

W.P.No.7284 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03.02.2025

**CORAM :
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

Writ Petition No.7284 of 2021

1.Mrs. S.Sushma
D/o. Mr. V. Senthil Kumar G-11. Gaiety
Palace No.1
Blackers Road Chennai 600 002

2. MS. U. Semma Agarval
D/o. Mr. R.Udhayakumar G-11. Gaiety Palace
No.1 Blackers Road Chennai 600 002

..Petitioners

. Vs.

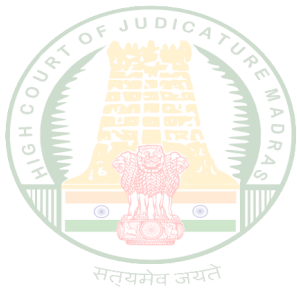
1. Director General of Police
Tamil Nadu Police Department
Dr. Radhakrishnan Salai
Mylapore Chennai 600004. and Others

..Respondents

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

For Petitioner(s) : Mr.S.Manuraj

For Respondent(s) : Mr.R.Muniyapparaj
Additional Public Prosecutor



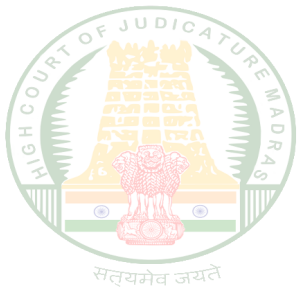
W.P.No.7284 of 2021

ORDER

Draft Transgender Persons (Protection of Rights) Rules, Sensitisation of Teachers and the Transgender Persons Policy:

The learned Additional Public Prosecutor submitted the status report of the Social Welfare and Women Empowerment Department. The relevant portions are extracted hereunder:

"7. It is submitted that as a first step, the Commissionerate of Social Welfare prepared the first draft policy in consultation with experts in the field. As the second step, the various stakeholders were then consulted in the five Zonal consultation meetings by the Commissionerate. As the third step, the inputs obtained in the Zonal consultation meetings were incorporated and the policy was updated. As the fourth step, this updated policy was then submitted to the Government by the Commissioner of Social Welfare & Women Empowerment. As the fifth step, upon receipt of the updated policy, the Department of Social Welfare & Women Empowerment circulated this policy for the comments of the Departments concerned. As the sixth step, these Departments in-turn consulted the Directorates and Commissionerates under them and then provide their responses to this proposed policy to the Social Welfare Department. As the seventh step, the Social Welfare Department has now compiled all the responses and has revised the policy accordingly. This policy document, which has been revised after receiving input from all the Departments, in complete shape is now



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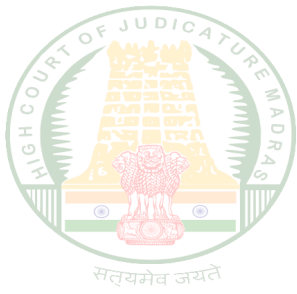
W.P.No.7284 of 2021

circulated in a single file to the concerned Departments as the eighth step and approval is to be obtained from the highest levels. Once all the approvals have been obtained, as the final step, this policy will be placed before the Council of Ministers in the Cabinet for approval. Upon approval by the Cabinet, this policy will be notified by the Government.

8. It is most humbly submitted that this is the procedure being followed for policy approval by the Tamil Nadu Government and the same approval mechanism was followed in releasing the Women's Policy.

9. It is submitted that following the procedure stated above, at the fifth step, the Social Welfare & Women Empowerment Department circulated the draft policy to the following stakeholder Departments on 08.06.2024-

- 1. Law*
- 2. Rural Development and Panchayat Raj*
- 3. Higher Education*
- 4. Revenue and Disaster Management*
- 5. Labour Welfare and Skill Development*
- 6. Home, Prohibition and Excise*
- 7. Transport*
- 8. Housing and Urban Development*
- 9. Backward Classes, Most Backward Classes and Minorities Welfare*
- 10. Adi Dravidar and Tribal Welfare*
- 11. Health and Family Welfare*
- 12. Co-operation Food and Consumer Protection*
- 13. Youth Welfare and Sport Development*



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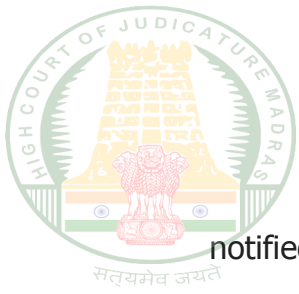
W.P.No.7284 of 2021

14. Human Resources Management

15. School Education

10.The final response to this draft policy from the above stakeholder Departments was received on 06.01.2025. It submitted that based on the final responses received by this Department, the Transgender Policy was updated. This updated Transgender Policy as a single document is now in circulation to all the stakeholder Departments concerned for approval as the eighth step. Once the approvals in circulation is obtained from the concerned Departments, it will be placed before the Council of Ministers for their consideration. It is reiterated that the Government remains committed to complete the process at the earliest and has been diligently taking the necessary steps. However, this policy requires approval from multiple Departments at various levels, which inherently extends the timeline. In light of these circumstances, the Department respectfully seeks additional time of three months to complete the process and assures this Hon'ble Court that it is making every effort to expedite the same.

2.The learned Additional Public Prosecutor submitted that the finalisation of the policy is at a crucial stage where the inputs are going to be sought for from the concerned departments and on receipt of the same, the policy will be placed before the Council of Ministers in the cabinet for approval. He further stated that upon approval of cabinet, policy will be



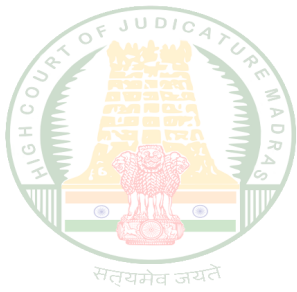
W.P.No.7284 of 2021

notified by the Government.

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3. The learned Additional Public Prosecutor brought to the notice of this Court a very important development that has taken place insofar as the policy that is going to be brought out by the State Government. He submitted that a report was given by the Committee which covered the entire LGBTQIA+ community and it was an exhaustive policy that was submitted by the Committee. However, considering the inherent discrimination faced by persons coming under the transgender community, a decision was taken to have a separate policy for persons falling within the transgender and intersex category and another policy covering others falling within the LGBTQIA+ community.

4. In the considered view of this Court, to have two separate policies – one for the transgender and intersex community persons and for the other categories falling within the LGBTQIA+ community, may cause some confusion. Hence, it will be more appropriate if one consolidated policy is made ready and that policy within itself can incorporate the reservation that is going to be made in favour of persons falling under the transgender and intersex categories.



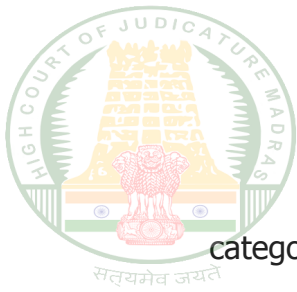
W.P.No.7284 of 2021

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5. Apart from the above, before a final decision is taken and the policy is given the force of law, it will be more appropriate to place the draft policy before this Court so that there can be wider deliberations from many stakeholders who attend the Court hearings to give their views. Such inputs that are given will also help in finalising an effective policy which can be utilised by the State Government. Ultimately, this Court does not want the policy to become a subject matter of litigation which will only defeat the whole exercise that is being carried out before this Court for the last four years.

6. When the above suggestion was made by this Court, the learned Additional Public Prosecutor submitted that the consolidated policy that was prepared by the Committee and the separate draft policy which has been carved out for persons falling within the category of transgender and intersex, will be placed before this Court before the next date of hearing. The learned Additional Public Prosecutor further submitted that he will also place a note on the difficulties encountered in having one consolidated policy covering all categories of persons falling under the LGBTQIA+ community.

7. In the light of the above submission, there shall be a direction to the Social Welfare and Women Empowerment Department to submit the draft consolidated policy that was given by the Committee and also the draft policy that has been carved out for persons belonging to transgender and intersex



W.P.No.7284 of 2021

category. Along with that, a note shall also be filed before this Court pointing out the difficulties in having one consolidated policy. An advance copy shall be given to the learned counsel who are appearing in this case and who are assisting this Court.

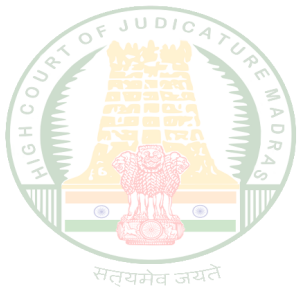
8. During the next date of hearing, various inputs given will be recorded and along with those inputs, a request will be made to prepare the policy and to give it a final shape by the State Government. There are merely inputs to be given to the State Government and ultimately it is for the State Government to decide the final shape of the policy before it is given the force of law.

National Medical Commission:

9. When the matter was listed during the previous hearings, there were broadly two issues that were focused and they are;

(a) to report on the modified competency being incorporated in the relevant books and the materials supplied to the students undergoing the medical course and ;

(b) for issuing necessary official notification by enlisting "conversion therapy" as a professional misconduct.



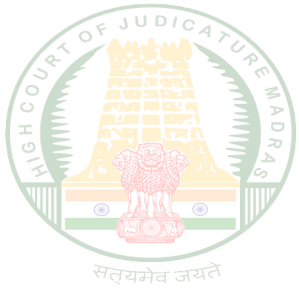
W.P.No.7284 of 2021

WEB COPY

10.Insofar as the modified competency is concerned, written instructions by way of a report dated 10.06.2024 was placed before this Court. This report also had an annexure which contained the additional clarifications issued by NMC on the CBME guidelines that was published on 03.10.2024 and which is the corrigendum/addendum incorporated in the existing guidelines published on 12.09.2024.

11.The learned counsel for the writ petitioner had very serious objections on the stand that has been taken by the NMC and it was submitted that NMC has virtually gone back to the original position and that many of the suggestions that were made by the Committee had not been incorporated and hence the learned counsel sought for the leave of this Court to file detailed objections in this regard.

12.Insofar as the notification for enlisting conversion therapy as a professional misconduct, NMC has taken a stand that the 2023 regulations in which this was sought to be incorporated, has been kept in abeyance. In view of the same, the 2002 regulations are in force. Therefore, till the new regulations comes into force, steps can be taken to amend the existing regulations and to incorporate conversion therapy as a professional misconduct.



W.P.No.7284 of 2021

13.A report in this regard shall be filed by the NMC during the next date of hearing.

NCERT:

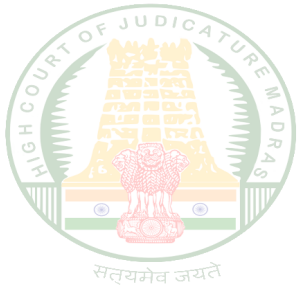
14.A report was placed before this Court wherein it has been stated that the module has been revised and finalised. The Director of NCERT has sent the finalised module to the concerned Ministry on 09.12.2024 and NCERT is awaiting for the approval of the Ministry.

15.Post this case under the caption 'for passing further orders' on 17.02.2025 at 2.15 p.m.

03.02.2025

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W.P.No.7284 of 2021

N.ANAND VENKATESH.,J

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WP No.7284 of 2021

03.02.2025