

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN**

Friday, the 10th day of December 2021 / 19th Aagraharyana, 1943
WP(C) NO. 21202 OF 2020(A)

PETITIONERS:

1. QUEERALA AN ORGANIZATION FOR MALAYALI LGBTIQ COMMUNITY (EKM)/TC/306/2016) 36, STAR ENCLAVE, CHAMBOKKADAVU ROAD, EDAPPALLY TOLL, NETHAJI NAGAR, EDAPPALY, ERNAKULAM KERALA-682 024. REPRESENTED BY BOARD MEMBER, RAJASHREE RAJU.
2. RAGHAV P.R, AGED 26 YEARS S/O REGHULAN , HOUSE NO 70, VELUTHEDATH HOUSE, PAMBOOR, KUTTOOR P.O.THRISSUR-680 013.

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY ITS CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. DIRECTOR OF SOCIAL JUSTICE, SOCIAL JUSTICE DEPARTMENT, GOVERNMENT OF KERALA, REPRESENTED BY ITS DIRECTOR/AUTHORIZED PERSON, 5TH FLOOR, VIKAS BHAVAN. PMG ROAD, PALAYAM, THIRUVANANTHAPURAM, KERALA695 033.
3. KERALA STATE MENTAL HEALTH, AUTHORITY (KSMHA), REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER/AUTHORIZED PERSON RED CROSS RD, RISHIMANGALAM, VANCHIYOOR, THIRUVANANTHAPURAM, KERALA-695 035.
4. DEPARTMENT OF HEALTH AND FAMILY WELFARE, REPRESENTED BY ITS SECRETARY TO GOVERNMENT/AUTHORIZED PERSON, ROOM NO 603,6TH FLOOR, ANNEXE II SECRETARIAT, THIRUVANANTHAPURAM, KERALA-695 001.
5. INDIAN PSYCHIATRIC SOCIETY (KERALA), REPRESENTED BY PRESIDENT/AUTHORIZED PERSON, 8TH FLOOR, IMA HOUSE, COCHIN, BEHIND JAWAHARLAL NEHRU INTERNATIONAL STADIUM P.O.PALARIVATTOM, KOCHI, KERALA-682 025.
6. PSYCHOLOGY CIRCLE, REPRESENTED BY PRESIDENT/AUTHORIZED PERSON ARISTA BUILDING, HOUSING COLONY ROAD, PERINTHALMANNA, MALAPPURAM, KERALA-679 322.
7. ADDL. R7, SEEMA RANJITH, AGED 46 YEARS, D/O.SASIDHARA KURUP, VYSAKH, AZHOOR, PATHANAMTHITTA P.O, PATHANAMTHITTA, KERALA:PIN-689645. ADDL R7 IS IMPEADED AS PER ORDER DATED 28-10-2020 IN IA 1/2020 IN WP(C)21202/2020
8. ADDL R8, ATHIRA SAJI, AGED 23 YEARS, D/O.SAJI EDAPPARAMBIL (H), MAIKAD, ANGAMALY S.P.O, ERNAKULAM DISTRICT, PIN:683573.

ADDL R8 IS IMPEADED AS PER ORDER DATED 28-10-2020 IN IA 2/2020 IN WP(C)21202/2020

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the 3rd respondent and 4th respondent to consider and pass appropriate order on Exhibit P10 representations, pending disposal of the above Writ Petition.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S.FERHA AZEEZ, Advocate for the petitioners, GOVERNMENT PLEADER for R1,R2,R4 BIJO FRANCIS and SRI.JOSE KURIAKOSE for R6 and of SMRUTHI SASIDHARAN for ADDL.R7, Advocates for the respondents, the court passed the following:



P.V.KUNHIKRISHNAN, J

W.P.(C) No. 21202 of 2020

Dated this the 10th day of December, 2021

O R D E R

The above writ petition is filed with following prayers :

"I. To declare that any form of forced treatment claims conversion therapy to change the Sexual Orientation, Gender Identity and Gender Expression of people belonging to LGBTIQ Community is illegal, unconstitutional and violation of fundamental rights guaranteed under art 14, 19, 21 of the constitution.

II. To issue a writ of mandamus directing the first respondent to take necessary measures banning forced conversion therapy which is harmful and widely discredited practice of trying to change an individual's sexual orientation, gender identity and gender expression, practiced by hospitals, medical practitioners, healthcare professionals and independent clinics within the state.

III. To issue a writ of mandamus or any other appropriate writ, order of direction directing the first respondent to formulate a mental health guideline making it illegal to practice any form of conversion therapy by practitioners or Mental Health Institutions.

IV. To issue a writ of mandamus or any other appropriate writ, order of direction directing the 3rd respondent and 4th respondent to consider and pass appropriate orders on Exhibit 10 as expeditious as possible.

V. AND to pass such other and further orders as are deemed fit and proper in the facts and circumstances of the case."

2. The 1st petitioner is a registered association of

W.P.(C.) No. 21202 of 2020

2

people belonging to Lesbian, Gay, Bisexual, Transgender, Queer & Intersex Life (LGBTQI community Kerala) and the 2nd petitioner is a transman and an alleged victim of forced conversion theory. The grievance of the petitioners is that there is forced conversion at the instance of the medical practitioners, which create several physical problems to the petitioners' community. According to the counsel for the petitioners, there is no guideline prescribing such conversion. The main prayer of the petitioners is that the Government of Kerala should frame a guideline.

3. Heard Adv.Ferha Azeez. She narrated the grievance of the petitioners' community and prayed for urgent orders. The learned Government Pleader on the other hand, conceded that there is no guideline. But the Government Pleader submitted that the Government has not received any complaint to the effect that there is forced conversion as alleged in the writ petition. If there is any such forced conversion, the

W.P.(C.) No. 21202 of 2020

3

Government Pleader submitted that Government is of the opinion that it is illegal and appropriate steps will be taken. The Government Pleader takes me through paragraph Nos. 6,7 and 8 of the counter affidavit filed by respondent No.3 and the same is extracted hereunder :

“6. The Kerala State Mental Health Authority did not receive any complaint in the past about 'Conversion Therapy' in Kerala. There is no therapy that has been approved or proven effective for conversion of sexual preferences or gender identity. But going through the testimonies submitted by the petitioners mentioned in para 4 (vii), it is likely that such unscientific and unethical treatments are being used by some mental health professionals and unqualified persons. Conversion therapy for transgender and homosexual persons is unscientific, unethical and harmful to the subjects.

7. As per Sec 3 of the Mental Healthcare Act, a mental illness should be determined in accordance with nationally and internationally accepted medical standards such as the latest edition of the International Classification of the Disease of the World Health Organization (WHO). As homosexuality is not a disorder as per these standards, any attempt to treat or cure homosexuality is illegal. A mentally ill person can be admitted in a mental health establishment against his/her will under Section 89 (Admission and treatment of persons with mental illness, with high support needs). A person can be admitted under this section only if he/she has a mental illness of such severity that the person- (i) has recently threatened or attempted or is threatening or attempting to cause bodily harm to himself; or (ii) has recently behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or (iii) has recently shown or is showing an inability to care for himself to a degree that

places the individual at risk of harm to himself. Obviously, a person cannot be admitted against his/her will for subjecting him/her to so called 'conversion therapy'.

8. Section 95 of the Mental Healthcare Act prohibits a few procedures. Conversion therapy though unscientific, is not on the list of prohibited procedures. The State Medical Councils of different systems of medicine can restrict unscientific treatments. But there are many counsellors and psychologists working in our state, whose practices are not regulated by any of these statutory bodies. So a decision by the statutory bodies alone cannot stop the practice of 'conversion therapy' in the State."

4. The counsel, who appeared for the 5th respondent, which is the Indian Psychiatry Society takes me through a study report prepared by the Indian Psychiatric Society, which is extracted in the counter affidavit filed by the 5th respondent. It will be better to extract the study report and the same is extracted hereunder :

STUDY REPORT

"a) Introduction

(i) 'Conversion Therapy' or 'Reparative Therapy' also known as Sexual Orientation or gender identity Change Efforts (SOCE) wherein an individual identifying and belonging to the LGBTQ+ community undergoes a procedure to change the sexual orientation, gender identity, or gender expression of the person. It may be with or without the informed or uninformed consent of the individual. This practice, medically and scientifically is proved to be ineffective due to the lack of evidence of such change, the risks of harm, and the ethical implications of

offering these 'therapies'. Large number of medical associations, medical bodies and professional associations in various countries therefore have in large consensus given statements to debunk the practice of SOCE based on the research and the knowledge produced by specialised professionals working on health and social issues.

ii) This is different from "Sex reassignment surgery" which is a medical surgical intervention procedure opted by individuals who wish to change their physical conditions of sexual characteristics in tune with the gender they identify with.

iii) "Conversion therapies are any treatments, including individual talk therapy, behavioral (e.g. aversive stimuli), group therapy or milieu (e.g. "retreats or inpatient treatments" relying on all of the above methods) treatments, which attempt to change an individual's sexual orientation from homosexual to heterosexual. However these practices have been repudiated by major mental health organizations because of increasing evidence that they are ineffective and may cause harm to individuals affected and their families who fail to change. At present, California, New Jersey, Oregon, Illinois, Washington, DC, and the Canadian Province of Ontario have passed legislation banning conversion therapy for minors and an increasing number of US States are considering similar bans. In April 2015, the Obama administration also called for a ban on conversion therapies for minors." (Ref:-The Growing Regulation of Conversion Therapy Jack Drescher, MD, Alan Schwartz, MD, [...] and D. Andrew Tompkins, MD, MHS <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5040471>)

iv) "What motivates individuals to pursue conversion therapy and ex-gay groups? How do they perceive its harmfulness and helpfulness? In this study, 202 consumers of sexual orientation conversion interventions were interviewed to answer these questions. The results indicated that a majority failed to change sexual orientation, and many reported that they associated harm with conversion interventions. A minority reported feeling helped, although not necessarily with their original goal of changing sexual orientation. A developmental model that

describes the various pathways of individuals who attempt to change their sexual orientation is presented." (Ref:- Changing Sexual Orientation: A Consumers' Report June 2002 Professional Psychology Research and Practice 33(3):249-259).

b) Risk associated

(i) Various clinical experiments conducted and their findings are explained in detail below.

"Perspectives were gathered of 50 Mormon individuals who had undergone counseling to change their sexual orientation. The data were analyzed using the constant comparative method and participant verification, thereby developing a grounded theory. A model emerged that depicted participants' intrapersonal and interpersonal motivations for seeking conversion or "reparative" therapy, their perceived benefits and harms of such interventions, and the factors that facilitated self-acceptance and consolidation of a positive self-identity. Based on these descriptions, this study provides the foundation for a broader-based treatment approach (besides one focused solely on changing sexual orientation or adopting a lesbian, gay, or bisexual identity), which is designed to produce individualized congruent solutions for religiously conflicted, same-sex-attracted clients." (Ref:-Mormon Clients' Experiences of Conversion Therapy: The Need for a New Treatment Approach A.LeeBeckstead, Susan L. Morrow)

ii) "Position statements of the major mental health organizations in the United States state that there is no scientific evidence that a homosexual sexual orientation can be changed by psychotherapy, often referred to as 'reparative therapy'. This study tested the hypothesis that some individuals whose sexual orientation is predominantly homosexual can, with some form of reparative therapy, become predominantly heterosexual. The participants were 200 self-selected individuals (143 males, 57 females) who reported at least some minimal change from homosexual to heterosexual orientation that lasted at least 5 years. They were interviewed by

telephone, using a structured interview that assessed same sex attraction, fantasy, yearning, and overt homosexual behavior. On all measures, the year prior to the therapy was compared to the year before the interview. The majority of participants gave reports of change from a predominantly or exclusively homosexual orientation before therapy to a predominantly or exclusively heterosexual orientation in the past year. Reports of complete change were uncommon. Female participants reported significantly more change than did male participants. Either some gay men and lesbians, following reparative therapy, actually change their predominantly homosexual orientation to a predominantly heterosexual orientation or some gay men and women construct elaborate self deceptive narratives (orevenlie) in which they claim to have changed their sexual orientation, or both. For many reasons, it is concluded that the participants' self-reports were, by-and-large, credible and that few elaborated self- deceptive narratives or lied. Thus, there is evidence that change in sexual orientation following some form of reparative therapy does occur in some gay men and lesbians." (Ref:- Spitzer RL. Can some gay men and lesbians change their sexual orientation?: 200 subjects reporting a change from homosexual to heterosexual orientation. Arch Sex Behav. 2003;32(5):403-417.)

iii) "The self-reports of individuals who claim that they have changed their sexual orientation are either dismissed as false or relied upon to promote sexual orientation change efforts. However, these reactions do not capture the complexity of the sexual reorientation phenomenon. This article provides an overview regarding the promise and effort of sexual reorientation and how this knowledge may inform our current understanding of human sexuality. Specifically, a brief history is given of the interventions used to change attractions to same-sex adults and the assumptions underlying these efforts. Information will be given regarding which conclusions can be derived from sexual reorientation studies. The limitations of these studies will be explained to strengthen future research. Hypotheses will be presented regarding the motivations and needs of those distressed by a same-sex erotic orientation and the impact that the hope of sexual reorientation may have for

family members, religious leaders, and policy makers. A multivariate model of sexuality and sexual orientation, including scales of attraction and aversion, will be proposed based upon current understanding of sexuality and the distinctions found in sexual reorientation research. In the end, a therapeutic framework will be highlighted that may be used (and researched) to help those distressed by their sexual orientation." (Ref:- Can We Change Sexual Orientation? February 2012 Archives of Sexual Behavior 41(1):121-34)

c) The Present Scenario

"In a Conference held in the year 2013 "Selling the Promise of Change: International Health and Policy Consequences of Sexual Orientation Change Efforts (SOCE)," which was sponsored by the NGO Committee on Human Rights and the NGO Committee on HIV/AIDS a paper was presented at the United Nations Church Center in New York City. The paper begins with a review of the history of mental health attitudes toward homosexuality from the 19th century to the present. This is followed by a discussion of how SOCE shifted from a clinical debate to a culture war issue. The paper then reviews some research issues raised by the Spitzer (2003) study, some of the problematic clinical and ethical issues raised by efforts to change sexual orientation, and concludes with a summary of the position statements of the American Psychiatric Association and American Psychological Association." (Ref:- Can Sexual Orientation Be Changed? Journal of Gay & Lesbian Mental Health Volume 19 2015 -issue-1)

d) Conclusion

i) Use of 'conversion', 'reorientation, or 'reparative' therapy for the treatment of LGBTQ+ persons can only be considered as an unauthorized forceful attempt to 'convert,' repair', 'change' or 'shift' an individual's sexual orientation, gender identity or gender expression. Such directed efforts, without any scientific protocol or approved treatment plan often result in substantial psychological pain and trauma by reinforcing damaging

internalized attitudes, irreparably. There is no scientific evidence to support conversion therapies.

ii) LGBTQ+ community, like any other individual, may be vulnerable due to stigma, bullying, family and society pressures etc., so seeking psychiatric help could help them pre-empt associated problems and treat them by pharmacological and non-pharmacological therapy.

iii) The individual or family confused or fail to face the questions on gender identity or sexual orientation may approach the mental health professional seeking assistance and present with suicidal feelings, relationship issues, conflicts, illness, etc.. In that scenario, clinical diagnosis and treatment plan needs to be evolved with the acceptance of gender identity or sexual orientation of the individual, which requires professional discretion.

iv) The solution to address this issue requires government policy, guidelines, written protocols and codified treatment plans which are formulated to enable the qualified professionals to handle genuine requests for clinical intervention from individuals concerned and it shall be self-regulatory in nature by ensuring sufficient freedom for professional judgement by the medical practitioners, but not allowed to be misused by anyone with vested interest as a weapon to curtail the individual rights.

In the light of the aforesaid study, deliberations and submissions made by this respondent, Indian Psychiatric Society, Kerala Branch, we humbly submit, that appropriate orders may be passed."

5. I considered the above contentions of the petitioners and the above report. It is an admitted fact that there is no guideline prescribed by the State Government for conversion therapy among the petitioner community. The Government Pleader says that there is no complaint received alleging

W.P.(C.) No. 21202 of 2020

10

forced conversion and on the other hand, the petitioners say that there is forced conversion. If there is forced conversion as alleged by the petitioners, stringent action should be taken. This is a matter to be looked into by the 1st respondent. According to me, a guideline is necessary in this regard for conversion therapy, if medically it is possible. Therefore, the 1st respondent will look into this matter and if necessary, will constitute an expert committee to study this issue. Based on the study report, the 1st respondent will frame a guideline and produce the same before this Court within 5 months. Before finalising the guidelines, a representative of the 1st petitioner shall be heard. Other stakeholders also should be heard by the Government before framing the guidelines.

6. Post on 18.5.2022.

The Government Pleader will place on record the guidelines framed as directed above on that date. Hand over a copy of this order to the Government Pleader for forwarding the same to the 1st respondent forthwith.

Sd/-
P.V.KUNHIKRISHNAN, JUDGE

SKS

APPENDIX OF WP(C) 21202/2020

EXHIBIT P10

**A COPY OF THE REPRESENTATION SUBMITTED BY 1ST
PETITIONER DATED 03.06.2020 IS PRODUCED AS EXHIBIT P10.**

