

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

Monday, the Fourth day of October 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 [RESPONDENTS]
TAMIL NADU POLICE DEPARTMENT,
DR.RADHAKRISHNAN SALAI, MYLAPORE,
CHENNAI 600 004.

(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

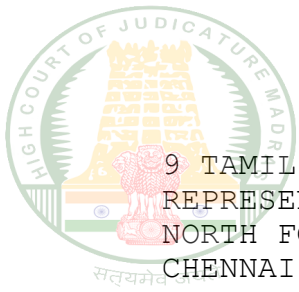
5 MR.R.UDHAYAKUMAR

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)

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.

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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.

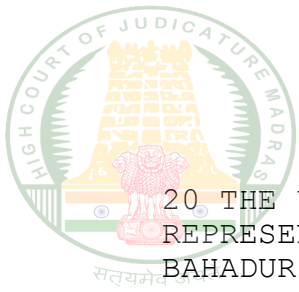
15 REHABILITATION COUNCIL OF INDIA,
REPRESENTED BY ITS MEMBER SECRETARY,
B-22, QUTUB INSTITUTIONAL AREA,
NEW DELHI - 110 016.

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,
REPRESENTED BY ITS JOINT SECRETARY,
217-C, SHASTRI BHAWAN, NEW DELHI - 110001.

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

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REPRESENTED BY ITS SECRETARY,
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.

(R8 TO R24 SUO-MOTU IMPEADED VIDE ORDER DATED 07.06.2021
MADE IN WP.7284/2021 BY NAVJ)

**25 THE MINISTRY OF HOME AFFAIRS,
REP.BY ITS SECRETARY, MINISTRY OF HOME AFFAIRS,
CONNAUGHT PLACE, NEW DELHI - 110 001**

**(R25 SUO MOTU IMPEADED VIDE ORDER DATED 04.10.2021
MADE IN WP.7284/2021 BY NAVJ)**

[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)



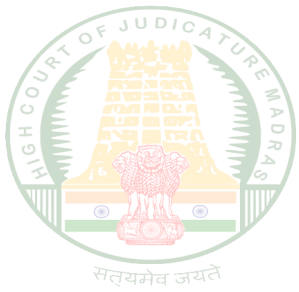
Order : This petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.S.MANURAJ, Advocate for the petitioners and of MR.HASAN MOHAMMED JINNAH, PUBLIC PROSECUTOR for the 2nd and 3rd Respondents and of MR.P.VASANTHA KUMAR, ADVOCATE for the 4th Respondent and of MR.P.THILAK KUMAR, ADVOCATE for the 5th Respondent and of MR.S.SILAMBANAN, ADDITIONAL ADVOCATE GENERAL for the 7th, 8th, 17th and 18th Respondents and of MR.R.SANKARANARAYANAN, ADDITIONAL SOLICITOR GENERAL for the 10th, 11th, 13th, 14th, 15th, 16th, 18th, 20th, 21st, 22nd and 23rd Respondents and of MS.SUBHARANJANI ANANTH, ADVOCATE for the 12th Respondent and of MR.C.K.CHANDRASEKARAN, ADVOCATE for the 9th Respondent and of MR.V.CHANDRASEKARAN, ADVOCATE for the 25th Respondent, the court made the following order:-

The Ministry of Home Affairs, represented by its Secretary, Ministry of Home Affairs, Connaught Place, New Delhi - 110 001, is suo-motu added as the 25th respondent in this writ petition. Mr.V.Chandrasekaran, learned counsel takes notice for the impleaded respondent.

2. This Court while passing the earlier orders on 31.08.2021, issued three directions insofar as Police Department is concerned. When the matter was taken up for hearing today, the learned State Public Prosecutor submitted the compliance report along with all the relevant materials filed as Annexures. The relevant portions in the compliance report are extracted hereunder:-

3. It is submitted that, as per the above said directions (a) and (c) given by the Hon'ble High Court of Madras, two Circular Memorandums dated: 09.06.2021, 23.06.2021 were issued to all Commissioners of Police in Cities and the Superintendent of Police in Districts in order to comply the directions of this Hon'ble High court and said circulars were already produced before the Hon'ble High Court.

4. In order to comply the Hon'ble High Court direction (c) of the order necessary circular was issued on 01.10.2021 in RC.No: 007284/Crime 3(1)/2021 to conduct sensitizations programmes to all the police officials in their respective district /city level. Also instructed to conduct sensitization programmes by identifying the NGOs approved by the Social Welfare Department having expertise in conducting the sensitization program and to give the training to all the police officials at their respective District / City level (In-Service Training Centre facilities can be used). The above said Circular Memorandum is filed herewith vide ANNEXURE-I.



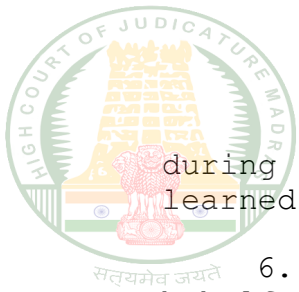
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5. It is submitted that, in compliance with the direction (b) of the order dated: 31.08.2021 with regard to amendment in the Police Conduct Rule as directed a letter in Rc.NO.007284/Crime 3(1)2021, dated 22.09.2021 has been sent to the Government, from the office of the Director General of Police recommending to made necessary amendment in the Police Conduct Rules by adding a specific clause to prevent the harassment against LGBTQIA+ community and/or the activists and NGO workers. The above said Letter is filed herewith vide ANNEXURE-II.
6. It is submitted that in continuation with the instructions given to the commissioners to Police in the cities and Superintendents of police in the districts the training and awareness programs are commenced. On 02.10.2021, a training program for police personnel was conducted to create awareness about the rights fo LGBTQIA+ community in Tiruppur and Coimbatore Districts. In order to create conducive atmosphere awareness meetings were organised by the police department in Tiruppur (17.07.2021) and Coimbatore Cities (03.08.2021, 07.09.2021 and 24.09.2021). Welfare measures such as issue of Aadhar Card and conduct of Job mela in provate companies also carried out by the police department in order to create confidence among the transgender community. The Photographs and press cutting were filed herewith vide ANNEXURE-III.

3. The learned State Public Prosecutor submitted that the awareness and sensitization programs are being added as an agenda in every meeting where the Police personnel are given routine instructions and therefore, they will be continuously sensitized about this issue. This Court also suggested to the learned State Public prosecutor to involve persons belonging to the LGBTQIA + community and also the activists/ NGO workers who have dedicated their lives for this, while conducting the sensitization/ awareness programs. The learned State Public Prosecutor readily agreed for the said suggestion and submitted that the same will be conveyed to the Director General of Police.

4. Insofar as bringing in a specific clause under the Police Conduct Rules, it is stated in the compliance report that a communication has already been sent in this regard on 22.09.2021 by the DGP to the Additional Chief Secretary to Government, Home Department and a request has been made to add the necessary clause in the Police Conduct Rules.

5. The learned Additional Advocate General appearing on behalf of the Additional Chief Secretary to the Government submitted that incorporating such a clause in the Police Conduct Rules is under process and the same will be reported to this Court



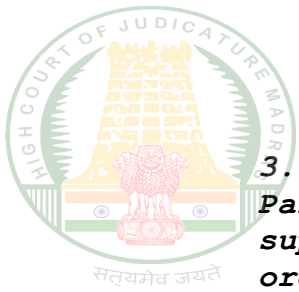
during the next date of hearing. The said statement made by the learned additional Advocate General is recorded.

6. The learned Additional 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 and certain steps have been taken by the State Government to come up with "the Transgender Policy". The learned Additional Advocate General also submitted that, insofar as media/press is concerned, one of the renowned newspapers already arranged for a seminar where it was decided that the media must build a queer friendly future and they are in the process of developing a material containing the words and expressions that are to be used while reporting or writing about the LGBTQIA + community. The relevant news article was also placed before this Court wherein the Assistant Resident Editor of the New Indian Express, Tamil Nadu, has come up with the idea of using a Style Guide which will help in maintaining uniformity while reporting stories. That apart, the editors and reporters can also be given formal training while reporting queer stories. The learned Additional Advocate General submitted that once such a style guide is finalized, the same can be made use by everyone who is involved in news reporting and this will ensure that the persons belonging to the LGBTQIA + Community are addressed with due respect and without usage of any demeaning words.

7. This Court appreciates the seriousness with which the State Government has taken up the issue seriously and this Court also expects that a report will be filed during the next date of hearing explaining the various steps taken by the State Government in this regard.

8. The learned Additional Solicitor General appearing on behalf of the 10, 11, 13, 14, 15, 16, 18, 20, 21, 22, 23 respondents relied upon the Status Report filed by the 10th respondent namely, the Ministry of Social Justice and Empowerment. The averments made in the status report and relied upon by the learned Additional Solicitor General are extracted hereunder :-

2.I state that with regard to the averments made at Para 43.B of the Order dated 07.06.2021, it is stated that according to the allocation of Business Rules, the Ministry handles matters related to Transgender Persons only. Therefore, the Ministry of Social Justice & Empowerment (MSJ&E) will enlist Non-Governmental Organisations (NGOs) including community-based groups, which have sufficient expertise in handling the issues faced by the Transgender Community. The other part of LGB (excluding transgender) subject as per the Allocation of Business rules is mandated for Ministry of Home Affairs. The list of such NGOs along with the address, contact details, and services provided will be published and revised periodically on the official website shortly.



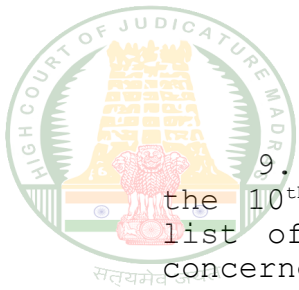
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3. I state that with regards to the averments made at Para 43.F of the writ Petition, Ministry has begun supporting the Garima Greh project on pilot basis in order to ensure that the destitute and homeless Transgender persons get a secure and good living space. Ministry has given 100% financial assistance in setting up 12d Garima Grehs: Shelter Home for Transgender persons in FY 2020-21. These shelter homes are setup on the states in Delhi, Tamil Nadu, Bihar, Gujarat, Odisha, Maharashtra, Chattisgarh, West Bengal and Rajasthan and are maintained by Transgender Community Based Organisations (CBOs). In these shelter homes, the resident Transgender persons are provided with basic services, basic medical facilities and other amenities. Skill development trainings are also provided in these shelter homes in order to equip the resident Transgender persons to take up subsequent economic activities.

Section 14 of "The Transgender Persons (Protection of Rights) Act, 2019" provides that "The appropriate Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment".

Ministry of Social Justice and Employment has also formulated an umbrella scheme "SMILE-Support for Marginalised Individuals for Livelihood and Enterprise", which has provision for setting up of Shelter Homes. Once, the scheme will be started for implementing, such more shelter homes will be opened in the Country, as per the requirement.

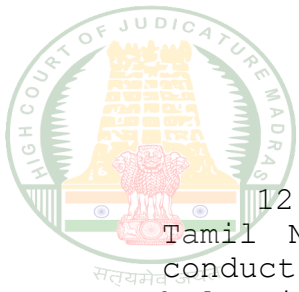
4. I state that with regards to the averment made at Para 43.H.3 and 43.H.8 of the Writ Petition, the Ministry of Social Justice and Empowerment regularly organizes several sensitization programmes for several stakeholders and Transgender community on the provisions of the "Transgender Persons (Protection of Rights) Act, 2019". Ministry through National Institute for social Defence (NISD) conducted awareness programmes for Integrated Child Development Services, Child Welfare Committees and Juvenile Justice Boards, District Magistrates/Collectors, Police officials, Prison functionaries, Health officials and Media professionals. An online training program for issuing Certificate of Identity and Identity Card for Transgender Persons on National Portal for Transgender Persons by District Magistrate/Collectors, is currently ongoing. The Ministry will make efforts to sensitize them towards their well being of their children viz. Sending them to nearby schools, for best treatment in hospitals etc.



9. The learned Additional Solicitor General submitted that the 10th respondent is already in the process of identifying the list of NGOs as directed by this Court and insofar as they are concerned, they will be publishing in the official website only those NGOs, who are dealing with Transgender Community. The learned Additional Solicitor General submitted that insofar as all the others who fall under the LGBTQIA + community, the same will be handled by the Ministry of Home Affairs and requested this Court to implead the Ministry of Home Affairs as one of the respondents in this case to enable getting instructions from the concerned department. The learned Additional Solicitor General submitted that he will also take instructions from the Ministry of Home Affairs in order to ensure that the concerned NGOs are identified and their details are provided in the website. It was also assured that the details provided in the website will be periodically revised and will be updated. It was submitted that the opening of the official website by the concerned Ministries will be reported before this Court during the next date of hearing.

10. The learned Additional Solicitor General also explained this Court various steps taken by the Central Government under the Garima Greh project. The learned Additional Solicitor General also brought to the notice of this Court yet another scheme called Support for Marginalized Individuals for Livelihood and Enterprise (SMILE) which also provides for setting up of shelter homes. It was also brought to the notice of this Court that the Ministry of Social Justice and Empowerment is regularly organizing sensitization programs for several stake holders and transgender community and they are also being made aware about the 2019 Act, which gives them protection. It was also brought to the notice of this Court that identity cards will be issued to transgender persons and the process is under way. The learned Additional Solicitor General assured that the Central Government and its departments will take all efforts to ensure that the persons belonging to the LGBTQIA + Community are given their due recognition and they are accepted as a part of this society.

11. When the earlier order was passed by this Court on 31.08.2021, this Court specifically dealt with the wrong notion even among Doctors/ Mental Health professionals that there is a conversion therapy which is available to cure this so called "disease". This wrong notion has arisen only due to the type of curriculum that is available for the MBBS Course. This Court while passing the earlier order made it very clear that necessary changes must be brought-in in the curriculum failing which, there will be doctors who will be indulging in conversion therapy with a foolish notion that there is a cure for gender identity/sexual orientation. The learned Standing counsel appearing on behalf of the National Medical Commission submitted that the earlier orders passed by this Court has already been forwarded to the Commission and since the Commission is now engaged in the NEET examination and admission to the Medical courses, the learned Standing Counsel sought for some more time to take instructions and file a report before this Court.



12. This order has also been brought to the notice of the Tamil Nadu State Judicial Academy and steps have been taken to conduct sensitization programs on a regular basis to the Judges belonging to the District Judiciary as well as to the High Court judges. The steps taken by the State Judicial Academy in this regard shall also be filed as a report during the next date of hearing.

13. The State Legal Services Authority filed a report during the last hearing on 31.08.2021, explaining the legal literacy and legal awareness camps that were conducted by the District Legal services Authority across the State. This Court expects that such awareness programs/ campus are organized on a regular basis, since such one time measures can never bring in a change. We are dealing with a situation where the deeply embedded prejudice has to be effaced and therefore, it requires continuous effort on the part of all the Stake holders.

14. Post this case under the caption for filing report on 06.12.2021 at 2.15 p.m.

-sd/-

04/10/2021

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

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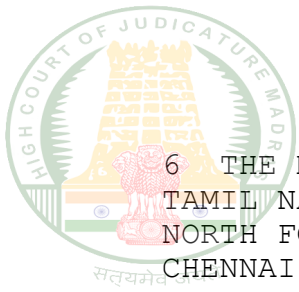
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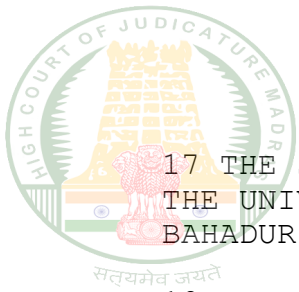
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COPY TO:

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NO.30/95, P.S.K.R.SALAI, R.A.PURAM
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HIGH COURT, MADRAS - 104.

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

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

Order
in
WP.NO.7284/2021

Date :04/10/2021

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PM(07/09/2021)

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PM(03/10/2021) (IT)