

GAHC010007972022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : PIL/2/2022

ALL ASSAM TRANSGENDER ASSOCIATION
REP. BY ITS GENERAL SECRETEARY
PANDU CABIN
NEAR RLY B.G OFFICE
P.O. PANDU
PIN-781012
DIST. KAMRUP (M).

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
JANTA BHAWAN
BLOCK C
DISPUR-06
GUWAHATI
ASSAM.

2:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
SOCIAL WELFARE DEPTT.
DISPUR-06
GUWAHATI
ASSAM.

3:THE JOINT SECRETARY
TO THE GOVT. OF ASSAM
SOCIAL WELFARE DEPTT.
DISPUR-06
GUWAHATI
ASSAM.

4:THE DIRECTOR TO THE GOVT. OF ASSAM

SOCIAL WELFARE DEPTT.
UZANBAZAR
GUWAHATI-01
ASSAM.
5:THE ADDL. DIRECTOR TO THE GOVT. OF ASSAM

SOCIAL WELFARE DEPTT.
UZANBAZAR
GUWAHATI-01
ASSAM.
6:THE DIRECTOR GENERAL OF POLICE

ASSAM
POLICE HEADQUARTER
ULUBARI
GUWAHATI-781007.
7:THE ADDL. DIRECTOR GENERAL OF POLICE (LAW AND ORDER)

POLICE HEADQUARTER
ULUBARI
GUWAHATI-781007.
8:THE ADDL. DIRECTOR GENERAL OF POLICE (ADMINISTRATION)

POLICE HEADQUARTER
ULUBARI
GUWAHATI-781007.

Advocate for : SWATI. B. BARUAH (TG)
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 7 ORS

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

19.01.2023

(Suman Shyam, J)

Heard Swati B. Baruah, learned counsel appearing for the petitioner. We have also heard Mr. D. Nath, learned Senior Govt. Advocate, Assam appearing for the respondent Nos.1, 6, 7 and 8. Mr. R. M. Das, learned Standing Counsel,

Department of Social Justice and Empowerment, Govt. of Assam, is present on behalf of the respondent Nos.2 to 5.

This PIL has been filed being aggrieved primarily on two counts. Firstly, although the constitution of the Transgender Welfare Board had been notified by the Government in the month of May, 2020, yet, the Board has not been made fully functional till date due to the lack of necessary infrastructural support including a functional office. Secondly, the authorities have failed to take steps for setting up of State Level Transgender Cell as per the requirement of the statute.

According to Swati B. Baruah, learned counsel for the petitioner, the failure on the part of the departmental authorities to initiate appropriate steps in such matters have resulted in violation of the statutory rights of the beneficiaries under the Transgender Person (Protection of Rights) Act, 2019 and the Rules framed thereunder.

Responding to the above, Mr. Nath, learned Senior Govt. Advocate, Assam submits that the matter was earlier looked into by the Ministry of Social Welfare, Govt. of Assam but after the bifurcation of the department and creation of a new Ministry in the form of Ministry of Social Justice and Empowerment, the matter is now being looked into by the newly created Ministry. According to Mr. Nath, all possible steps have already been initiated to redress the grievance of the petitioner but due to the creation of the new Ministry and transfer of subjects, there has been some delay in giving effect to some of the provisions of the statute.

Mr. R. M. Das, learned departmental counsel has supported the stand of the learned Senior Govt. Advocate, Assam and submits that although the Ministry is keen to implement the provisions of the statute, yet, due to infrastructural

reasons, certain steps could not be initiated. According to Mr. Das, the Directorate of Social Justice and Empowerment itself is without a permanent office and therefore, it is not in a position to make arrangements for office space, as demanded by the petitioner. Mr. Das, however, submits that the meetings of the Board can take place by using the existing infrastructure available at the disposal of the Ministry.

The above response of the learned departmental counsel is not found to be satisfactory primarily for two reasons. Firstly, de hors the questions of infrastructure, we do not find any material to indicate that the Transgender Welfare Board constituted more than two years back has been made fully functional by the Ministry. Secondly, the explanation for failure to set up a State Level Protection Cell is also found to be wholly unsatisfactory.

Be that as it may, acceding to the request of Mr. Das, we grant the respondent Nos.2 to 5 three weeks time with effect from today to file an affidavit bringing the updated facts on record to indicate the manner in which, the provisions of the statute has been given effect to in the context of the grievance expressed in this PIL.

Registry to list this case along with PIL Nos.6/2022 and 52/2020 again after four weeks.

JUDGE

JUDGE

Comparing Assistant