

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

Tuesday, the Thirty First day of August Two Thousand Twenty One

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PRESENT

THE HON`BLE MR JUSTICE N.ANAND VENKATESH

WP.NO.7284 OF 2021

1 MRS.S.SUSHMA

[PETITIONERS]

2 MS.U.SEEMA AGARVAL

Vs

**1 DIRECTOR GENERAL OF POLICE
TAMIL NADU POLICE DEPARTMENT,
DR.RADHAKRISHNAN SALAI, MYLAPORE,
CHENNAI 600 004.**

[RESPONDENTS]

**(R1 DELETED VIDE ORDER DT 22/3/2021
MADE IN WP.7284/2021 BY NAVJ)**

2 COMMISSIONER OF POLICE
GREATER CHENNAI POLICE, NO.132,
COMMISSIONER OFFICE BUILDING,
E.V.K.SAMPATH ROAD, VEPERY ,
CHENNAI 600 007

3 COMMISSIONER OF POLICE
MADURAI, ALAGAR KOVIL ROAD,
MADURAI 625 002

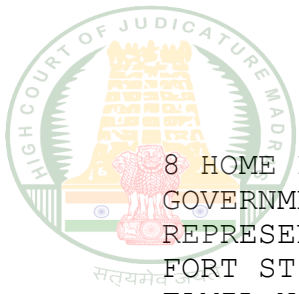
4 MR.V.SENTHIL KUMAR

5 MR.R.UDHAYAKUMAR

6 THE INSPECTOR OF POLICE,
THALLAKULAM POLICE STATION, MADURAI.

7 THE INSPECTOR OF POLICE,
AVANIYAPURAM POLICE STATION, MADURAI.

(R6, R7 SUO-MOTU IMPEADED VIDE ORDER DT
22/3/2021 MADE IN WP.7284/2021 BY NAVJ)



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8 HOME DEPARTMENT,
GOVERNMENT OF TAMIL NADU,
REPRESENTED BY SECRETARY TO GOVERNMENT,
FORT ST. GEORGE, CHENNAI 600009,
TAMIL NADU, INDIA.

9 TAMIL NADU STATE LEGAL SERVICES AUTHORITY,
REPRESENTED BY ITS MEMBER SECRETARY,
NORTH FORT ROAD, HIGH COURT CAMPUS,
CHENNAI - 600 104.

10 MINISTRY OF LAW, GOVERNMENT OF TAMIL NADU,
REPRESENTED BY SECRETARY TO GOVERNMENT,
FORT ST. GEORGE, CHENNAI 600 009,
TAMIL NADU, INDIA.

11 MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT,
REPRESENTED BY SECRETARY GOVERNMENT OF INDIA,
SHASTRI BHAVAN, DR. RAJENDRAPRASAD ROAD,
NEW DELHI-110 001.

12 THE DIRECTOR,
SOCIAL JUSTICE AND EMPOWERMENT,
SHASTRI BHAVAN, DR. RAJENDRA PRASAD ROAD,
NEW DELHI 110 001

13 NATIONAL MEDICAL COMMISSION,
REPRESENTED BY ITS CHAIRMAN,
DWARAKA, NEW DELHI-110077.

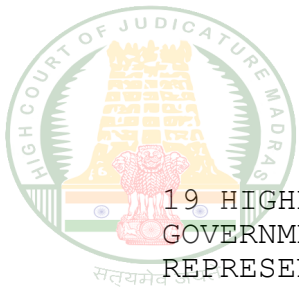
14 INDIAN PSYCHIATRIC SOCIETY,
REPRESENTED BY ITS PLOT 43,
SECTOR 55, GURUGRAM, HARYANA,
INDIA, PIN: 122003.

15 REHABILITATION COUNCIL OF INDIA,
REPRESENTED BY ITS MEMBER SECRETARY,
B-22, QUTUB INSTITUTIONAL AREA,
NEW DELHI - 110 016.

16 DEPARTMENT OF HIGHER EDUCATION,
GOVERNMENT OF INDIA,
REPRESENTED BY ITS JOINT SECRETARY,
122-C, SHASTRI BHAWAN, NEW DELHI - 110001.

17 DEPARTMENT OF SCHOOL EDUCATION & LITERACY,
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REPRESENTED BY SECRETARY TO GOVERNMENT,
FORT ST. GEORGE, CHENNAI 600 009,
TAMIL NADU, INDIA.



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20 THE UNIVERSITY GRANTS COMMISSION (UGC),
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BAHADUR SHAH ZAFAR MARG,
NEW DELHI-110.

21 ALL INDIA COUNCIL FOR TECHNICAL EDUCATION,
REPRESENTED BY ITS ADVISOR-1 (APPROVAL)
7TH FLOOR, CHANDRALOK BUILDING, JANPATH,
NEW DELHI - 110 00.

22 THE NATIONAL COUNCIL OF EDUCATIONAL
RESEARCH AND TRAINING (NCERT),
REPRESENTED BY ITS DIRECTOR,
SRI AURBINDO MARG, NEW DELHI

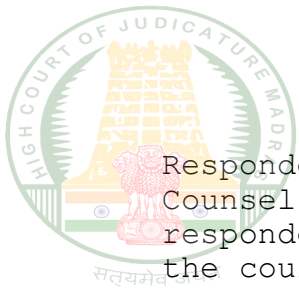
23 SECRETARY TO GOVERNMENT,
UNION OF INDIA,
MINISTRY OF HEALTH AND FAMILY WELFARE,
NIRMAN BHAVAN, NEAR UDYOG BHAVAN METRO STATION,
MOULAND AZAD ROAD, NEW DELHI-110001.

24 MINISTRY OF WOMEN AND CHILD DEVELOPMENT,
REPRESENTED BY ITS SECRETARY,
GOVERNMENT OF INDIA.

[The following Departments/Institutions are also Suo Motu added as respondents 7 to 23 in this writ petition on 07.06.2021 since the guidelines given by this Court needs to be followed/implemented by the impleaded respondents.]

Writ Petitions under Article 226 of the Constitution of India praying that in the circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to issue a WRIT OF MANDAMUS and/or any other writ, order or direction in the nature of a Mandamus, Directing Respondent Nos. 1 to 3 to inquire with the parents of the Petitioners and instruct them not to interfere with the life of the Petitioners and consequentially, to grant the necessary Police Protection to the Petitioners (In WP.NO.7284/2021).

Order : This petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.S.MANURAJ, Advocate for the petitioners and of State Public Prosecutor for the 1st and 2nd respondents, MS.SHABNAM, Government Counsel for the 7th, 9th, 17th and 18th respondents and of MR.C.K.CHANDRASEKHAR, ADVOCATE for the 8th



Respondent and of MR.V.CHANDRASEKHAR, Central Government Standing Counsel for the 10th, 11th, 13th, 14th, 15th, 16th, 18th, 20th, 21st, 22nd and 23rd respondents and of MR.SUBHARANJANI, ADVOCATE for the 12th Respondent the court made the following order:-

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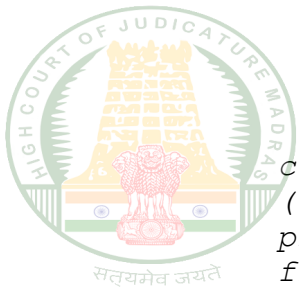
The matter was posted for hearing today to take note of developments that have taken place pursuant to the orders passed by this Court on 07.06.2021.

2.The learned State Public Prosecutor appearing on behalf of the 1st and 2nd Respondents submitted a compliance report filed by the Director General of Police, Tamil Nadu. The Compliance Report has specifically dealt with the directions "A" and "H" issued by this Court. It has been stated that these two directions have been circulated to all the Commissioners of Police in cities and the Superintendent of Police in Districts through two circular memorandums dated 09.06.2021 and 23.06.2021 and a direction has been given to strictly comply with the same. The relevant circular memorandums were also filed along with the compliance report. For proper appreciation, paragraphs 6 and 7 of the Compliance Report are extracted hereunder.

" 6. It is most respectfully submitted that there is no discrimination and abuse in the process of incarceration of transgender and intersex persons at Prison in the State of Tamil Nadu. As far as Transgender prisoners are concerned, as per the gender category mentioned in the warrant of the prisoner received from the Judicial Magistrate concerned they are being lodged in the respective prisons viz., Central Prison of Special Prisons for Women. The Trans - women Prisoners are lodged in Special prisons for Women and Trans - Men Prisoners are lodged in the central prisons and at present, no long term convict prisoners belong to this category are admitted in prisons, only few remand prisoners being to transgender category are admitted in prisons.

7. It is submitted that in this connection, the Director General of Police, Tamil Nadu Police Academy at Chennai has sent a reply letter in C.No.T1/3661/TNPA/2021 dated 17.08.2021 to the Director General of Police /Head of the Police Force, Tamil Nadu stating as follows :

As per the direction of the High Court on Online / Offline Training programme for Police Personnel to create awareness about the offences and penalties as stipulated under Chapter VIII of the Transgender persons (Protection of Rights) Act, 2019 and compliance of Rules 11 of the Transgender persons (Protection of Rights) Rule Act 2020 conducted at Tamil Nadu Police Academy with the assistance of Assistant Public Prosecutor and our officers. The offline training was



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conducted for 42 Deputy Superintendent of Police (Trainees) and for 25 TNPA staffs. The online training programme for Women Inspectors who are serving in the field was conducted by the Deputy Director of Tamil Nadu Police Academy.

Outreach programs will be conducted by the NGOs with community support to put forth first, handing problem faced in the hand of law enforcement agencies.

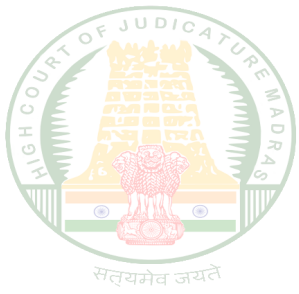
It is further requested that the ISTCs in all districts may be requested to conduct the training in further as TNPA will be imparting basic institutional training from 969 Sis and the photos of Training programme conducted at Tamil Nadu Police Academy for Police personnel is herewith attached."

3.It has been brought to the notice of this Court, by NGO workers who help and aid the community members that the police officers at various police stations refused to provide protection and even in certain cases harassed not only the community members but also NGOs and field workers who were helping them. This Court is appalled upon learning that these instances have taken place even subsequent to the Order passed by this Court and the consequent guidelines issued on 07.06.2021. One of the excuses given by the police authorities while shunning these persons is the lack of an internal circular and/or notification issued by the higher authorities of the Department in this regard. Evidently, the larger excuse seems to be the sheer lack of awareness and the apathy towards arming themselves enough to fight for a community of public belonging to the citizenry of this nation, to whom they swore to be servants. This Court in its earlier Order already observed that 'lack of awareness can be no excuse to any form of discrimination', and the absence of internal communication and hierarchical orders is no excuse to deny protection to the community that is vulnerable, susceptible to threat and harassment. What has been built by the State as a source of protection to the public cannot become the end from which they need protection.

4.When the above instances were brought to the notice of the State Public Prosecutor, it was submitted that the concern raised by this Court will be immediately informed to the DGP of Police and steps will be taken to create awareness to the Police about the circular memorandums issued by the DGP of Police and it will be ensured that direction "A" given by this Court will be strictly complied with.

5.In order to ensure further clarity on this issue, the following directions are issued.

- a. Police department to refrain from harassing activists and people belonging to NGOs, not just the people who belong to the LGBTQIA+ community.



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b.A specific clause is to be added in the Police Conduct Rules specifically providing that any harassment by the police, to the persons belonging to the LGBTQIA+ community and/or to the activists and NGO workers, will be treated as misconduct and will entail a punishment for such misconduct. and;

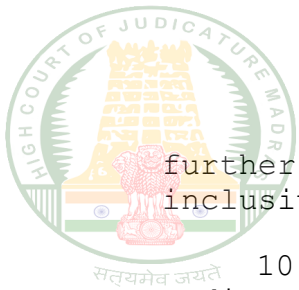
c. While conducting sensitization programs for the Police, it must be conducted through the persons belonging to the community and/or the activists and NGO workers who are involved in this cause.

6. The Learned Advocate General appearing on behalf of the Respondents 7, 8, 9, 17 & 18 submitted that some more time is required to file a compliance report with regard to the directions issued by this Court in clauses "G" & "H", in its order dated 07.06.2021.

7.This court impressed upon the learned Advocate General to instruct the authorities to be more proactive in this issue. It was also brought to the notice of the learned Advocate General that the State of Tamil Nadu is always known for introducing reforms in the interest of persons belonging to the marginalized communities and sects and therefore, this State must be a role model to create a favorable atmosphere to persons belonging to the LGBTQIA+ Community. This Court is confident that the State Government will work towards the recognition and development of persons belonging to the community and they will be brought within the mainstream of the society. The expectation of this Court must be kept in mind by the State Government while filing the compliance/status report before this Court.

8.Certain incidents of misreporting and insensitivity demonstrated by the media in publishing "news" about persons belonging to the community was brought to the notice of this Court. Insensitive remarks such as "ஆண் போல வேடமிட்டுக்கொண்டு தனது தோழியுடன் கணவன் போல வாழ்ந்துவந்த நிலையில், அவர்களைப் பலகட்ட முயற்சிகளுக்கும் பிறகு போலீஸார் மீட்டுள்ளனர்" (a woman disguised as a male and pretended to be in a marriage with her female friend, both of whom were rescued by the police after repeated efforts) and "பெண்ணாக இருந்து தனக்காக ஆணாக மாறிய காதல் கணவருடன் செல்ல விறுப்பம் தெரிவித்தார்" (she expressed her willingness to be united with her husband who, originally being a female, converted herself into a male for the sake of her partner).

9.Media's insensitive commentary and ridiculing with dramatic words, music on "reporting" though not new to our society, cannot be normalised. The reportage of the most intimate and personal aspects of an individual's identity by the contemporary vernacular media is deeply problematic and it not just reflects the pre-existing harmful stigmatization of the community, but also perpetuates it. Stigmatising, inaccurate and inherently unscientific phrases such as "ஆணாக மாறிய பெண், பெண்ணாக மாறிய ஆண்" are rooted in queerphobia and cannot be tolerated or entertained any



further. It is high time journalists stick to sensitive and inclusive terms on the gender spectrum.

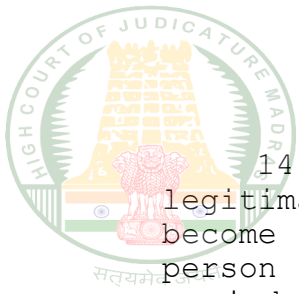
10. This court always believes that in so far as press and media are concerned, it is always better to request them to exercise self-restraint. This court doesn't want to give any positive directions at this point of time which may unwittingly trench upon the freedom of press. The press will have to play a major role in spreading awareness through sensitive reporting of cases. The choice of words ultimately should not demean the persons belonging to the Community. This Court reposes confidence on the press and expects the press to show more sensitivity while reporting cases and maintain the confidentiality of the identity of the persons involved in a news item.

11. The learned Additional Solicitor General appearing on behalf of the Respondents 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22 and 23 submitted that some more time is required to file a compliance/status report in so far as the directions issued by this court in clauses "B", "F", "G" & "H" in its order dated 07.06.2021.

12. The attention of the Additional Solicitor General was drawn to the need for the revamping of the curriculum in the MBBS course.

13. The report submitted by Dr. Trinetra Halder Gummaraju which was extracted in toto in the earlier Order passed on 07.06.2021 was also brought to the notice of the Additional Solicitor General. The relevant portion of the said report is extracted hereunder for better appreciation.

'Psychological counselling can be a great tool to help an individual and their family come to terms with queer identity, but it is extremely unfortunate that psychiatry and psychology too as fields have been complicit in perpetuating queerphobia. I began to find vast amounts of transphobic and homophobic literature in medical textbooks - a haunting realisation that our medical textbooks are just as draconian as our legislations. In India, after the erstwhile Medical Council of India (MCI) decided to review the country's medical curriculum after more than two decades, it created the 'Competency Based Undergraduate Curriculum for the Indian Medical Graduate' in 2018. It was expected that this curriculum would incorporate modern scientific beliefs and would not pathologize as it once did. But the MCI failed expectations - currently, for undergraduate students studying Forensic Medicine in their MBBS, the medical curriculum describes "sodomy", "lesbianism" and oral sex as sexual offences, and "transvestism" (cross-dressing) as a "sexual perversion".'



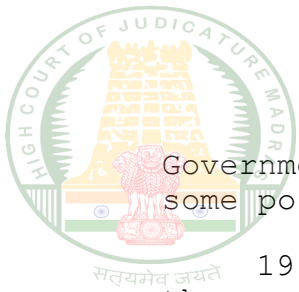
14. The above reflects how queerphobia is being reaffirmed as legitimate throughout the education of a doctor who might go on to become a psychiatrist or any physician who might be approached by a person from the community. As important as it is for an advocate or a judge to take up a client's case or to decide the case, as the case may be without being personally judgemental about them, it is equally or even more important for a professional from the medical and mental health professionals' fraternity to be non-judgemental and free of moral or personal prejudices about their patient's or client's identity on the gender spectrum or their sexuality. Knowledge about a patient's gender identity and sexuality may be of interest to a doctor, physician and a mental health professional if it is pertinent in cracking the course of treatment, but the course of treatment cannot be one which aims to "cure" their gender identity or sexuality itself.

15. In this regard, the notice of this court was drawn to one of the prescription that was given by a psychiatrist to a Gay man. The Doctor had prescribed two medicines namely *Stimuli Capsule* and *Fluoxet capsule* for 15 days. That apart, this Doctor had also referred the concerned person to a psychotherapist for Cognitive Behavioral Therapy for M2M behavior. This sample case clearly exhibits the ignorance on the part of the Doctor who is not even aware that there is no "cure" for gender identity. These are ways and means adopted by professionals under the guise of conversion therapy. Prescribing anti-depressants and erectile dysfunction drugs to a person and referring them into cognitive behavioural therapy as "remedy" to their gender identity and sexuality is nothing but conversion "therapy", camouflaged as medical and mental health support. This lack of knowledge on the part of the concerned psychiatrist is directly attributable to the course that was undergone by him and which is yet to be revamped and brought up to date.

16. The learned Additional Solicitor General shall bring this to the notice of the National Medical Commission and Indian Psychiatric Society and direct them also to file a report as to how they are going to handle this issue in future by carrying out necessary changes in the curriculum.

17. The learned counsel appearing on behalf of the Tamil Nadu State Legal Services Authority filed a report along with annexures. It is seen from the report that legal literacy and legal awareness camps were conducted by 28 District Legal services Authorities across the State. It is also stated that a seminar on the "issue relating to transgender" will be organized along with the social welfare department across the State.

18. The Orders passed and Guidelines issued by this Court on 07.06.2021, have created a lot of awareness among the LGBTQIA+ community and the society at large. It is therefore necessary to carry on with this momentum and create a congenial atmosphere for the persons belonging to the LGBTQIA+ Community by accepting them as they are. This Court expects the State and the Central



Government to give more priority to this issue and come up with some positive actions on their part.

19. Post this case on 04.10.2021 at 02:15 PM. In the meantime, the report shall be filed in the registry and the same shall be put up in the bundle.

20. Registry is directed to print the name of Ms. Shabnam, learned Government Counsel appearing for respondents 7, 9, 17 and 18, Mr. V Chandrasekhar, learned Central Government Standing Counsel for Respondents 10, 11, 13, 14, 15, 16, 18, 20, 21, 22 & 23, Ms. Subharanjani, learned counsel for Respondent 12 and Mr. C.K. Chandrasekhar, learned counsel appearing on behalf of respondent 8.

-sd/-
31/08/2021
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Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

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GREATER CHENNAI POLICE,
NO.132, COMMISSIONER OFFICE BUILDING,
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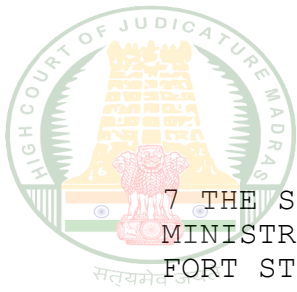
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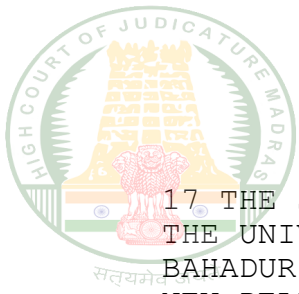
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GOVERNMENT OF INDIA

COPY TO:

1 THE ADVOCATE GENERAL,
HIGH COURT, MADRAS - 104.

2 THE ADDITIONAL SOLICITOR GENERAL
HIGH COURT, MADRAS - 104.

3 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS - 104.

Order
in
WP.NO.7284/2021

Date :31/08/2021

From 26.2.2001 the Registry is issuing certified
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PM(07/09/2021)