Adv.
Ms. Neelam Sharma,Adv.

Mr. Gopal Singh,Adv.
Mr. Manish Kumar,Adv.

Mr. Gopal Singh,Adv.
Mr. Rituraj Biswas,Adv.

Mr. P.P. Malhotra,ASG.
Ms. Vimla Sinha,Adv.
Mr. Shailendra Sharma,Adv.
Ms. Anil Katiyar,Adv.

Mr. Navneet Kumar,Adv.
for M/s. Corporate Law Group,Advs.

Ms. Vibha Datta Makhija,Adv.
Mr. Saurabh Mishra,Adv.

Mr. Ramesh Babu M.R.,Adv.

Ms. Hemantika Wahi,Adv.
Ms. Nupur Kanungo,Adv.

Mr. A. Mariarputham,AG., Sikkim
Ms. Aruna Mathur,Adv.
Mr. Amarjeet Singh Girsra,Adv.
for M/s. Arputham, Aruna & Co.,Advs.

Mr. Anil Shrivastav,Adv.
Mr. Ritu Raj,Adv.

Mr. Guntur Prabhakar,Adv.

Mr. Naresh K. Sharma,Adv.

Mr. Anjani Kumar Jha,Adv.

Mr. T.S. Doabia,Sr.Adv.
Mr. Manpreet Singh Doabia,Adv.
Ms. Sushma Suri,Adv.

Mr. Pragyan P. Sharma,Adv.
Mr. P.V. Yogeswaran,Adv.

Mr. Arun K. Sinha, Adv.

Mr. Atul Jha, Adv.

Mr. D.K. Sinha, Adv.

Mr. Anil K. Jha, Adv.

Mr. Santosh Kumar, Adv.

Mr. Manjit Singh, Adv.

Mr. Kamal Mohan Gupta, Adv.

Dr. Manish Singhvi, AAG

Mr. Devanshu Kumar Devesh, Adv.

Mr. Sahjil S. Chauhan, Adv.

Mr. Milind Kumar, Adv.

Mr. Amit Kumar, Adv.

Mr. Somesh Chandra Jha, Adv.

Ms. Rekha Bakshi, Adv.

Mr. Manoj Pant, Adv.

Mr. Ashish Kumar, Adv.

Mr. R. Nedumaran, Adv.

Mr. Vimal Dubey, Adv.

Mr. D. Mahesh Babu, Adv.

Mr. Ramesh Allanki, Adv.

UPON hearing counsel the Court made the following

O R D E R

I.A. No.4 in W.P. (C) No.512 of 1999:

By the present Interlocutory Application, the petitioners herein have challenged the National AIDS Control Organisation's [for short, 'the NACO'] Directives by which the Second Line treatment is made available only to certain specified categories of persons based on identified and specified criteria.

The Interlocutory Application has been moved also for a further direction from this Court that all those who are clinically evaluated to be in need of Second Line Anti-

Retroviral [for short, `the ART'] drugs are provided such treatment free of cost without regard to geographical location, current registration with ART Centres, length of time on first line ART or any other condition. Having heard arguments at length, we are of the view that, in the first instance, the Quarterly ART Reporting Format for private sector needs to be immediately supplied through NACO to all private hospitals who in turn will fill up the Reporting Format, which is annexed to the affidavit of Union of India dated 9th September,2010.

The ART Reporting Format will be posted on the Website of NACO within two days.

The private hospitals would submit the data to NACO within two weeks after the Format is put on the Website.

For further directions, let this matter stand over for four weeks. As far as private Doctors treating HIV patients are concerned, we hereby direct Medical Council of India [for short, `the MCI'], to implement our above directions within two weeks from the Reporting Format being put on the Website.

The MCI, in turn will issue appropriate directions to the private Doctors, to furnish the requisite information in the ART Reporting Format to NACO. The guidelines will be issued by the MCI within a period of two weeks from today. We are informed that Ministry of Health and Family Welfare has issued appropriate directions vide communication dated 9th September, 2010.

[Alka Dudeja]
A.R.-cum-P.S.

[Madhu Saxena]
Assistant Registrar

ITEM NO. 67

COURT NO.1

SECTION PIL

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

W R I T P E T I T I O N (C I V I L) N O . 5 3 5 O F 1 9 9 8

SAHARA HOUSE

Petitioner(s)

V E R S U S

U.O.I. & ORS

Respondent(s)

(With office report)

With W.P. (C) No.512 of 1999

(With appln(s) for amendment of the petition, directions, impleading party and ad-interim orders)

W.P. (C) No.61 of 2003

(With office report)

W.P. (C) No.311 of 2003

(With appln(s) for directions, permission to file additional documents and office report)

Date: 16/12/2010 These Matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE K.S. PANICKER RADHAKRISHNAN

HON'BLE MR. JUSTICE SWATANTER KUMAR

For Petitioner(s)

Mr. Chander Uday Singh, Sr. Adv.

In WP 535/1998:

Mr. Naveen R. Nath, Adv. (A.C.)

Mr. Anand Grover, Adv.

Ms. Shivangi Rai, Adv.

In WP 512/1999:

Mr. Chander Uday Singh, Sr. Adv.

Mr. Naveen R. Nath, Adv.

Ms. Shivangi, Adv.

In WP 61/2003:

Ms. Kamini Jaiswal, Adv.

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In WP 311/2003:

Mr. Colin Gonsalves, Sr. Adv.

Mr. Tariq Abeed, Adv.

Ms. Jyoti Mendiratta, Adv.

For Respondent(s)

Mr. Ashok Bhan, Adv.

Mr. Subhash Kaushik, Adv.

Mr. Aditya Sharma, Adv.

Mr. Arvind Kumar Sharma, Adv.

Mr. Sudhir Kumar Gupta, Adv.

Mr. Anil K. Jha, Adv.
Mr. D.K. Sinha, Adv.

Mr. Anil K. Jha, Adv.
Mr. Manoranjan Kumar Jha, Adv.

Mr. Manjit Singh, AAG.
Mr. Kamal Mohan Gupta, Adv.

Dr. Manish Singhvi, AAG, Rajasthan.
Mr. Devanshu Kumar Devesh, Adv.
Mr. Sahjil S. Chauhan, Adv.
Mr. R. Gopalakrishnan, Adv.

....5/-

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Mr. A. Sharan, Sr. Adv.
Mr. Amit Kumar, Adv.
Mr. Ashish Kumar, Adv.
Mr. Somesh Chandra Jha, Adv.

Mr. R. Nedumaran, Adv.

Mr. D. Mahesh Babu, Adv.
Mr. Ramesh Alanki, Adv.

Ms. Pareena Gautam, Adv.
Mr. B.S. Banthia, Adv.
Mr. Vikas Upadhyay, Adv.

Ms. Jayshree Anand, Adv.
Mr. K.K. Mahalik, Adv.
Mr. Ajay Pal, Adv.

UPON hearing counsel the Court made the following
O R D E R

The Minutes of Meeting for Universal Access to Second Line Treatment of HIV is taken on Record and marked as 'X'. The said Minutes shall be treated as the Order of this Court. The matter needs to be monitored in phases. Consequently, this writ petition to stand over for twelve weeks. On completion of twelve weeks, the petitioner(s) will submit a status report.

[Alka Dudeja]
A.R.-cum-P.S.

[Madhu Saxena]
Assistant Registrar

[N.B.: The Minutes of Meeting are annexed herewith.]

**Statement/Minutes of Meeting for bringing about Universal
Access to Second line treatment**

SAHARA HOUSE vs. UNION OF INDIA,
WRIT PETITION (C) No. 535 of 1998

SANKALP REHABILITATION TRUST & ANR. V. UNION OF INDIA
WRIT PETITION (C) No.512/1999

VOLUNTARY HEALTH ASSOCIATION OF PUNJAB vs UNION OF
INDIA
WRIT PETITION No. (C) No. 311/2003

COMMON CAUSE Vs. UNION OF INDIA WRIT PETITION (C) No.
61/2003

One of the issues that has arisen in the above-referenced Writ Petitions concerns the criteria currently being employed by the National AIDS Control Organization (NACO) for administering second line treatment to persons suffering from HIV / AIDS. Specifically, the Petitioners have sought extension of second line treatment to all persons in need of it - whether they underwent first line treatment in government or private sector, and irrespective of whether they were put on a rational regimen for first line treatment. The NACO has consistently maintained that the ultimate goal is to have universal access to second line treatment, but there were various capacity-related and other constraints on doing so, and this was therefore sought to be achieved in a phased manner. In proceedings before this Hon'ble Court, the parties undertook to hold a review meeting to discuss the modalities for bringing about universal access to second line treatment to all those in need of it. A meeting was held on 13.12.10, where the following decisions were taken:

1. The private practitioners are required to follow the ART guidelines outlined in the OM no. T-11020/29/1998 (Admn.-ART) dated 9th September 2010 and earlier OM no. T-11020/29/1998 (Admn.-ART) dated 26th August 2008 approved by Hon'ble Supreme Court of India in its order dated 1st October 2008

2 NACO commits to making second line treatment available to all those in need of it - whether they underwent first line treatment in the government sector or private sector, and irrespective of whether they were put on rational / irrational treatment regimen.

3. However, there are some immediate constraints that need to be addressed, before second line treatment can be universally available. The process for drug procurement (through international competitive bidding) is likely to take at least six to eight months, and some lead-up time is also required for strengthening viral load capacity and trained personnel.

4. Further, complete data on the number of persons who would seek second line treatment in the government sector is presently unavailable. Without such data, it is difficult for NACO to gauge the nature and extent of capacity addition that is required to handle the additional inflow of persons in need of treatment without compromising on quality of care.

5. Therefore, it is proposed that in the first phase, universal access to second line treatment would be started at four Centres of Excellence (JJ Hospital in Mumbai, GHTM Tambaram, Maulana Azad Medical College(MAMC), New Delhi and Calcutta School of Tropical Medicines, Kolkata) with immediate effect. This pilot initiative would be studied over a period of three months, which would give an indication of the numbers of additional persons seeking second line treatment, thus enabling capacity addition to proceed in a planned and phased manner. A Status Report would be presented to this Hon'ble Court after three

months, along with a plan for Phase II (where such treatment is likely to be made universally available at some more Centres of Excellence).

6. By way of clarification, it is submitted that persons from anywhere in the country (in need of second line treatment) may be referred to these four Centres of Excellence presently.

7. As a matter of procedure, person in need of second line treatment will register at the local ART centre. This could be a person who suspects treatment failure, or a person already on second line treatment. The local ART centre will then refer the person to the State AIDS Clinical Expert Panel (SACEP) in the Centre of Excellence, as per existing operational guidelines and prior appointment shall be given. The person shall then report to SACEP where further viral load tests etc. will be conducted as required, and a decision would be taken on whether there is genuine treatment failure necessitating second line treatment.

8. The precise progression of phases depends, in large part, on the number of persons requiring treatment once access to such treatment is universalized and patients are referred by the practitioners / information provided by networks. NACO shall make its best efforts to ensure that such treatment is universally available at the earliest.

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO(s). 535 OF 1998

SAHARA HOUSEPetitioner

VERSUS

U.O.I. & ORSRespondents

WITH

WRIT PETITION (CIVIL) NO(s). 512 OF 1999

WRIT PETITION (CIVIL) NO(s). 61 OF 2003

WRIT PETITION (CIVIL) NO(s). 311 OF 2003

O R D E R

We have heard learned counsel for the parties and perused the record.

The matters are pending since 1998 and have been monitored by this Court. This Court had been passing the orders from time to time and the respondents have taken the steps accordingly, and most of the problems are solved.

Learned senior counsel for the petitioners has submitted that only few issues remain to be solved by the respondents which are as follows:-

1. Issues about HIV2 Diagnosis

The guidelines for diagnosis of HIV 2 have been finalised and rolled out by DAC.

All persons should be tested for HIV 2 before initiation of ART. Further, testing for Hepatitis B and C should be available to all persons. The petitioners will make separate submissions to NACO in this regard.

2. Issues regarding ART regimen under national programme

While the petitioners agreed the steps mentioned in the paragraph are welcome, there

are serious issues relating to the delay in detecting non-adherence to ART as well as people not being switched to alternate first line/second line treatment, resulting in their early death. The petitioners submit that routine Viral Load testing should be the norm. Routine Viral Load testing would be more economic for the National Programme and is better for the clinical management of the patient. The petitioners are not in agreement with NACO on this issue and will make separate submissions to NACO within a month.

3. NACO assured the petitioners that the position with regard to the stock out of ART drugs had improved.

4. NACO to inform the petitioners in due time about the status of the introduction of 3rd line in the National Programme.

Learned Senior counsel for the petitioners has agreed that he would make a proper representation in respect of the aforesaid four grievances and Mr. P.P. Malhotra, learned ASG has assured the Court that in case the representation is made, the same will be considered and appropriate order will be passed on them.

In view of the above, we dispose of all the cases. Petitioners may approach the respondents for redressal of their grievances and if so approached, the grievances shall be considered in accordance with law.

.....J.

(Dr. B.S. Chauhan)

.....J.

(S.A. Bobde)

New Delhi;

December 02, 2013.

ITEM NO.201

Court No.4

SECTION PIL

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO(s). 535 OF 1998

SAHARA HOUSE

Petitioner(s)

VERSUS

U.O.I. & ORS

Respondent (s)

(With office report)
 (For Final Disposal)

WITH W.P(C) NO. 512 of 1999

(With appln(s) for amendment of the petition and directions and impleading party and ad interim orders)
 (For Final Disposal)

W.P(C) NO. 61 of 2003

(With office report)
 (For Final Disposal)

WITH W.P(C) NO. 311 of 2003

(With appln(s) for directions and permission to file additional documents and office report)
 (For Final Disposal)

Date: 02/12/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
 HON'BLE MR. JUSTICE S.A. BOBDE

For Petitioner(s)

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 Mr. Suraj Samson,Adv.
 Ms. Filza Moonis,Adv.
 Mr. Mukesh Sharma,Adv.
 Mr. Puushottam S. Tripathi,Adv.

Mr. Naveen R. Nath, Adv. (AC)

Mr. Colin Gonsalves, Sr. Adv.
 Ms. Divya Jyoti, Adv.
 Ms. Jyoti Mendiratta, Adv.

Ms. Kamini Jaiswal, Adv.

For Respondent(s)

Mr. P.P. Malhotra, ASG

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 Mr. Chetan Chawla, Adv.
 Mr. V.K. Vijju, Adv.
 Mr. Gaurav Sharma, Adv.

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for Mr. Sharvan Kumar, Adv.
 Ms. Bhawna Singh Dev, Adv.
 Ms. Sushma Suri, Adv.
 Mr. S.N. Terdal, Adv.

Mr. Ajay Bansal, AAG
 Mr. Kuldip Singh, Adv.
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 Mr. Ritu Raj, Adv.

State of Kerala Ms. Liz Mathew, Adv.
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Mr. Apoorv Kurup, Adv.
Mr. Aniruddha P. Mayee, Adv.

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Mr. G. Prakash, Adv.

Mr. Naresh K. Sharma, Adv.

Mr. Sudhir Kumar Gupta, Adv.

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Mr. T. Harish Kumar, Adv.

Mr. T.V. George, Adv.

Mr. Ashutosh Kr. Sharma, Adv.
Mr. Anuvrat Sharma, Adv.

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-4-

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