

N.ANAND VENKATESH, J.

Pursuant to the earlier orders passed by this Court on 17.11.2023, the matter was posted for hearing today.

Glossary, Draft Transgender Persons (Protection of Rights) Rules, Sensitisation of Teachers and Transgender Persons Policy.

Mr.Hasan Mohammed Jinnah, State Public Prosecutor submitted the status report filed by the Secretary to the Government, Social Welfare and Women Empowerment Department. The status report explains the various consultation process that took place to come up with a draft policy. It is also mentioned that some more meetings/consultations will have to be undertaken throughout the State in order to cover the entire community. Thereafter, the public opinion must also be integrated into the policy and thereafter it must be placed before the Government. The learned State Public Prosecutor submitted that the issue involves policy decision to be taken by the Government at the highest level and therefore, the draft policy that was received from the Commissioner of Social Welfare is not made public and it is submitted before this Court in a sealed cover.

2.This Court had an opportunity to go through the draft policy. The crux of the



WEB COPY policy is captured hereunder:

SALIENT FEATURES OF TAMIL NADU SEXUAL AND GENDER MINORITIES (LGBTQIA+) POLICY

A policy has been submitted to the TN Social Welfare Commissionerate in January 2024. It has been drafted by a committee consisting of LGBTQIA+ persons, and draws on an earlier version prepared by the State Planning Commission. Following 10 consultations with nearly 240 persons from the LGBTQIA+ community, the drafting committee has put forward a unified approach with cross-cutting protections, while welfare schemes, specific to the transgender and intersex community, are listed separately. The committee has provided detailed reasoning on why one single unified policy is ideal, even though some areas such as reservations and welfare schemes are specific to transgender and intersex persons.

A. KEY RECOMMENDATIONS SPECIFIC FOR TRANSGENDER AND INTERSEX PERSONS

Reservations (T&I only)

*Horizontal reservations in education and employment for transgender and intersex persons

Name And Gender Recognition (T&I only)

* Employees who join establishments with their assigned-gender and then legally transition to a different gender identity on the job shall not lose their jobs.

* Ability to change legal name and gender on academic certificates based on State OR Central transgender ID cards alone (without being asked for additional proof or being made to file cases as is currently happening).

* Ability to change legal gender and name in gazette publication, based on gender marker in Center or State ID cards, without being asked for additional documentation.



WEB COPY **Employment, Livelihood And Associated Schemes (T&I only)**

- * Age relaxation in employment considering academic hurdles, challenges and time delays in asserting legal name and gender identity and process of changing relevant documents
- * Access to Vocational Training, Loans, Grants and Schemes to generate livelihood; and steps to facilitate access to these for transmasculine (thirunambi) and intersex persons, on the lines of what are currently available to transfeminine (thirunangai) persons.

Medical And Healthcare (T&I only)

- * Gender-affirming medical and surgical care with standard protocols based on World Professional Association on Transgender Health Standards of Care version 8) for transgender and intersex persons, and immediate cessation of unethical practices such as the two-finger test for transmasculine persons.

Law And Law-Enforcement, Including Prisons (T&I only)

- * Comply with the Home Ministry's advisory on incarceration of transgender prisoners, stopping body checks for verifying gender, and establishment/designation of separate cells and showers for transfeminine and transmasculine persons.

B.KEY CROSS-CUTTING RECOMMENDATIONS FOR SAFEGUARDING LGBTQIA+ RIGHTS AND ENSURING INCLUSION

Stakeholder Awareness And Sensitization (cross-cutting for all LGBTQIA+)

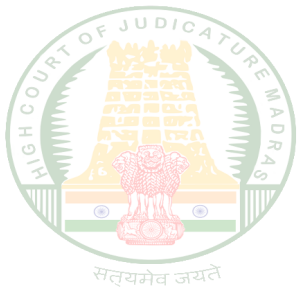
- * Sensitization of stakeholders across institutions (healthcare, educational institutions, law and law-enforcement, shelters, other government departments) on sexual and gender minorities (LGBTQIA+).

Family And Relationships (cross-cutting for all LGBTQIA+)

- * Protection from birth family violence and harassment, including corrective rape against LGBTQIA+ persons.
- * Recognition of same-gender relationships by means of Deed of Family Association and other forms of existing/legacy relationship establishment methods.

Medical And Health Care (cross-cutting for all LGBTQIA+)

- * Sensitive gynaecological and sexual/reproductive health care for all who need it,



including lesbian, bisexual, pansexual women, and transmasculine persons.

- * Training and sensitization of healthcare providers, with suitable modifications to curricula and in-service training
- * Complaints and redressal mechanism to report unnecessary physical examination or other unethical practices against LGBTQIA+ persons in medical institutions
- * Vaccines for Hepatitis B and HPV, as well as Pre- and post- exposure prophylaxis (PrEP and PEP) for all persons who need them.

Housing And Short-Stay Facilities (cross-cutting for all LGBTQIA+)

- * Non-discrimination in access to housing
- * Short-stay shelters for individuals and couples facing violence from natal families
- * Sensitisation of staff , counselors of existing women shelter homes, one stop centers ,and child care institutions on sexual and gender minority issues to promote inclusion.

Education And Employment (cross-cutting for all LGBTQIA+)

- * Protection from bullying, ragging, and physical/sexual violence in schools and higher education for all children and young persons, across sexual orientation, gender identity, expression and sex characteristics.
- * Access to gender-neutral restrooms and gender-neutral hostels in educational institutions.
- * Ability to wear uniforms/clothes consistent with one's self-determined gender identity and/or preferred gender expression.
- * Anti-harassment and inclusive policies across public and private sectors in hiring, retention and promotion.
- * Protection of labourers from discrimination in the unorganised work sector

Law And Law-Enforcement, Including Prisons (cross-cutting for all LGBTQIA+)

- * Free legal aid, access to non-litigative dispute resolution (Lok Adalat, etc) for LGBTQIA+ persons.
- * Enforcement of TN Subordinate police conduct rules against harassment of sexual and gender minorities (LGBTQIA+ persons), activists and NGOs helping the community.



WEB COPY **Other Measures (cross-cutting for all LGBTQIA+)**

- * Establish a toll free number for assistance and guidance on all aspects of sexual and gender minorities with trained and sensitized personnel
- * Issuance of ration cards for sexual and gender minority persons who have left their natal families and for samegender couples who cohabit.
- * Access to inclusive sanitation in public facilities, including gender-neutral restrooms
- * Sensitisation of Tamil and English Media on sensitive and non stigmatising coverage of sexual and gender minorities with use of appropriate terminology as reflected in the publicly available glossary.
- * Promotion of LGBTQIA+ inclusive arts and literature in the existing art and literary organizations

C. SUGGESTED STATE-LEVEL AMENDMENTS

- * Existing TN transgender board shall include intersex persons in its scope and composition, increase representation of transmasculine persons, and change the Tamil name, which currently only mentions transfeminine persons (thirunangais), to be more inclusive (e.g. Thirunar nala vaariyam)
- * A Sexual and Gender Minorities Commission is suggested to be formed with quasi-judicial powers to determine, investigate and enforce the law, schemes and programs as per state laws and policy.
- * State legislation for establishing a Sexual and Gender Minorities Commission
- * State Amendment of Rules for legal services rules to include free legal aid for all LGBTQIA+ persons.
- * State Amendment of PWDVA Rules to include domestic and family violence on sexual and gender minorities.
- * State Amendment of Juvenile Justice Rules to recognize vulnerabilities of gender-nonconforming children and ensure suitable protection.
- * State legislation for recognition of DFA for protecting same-gender families.

3.The unveiling of the Tamil Nadu Gender and Sexual Minority (LGBTQ+) Policy is a commendable stride towards recognizing and addressing the rights and welfare of



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trans and intersex individuals within the state. The policy underscores a notable commitment to empowerment and inclusivity, articulating detailed rights related to movement, property, and public office for the LGBTQ+ community.

4.The ambitious objectives of the policy reflect a conscientious effort to create an enabling environment, encourage voluntary action, and expand outreach activities. The emphasis on combating discrimination and violence against sexual and gender minorities, alongside the push for sensitization across various groups, signals a commendable endeavour to eradicate societal biases.

5.The policy's consideration for specific sub-groups within the LGBTQ+ community speaks to a nuanced approach to services, inclusion, and sensitization. The acknowledgement of the diverse perspectives from the drafting committee and community consultations in the policy development process adds credibility to its comprehensive nature.

6.Contributors from the Social Welfare Department, State Planning Commission, and LGBTQIA+ community, including the drafting committee, showcase a collaborative effort in the policy's formulation. The conscientious gathering of recommendations from community members through meetings and consultations reflects a dedication to



WEB COPY a participatory and inclusive policy making process.

7.The proposed functions of the State Commission for Sexual and Gender Minorities highlight a desire for robust oversight and evaluation. Functions such as reviewing the legal framework, monitoring policy implementation, and providing advisory roles underscore a commitment to accountability and transparency.

8.In conclusion, the Tamil Nadu Gender and Sexual Minority (LGBTQ+) Policy, with its intricate details and comprehensive approach, stands as a testament to the state's purported commitment to inclusivity and empowerment. The subtlety with which the policy navigates the complex landscape of LGBTQ+ rights in Tamil Nadu contributes to a dialogue on diversity and acceptance.

9.The implementation of the final policy will take some more time since the interest of the stakeholders and more particularly the interest of persons belonging to the transgender community has to be addressed. That apart, the policy also requires to be translated into Tamil and only then, it will have a wider reach and there will be more response from the stakeholders. Ultimately, it must be made clear that neither the Court nor the State Government is attempting to hasten up the process and there can be an assurance that the policy which is more beneficial to the persons belonging



WEB COPY to the community alone will be made operational.

10.This Court is inclined to grant some more time for the State Government to undertake a larger consultation with the stakeholders. It is left open to the State Government to expand the Committee by adding persons belonging to the trans community so that their interest is also taken here. This Court is inclined to grant **three months time** as sought for by the 30th respondent.

11.Pursuant to the earlier directions that were issued by this Court at paragraph 5, 6 and 7 of the order passed on 17.11.2023, it is informed to this Court that the portal has once again being reopened. A status report has been filed in this regard by the under Secretary, Ministry of Social Justice and Empowerment, Government of India and the relevant portions are extracted hereunder:

In reference to the Hon'ble Court order dated 17.11.2023, the National Institute of Social Defence (NISD) vide letter dated 09.01.2024 has been requested to undertake the exercise of inviting applications for registration of NGOs working in domain of LGBTQIA+ by giving wide publicity and vide letter dated 19.01.2023 it has been requested to NISD to keep the provision of listing of NGOs working in domain of LGBTQIA+ open while taking up the matter with all stakeholders for listing of NGOs. It has been also been requested that sufficient awareness may be created through social media, transgender boards,



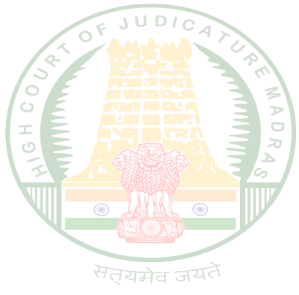
WEB COPY States/UT administrations etc.

2.NISD has taken following action as on 25.01.2024.

- a) Flyers have been posted on social media platforms such as Facebook, Twitter, Instagram and NISD website
- b) NISD has shared the information on whatsapp groups formed for transgender welfare such as Garima Greh (shelter home for transgender persons), Transgender Welfare Groups, CBOS Group from Alliance India etc.
- c) NISD issued letters to all concerned States/UTs Department looking for transgender issues to publicize this information and encourage CBOS/NGOs in their jurisdiction to register for “Enlistment of NGOs for grievance redressal of LGBTQIA+ community” with the MoSJE through Google form created for the purpose.

3. Till date 30 CBOs have been registered in second phase of advertisement (Annexure-1) and NISD is in process of communicating to Transgender Boards of different States as well.

12. There shall be a direction to keep the process of enlisting open till the next date of hearing. This will ensure that more NGOs will come forward and submit their applications for enlisting themselves in the official portal.



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13.The head incharge of the Department of gender studies belonging to NCERT has filed a status report and it is informed that the finalisation of the module will be completed by March 2024. This finalisation will take place after getting the feedback from the various stakeholders.

14.The learned Senior Panel Counsel submitted that some more time is required for issuance of notification under the 2022 regulations that has already been recommended by the National Medical Commission.

15. Post this case for further hearing on 10.6.2024 at 2.15 pm.

29.01.2024

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