

W.P.No.7284 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2025

**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

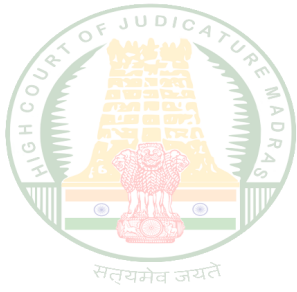
..Petitioners

. 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)



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For Petitioner(s) : Ms.Vadhana Bhaskar
for Mr.S.Manuraj

For Respondent(s) : Mr.R.Muniyapparaj
Additional Public Prosecutor
for R1, R2, R3, R6, R7 & R30

Mr.Sriram Panchu
Senior Counsel for R27

Mr.G.Sankaran
Senior Counsel
for Mr.R.Ramasamy
for R26

Mr.V.Chandrasekaran
Senior Panel Counsel
for R10 to R12, R14 to R16
R19, R20, R22, R23 & R32

Mr..K.Chandrasekar for R8

for R4 & R5 – No appearance

Ms.Subharanjani for R13

Mrs.B.S.Ajeetha
for R29 & R31

Mr.B.Rabu Manohar for R21

Mr.Jayna Kothari
for Mr.Rajagopalan
for R28



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ORDER

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

Pursuant to the earlier order passed on 03.02.2025, the matter was listed for hearing today in order to enable wider deliberations on the need for either bringing a separate policy for transgender and intersex community or to have a unified policy by including all the communities under one umbrella.

2.It was submitted that bringing a separate policy for transgender and intersex persons will result in discord and difference among the communities which will not be in the interest of the LGBTQIA+ community at large. It was further submitted that the entire community together have fought their way and as a result, there is some light at the end of the tunnel and if this unity is disrupted, it will only weaken the community. It was also submitted that there is very little understanding about the problems faced by the transmen and there is very little representation for transmen and also for intersex community in the committee and therefore bringing out a separate policy for transgender must not in turn, marginalise transmen and intersex people. In order to deal with all these issues, it will be more appropriate to have an unified policy and whatever reservations/opportunities are going to be given to the transgender and intersex people can be carved out in the unified policy itself.

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3.Per contra, it was submitted by the learned counsel appearing for some of the persons belonging to the transgender community that there is historical marginalisation of transgender persons for a very long time and they are one of the most vulnerable sections of the society. That apart, the work on transgender persons has progressed well for quite sometime than the persons belonging to LGBQ and hence the benefits that are going to be extended to the persons belonging to the transgender and intersex community should not be made to wait endlessly till the completion of the policy for persons belonging to other communities. It was further submitted that there will be no split or division owing to bringing two separate policies and by bringing two separate policies, there will be more clarity and the fight for recognition will continue with all persons belonging to LGBTQIA+ community together. It was further submitted that both the policies can be brought into effect on the same day and persons belonging to the transgender community do not intend that their policy must come first and thereafter the policy for the others will have to follow.

4.There was open deliberation from counsel appearing for various communities and this Court also expressed its mind on the pros and cons of having a unified policy and a separate policy for persons belonging to transgender and intersex community.

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5.The learned Additional Public Prosecutor appearing on behalf of the Social Welfare and Women Empowerment Department [30th respondent in this writ petition] submitted that after the unified policy was submitted by the Committee that was constituted, the input of the transgender community was sought for. After collecting all their views, the State found that there is historical marginalisation of transgender persons and they are the most vulnerable sections of the society. The community feared that if a common policy is brought into force, the social welfare benefits which the transgender community should be receiving will be diverted to other communities. Ultimately, the State found that the policy will be effective in as much as the trust it inspires on its beneficiaries. That is the reason why the State was of the view that a separate policy can effectively address the unique challenges faced by the transgender community and persons belonging to intersex community.

6.The learned Additional Public Prosecutor submitted that the views that were expressed on both sides will also be taken into consideration by the State and they will take a final decision in this regard.

7.During the earlier hearing, this Court had directed the transgender policy to be circulated in order to have an open discussion. However, since the transgender policy is going to get the force of law, the State was



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apprehensive of circulating the policy in the open considering that it may have some repercussions. Hence, the unified policy and the separate policy that was prepared, was handed over to me in a sealed cover and I had the benefit of going through the same.

8.Insofar as the policy prepared for transgenders, it covers transmen transwomen and persons belonging to intersex community. The policy provides for right of identity, health care, education, employment, residence and stay and also to sensitize and prevent discrimination in accessing to various Government welfare measures. It is not necessary for this Court to go into the details considering the fact that the entire policy should not come out to the open even before it becomes a law.

9.Insofar as the transgender policy prepared for LGBTQIA+, various inputs that have been given by the Committee has been followed up and the first trans policy has been prepared and it has to go through nearly seven steps in order to finalise the policy and give it the force of law.

10.On carefully going through the trans gender policy and also the policy prepared for LGBTQ+, I found that the recommendations that were made by the Committee has been taken into consideration and instead of carving out a separate portion for persons belonging to transgender and

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intersex community within the unified policy, a separate policy has been formulated.

11.It must be made clear that it is for the legislature to finalise the policy and give it the force of law and this Court cannot trench upon that area which is within the exclusive domain of the legislature. Hence, this Court has the fervent hope that all the views that were put forth during the deliberations that took place during the hearing, will be taken into account by the State before finalising the policy and giving it the force of law. This peculiar mechanism of deliberating a policy was undertaken since it is prepared by persons who never had a lived experience of the travails faced by persons belonging to LGBTQIA+ community and hence it is important to understand and appreciate the sensitivity that is involved before finalising the policy and giving it the force of law. It is unusual for the Government to allow its policy to be discussed before it is given the force of law and the fact that the Government was also open for such a discussion, shows that the State wants to take into account the views expressed by all the stake holders before they come out with the historic policy for LGBTQIA+ community and give it a force of law. Such law will be one of a kind in the entire country and it will pave way for a better future for those persons who were exploited and marginalised by this society for a long period of time.



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12.The learned Additional Public Prosecutor submitted that three months time is required for finalising the policy and to give it the force of law.

This Court is inclined to give the time sought for by the State to come up with the finalised policy.

National Medical Commission:

13.This Court in its previous order had flagged certain issues that required the follow up action on the part of NMC.

14.Insofar as the modified competency to be incorporated in the relevant books and materials supplied to the students, the learned Standing Counsel submitted that the suggestions put forth by this Court during the last hearing is being followed up and some more time will be required to implement the same.

15.The learned counsel for the writ petitioner submitted that already they are in the process of preparing a tabulation and a copy of the same will be handed over to the learned Standing Counsel, which can also be forwarded to the NMC for further course of action.

16.The learned Standing Counsel for NMC submitted that whatever suggestions are put forth will be forwarded to NMC and it will be acted upon

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and reported to this Court.

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17.The other issue that was considered during the previous hearing was on the official notification to enlist conversion therapy as a professional misconduct. The communication received by the learned Standing Counsel from the Medical Council was placed before this Court. It is stated that already the same has been incorporated in the 2023 regulations which is pending before the Government and if the 2002 regulations are to be amended, the commission has to undertake a detailed process by calling for public comments and calling for the opinions of experts etc.

18.In the light of the above difficulty expressed by the learned Standing Counsel, it will be more appropriate if the conversion therapy is brought within the curriculum and it is informed to the medical students that such conversion therapy is completely barred and such practise will have serious consequences. By incorporating the same in the curriculum, there will be more awareness among the students and over a period of time, the 2023 regulations will also come into effect.

NCERT:

19.The Government of India, Ministry of Education represented by its Secretary, New Delhi is suo motu added as the 32nd respondent in this writ

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petition. Mr.V.Chandrasekaran, learned Senior Panel counsel takes notice on behalf of the impleaded 32nd respondent.

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20.The learned Senior Panel Counsel submitted that the Ministry of Education is yet to act upon the finalised module that has already been submitted by NCERT on 09.12.2024. Hence, it was submitted that once the approval is given by the Ministry, the finalised module will come into effect.

21.In the light of the above submission, there shall be a direction to the Ministry of Education which has been impleaded as the 32nd respondent to follow up on the finalised module submitted by the NCERT dated 09.12.2024 and come up with their final approval within a period of eight weeks from the date of receipt of copy of this order.

22.The last issue that was brought to the notice of this Court is the issue that was raised by the 31st respondent. Mrs.Ajitha, learned counsel appearing on behalf of the 31st respondent submitted that continuing medical education session was organised at Madurai Medical College on September 2024 to discuss on the LGBTQIA+ issues. The programme was attended by 120 final year students and there were totally 5 speakers who were supposed to address the audience. When one of the speaker was addressing the audience, a cardiologist stood up and stated that they are boycotting the

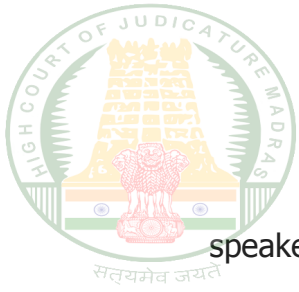
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programme and he ordered all the students to leave the hall. This was done with an intention to insult the speakers and particularly three of the speakers who belonged to the community out of which two of them belonged to non-medical profession.

23.The learned counsel submitted that while conducting such seminars, the lived experience of those belonging to the community will help in bridging the gap in the health care centres for the LGBTQIA+ individuals and will promote a more inclusive and sophisticated health care system. However, the attitude of the dean was such that stringent restrictions were made by issuing a circular after the meeting was already disrupted. Hence, the learned counsel submitted that necessary directions must be issued by this Court to ensure that no such disruptions takes place in future.

24.In the considered view of this Court, this incident once again shows the mindset among some of the persons who form part of medical education. It is important to include LGBTQIA+ persons as speakers to address their issues in order to help the medical and health care professionals to understand their difficulties better. Sharing the lived experience is the most powerful way in which such awareness can be created. In fact, it is the 25th respondent, who had informed the college to include LGBTQIA+ persons as



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speakers to address various issues. When that is done, no one has the right to disrupt such a meeting

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25.In view of the above, there shall be a direction to the Director of Medical Education, Government of Tamil Nadu to conduct awareness programmes for updating the LGBTQIA+ issues based on the competency available in on the medical education curriculum issued by NMC, in all the Government and Private Medical Colleges in Tamil Nadu and while doing so, they must also include the speakers belonging to the LGBTQIA+ community. This direction shall be followed in letter and spirit.

26.Post this writ petition under the caption 'for passing further orders' on 09.06.2025 at 2.15 p.m.

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