

W.P.No.7284 of 2021

N.ANAND VENKATESH.,J.

In light of the earlier Order passed on 04.10.2021, the Director General of Prisons and Correctional Services, Tami Nadu (hereinafter referred to as “DGP”), has filed a compliance report along with all relevant documents.

The relevant portions from the compliance report are extracted hereunder:

“3.....It is submitted that the Superintendents of all Central Prisons/special Prison for Women were again instructed vide this office memo No.8468/PW3/2021, dated - 20.10.2021 to conduct awareness programme to sensitize the prison personnel while handling LGBTQIA+ community through persons belong to the community/or activists and NGO workers and also to ensure that transgender and gender non confirming prisoners are housed separately as per the orders of the Hon'ble High Court in W.P.No.7284 of 2021 dated 7.6.2021.

4.It is submitted that the sensitization programmes were conducted in the following prisons on the dates as noted against each.

S.No.	Name of the Prison	Date conducted	Conducted by
1.	Central Prison I, Puzhal & Sepcial Prison for Women, Puzhal	21.10.2021	Jeeva Rangaraj (A Transgender person), Founder, Transgender Rights Association, Chennai
2.	Central Prison II, Puzhal	21.10.2021	1.Tmt.R.Jeeva, Founder, PGDSIM (an NGO) 2.V.Ithayakani, Transgender Rights Association

S.No.	Name of the Prison	Date conducted	Conducted by
3.	Central Prison, Cuddalore	21.10.2021	Thiru.R.Ramkumar, Social Activist (Referred by Social Welfare Department, Cuddalore District)
4.	Central Prison, Trichy & Special Prison for Women, Trichy	21.10.2021	Gajal and Ananya of the organisation SAFE
5.	Central Prison, Coimbatore & Special Prison for Women, Coimbatore	21.10.2021	Kalki Subramanian, (a Transgender person), Founder of 'Sahodhari Foundation', Pollachi, Coimbatore
6.	Central Prison, Palayamkottai	21.10.2021	Members of Peach NGO, Tirunelveli Transgender persons Anbu, Bhuvanisri, Swathi and Mirulasri participated and explained the issues faced by them in the society.

S.No.	Name of the Prison	Date conducted	Conducted by
7.	Central Prison, Vellore & Special Prison for Women, Vellore	21.10.2021	M.Chithra and Ms.Malathy, All Gender Positive Network, Vellore District.
8.	Central Prison, Madurai & Special Prison for Women, Madurai	22.10.2021	Ms.Priya Babu, (a Transgender person) Managing Trustee, Transgender Resource Centre, Madurai Number of Persons Attended the Programme: Central Prison-61, Special Prison for Women-24
9.	Central Prison, Salem and Special sub Jail, Salem	22.10.2021	1.Tmt.Kowsalya, Social Welfare Department, Salem District 2.Dr.Priya, (a Transgender person) Transgender Welfare Association, Salem Number of persons attended the programme-51 (Central Prison Salem-42, Special sub Jail-9)

5.It is submitted that, in the State of Tamil Nadu, as per the gender category mentioned in the warrant of the prisoner received from the Judicial Magistrate concerned, they are being lodged in the respective prisons viz., Central Prison or Special Prisons for Women. It is submitted that Trans-women prisoners are lodged in Special Prisons for Women and Trans-Men prisoners are lodged in Central Prisons. It is submitted that with regard to separation of prisoners belonging to LGBTQIA+ community, they are housed separately in all prisons. At present, no convict prisoners being to this category.”

2.The learned State Public Prosecutor brought to the notice of this Court, the various awareness programmes that were conducted at the Central Prisons. The learned Public Prosecutor further submitted that these sensitisation programmes were, in fact, conducted with the help of members of the LGBTQIA+ community (hereinafter referred to as “the Community”). It was further submitted that based on the “gender category” mentioned in the warrant of prisoners as received from the concerned Judicial Magistrate/Metropolitan Magistrate Court, the respective prisoners are lodged in prisons in the following manner. Transwomen are lodged in the Special Prisons for Women and transmen are lodged in Central Prisons. The learned Public Prosecutor submitted that the prison authorities, to the best of their ability, accommodate

prisoners who are members of the Community separately, in all the prisons. It was also brought to the notice of this Court that currently, there are no convict prisoners belonging to the Community, in any of the prisons. The status report filed by the DGP and the submissions of the Public Prosecutor are noted by this Court and are taken on record.

3.The DGP has filed a compliance report with regard to the amendment that was suggested by this Court to be made to the Tamil Nadu Subordinate Police Officer's Conduct Rules, 1964 (hereinafter referred to as "Police Conduct Rules" or "Conduct Rules"). The status report also covers the follow-up action taken by the Department by way of sensitisation programmes to all police officers. The relevant portions are extracted hereunder:

"2.It is submitted that, in continuation of Order dated: 04.10.2021, the Hon'ble High Court of Madras in the Writ Petition No.7284 of 2021 has issued further directions in order to ensure further clarity on the issue of prevention and protection of LGBTQIA+ community the following further updates are furnished.

a) With regard to the order that addition of specific clause in Police Conduct Rules, based on the Director General of Police's letter to the government dated: 22.09.2021.

b) The Government, had sent a letter in Letter

No.66391/Pol.VI/2021-1, Dated: 23.11.2021 to the Director General of Police seeking amendment proposal in Tamil Nadu Police conduct Rules along with specific remarks thereon.

c) It is submitted that in reply to the Government, Letter above mentioned, the Director General of Police had sent a draft amendment proposal rule vide Letter in Rc.No.010889/A&R(1)/2021, Dated: 29.11.2021 for inclusion of Rule 24-C in Tamil Nadu Police Subordinate Police Officer's Conduct Rules 1964 as under.

“24-C. No Police officer shall indulge in any act of harassment of any person belonging to the LGBTQIA+ COMMUNITY and/ or the persons working for the welfare of the community.

***Explanation:-** For the purpose of this rule, harassment does not include the right of people to make any enquiry as per the procedure established by law.”..*

d)In order to comply the Hon'ble High Court direction para 5(c) of the order dated 31.08.2021 necessary circular was issued on 01.10.2021 in Rc.No.007284/Crime 3(1)/2021 to conduct sensitizations programs to all the police officials in their respective district / city level. The awareness and sensitization programs are added as an agenda in every meeting where the police personnel are given routine instructions so as they will be continuously sensitized about this

issue. Persons belong to the LGBTQIA+community and also the activists / NGO workers who have dedicated their lives for this, are also involved while conducting the sensitization / awareness programs in the districts / cities.

e) The compliance report dated 04.10.2021 may be read as part and parcel of this compliance report.

4.The learned State Public Prosecutor submitted that the draft amendment to the Police Conduct Rules has already been placed before the Government and that the same proposes to include Rule 24-C in the Conduct Rules that shall specifically deal with disciplinary action to be initiated against police officers who involve in the act of harassing LGBTQIA+ persons. The learned Public Prosecutor also submitted that the draft amendment is under serious consideration, and within a couple of weeks, the Government will pass appropriate orders amending the said Conduct Rules.

5.This Court appreciates the immediate steps taken by the DGP and the State Government in bringing in a specific amending clause to the Conduct Rules pursuant to the Orders passed by this Court. This new Rule will be effectively instrumental in ensuring that the Community does not suffer harassment at the hands of any police officer. This Court is confident that regular sensitisation programmes will definitely help the police officers change

their attitude insofar as the LGBTQIA+ Community is concerned, and in the future, instances warranting the use of this particular Conduct Rule to punish erring police officers will become rare.

6. When the matter was heard by this Court on 04.10.2021, the learned Additional Advocate General appearing on behalf of Respondents 7, 8, 9, 17 and 18, submitted that a compliance report will be filed before this Court with regard to the steps taken by the State Government to come up with a Transgender Policy. The learned Additional Advocate General also submitted that the standard words and expressions to be used by the press and media while addressing the Community individuals will also be submitted before this Court. When the matter was taken up for hearing today, the learned Additional Advocate General sought time to file the status report in this regard.

7. The Principal Secretary, Department of Social Welfare and Women Empowerment shall file a status report during the next date of hearing on the status of the Transgender Policy. There shall also be a further direction to prepare a standardised guide/prescriptive glossary containing the words and expressions to be used by the press and media while addressing persons belonging to the Community. Once such a Guide is placed before this Court, this Court will issue a mandamus to the press and media to henceforth use only

those terms while addressing persons belonging to the Community. The status report shall be filed before this Court on 23.12.2021 covering all these aspects.

8. While passing the earlier Orders on 04.10.2021, this Court gave a specific direction to the National Medical Commission (hereinafter referred to as “NMC”) to deal with the prevailing unscientific notions about the Community due to the existing MBBS course curriculum. Pursuant to this Order, the NMC- Undergraduate Medical Education Board, through Office Order dt.24.09.2021, constituted an Expert Committee to address these issues in the MBBS course curriculum. The committee was directed to specifically focus on the following two issues and provide for their recommendations:

- i. Virginity Test in the Forensic Medicine Curriculum of MBBS; and
- ii. Modifications related to LGBTQIA+ community in MBBS.

9. The NMC issued an advisory through No. NMC / Secy/ 2021/ 41/ 025834 dt. 13.10.2021 and it will be relevant to extract the entire advisory hereunder:

Advisory regarding the issue of LGBTQIA+ Community and necessary changes in competencies of CBME- curriculum

This is in pursuance of the direction passed by the Hon’ble

Madras High Court in writ petition no.7284 of 2021. It has been noted that the various textbooks of medical education mainly of Forensic Medicine and Toxicology subject and Psychiatry subject contains unscientific information about virginity and also contains derogatory remarks against LGBTQIA+ Community and homosexuals.

2. In this connection, all the Medical Universities/ Colleges/ Institutions are requested that while teaching UG & PG students wherever the issue of gender or similar kind arise, the mention of Clinical history or complaints or signs/symptoms, examination findings or history about nomenclature shall not be taught in such a way that it becomes/perceived in any way derogatory/discriminatory/ insulting to LGBTQIA+ community.

3. Further, all the authors of Medical Text Books are hereby instructed to amend the information about virginity, LGBTQIA+ community and homosexuals, etc., in their textbooks according to the available scientific literature, guidelines issued by the Government, and directions passed by the Hon'ble Court. Furthermore, all the Medical Universities/ Colleges/ Institutions are requested not to approve the books as recommended books by

the University if the books have unscientific, derogatory, and discriminatory information about virginity, LGBTQIA+ community and homosexuals.

4. The publication shall be applied strictly by the Government and Authorities concerned.

10. The learned Standing Counsel appearing for NMC submitted that the NMC has complied with the Orders passed by this Court and that the above extracted advisory has also been issued to amend the various materials that are available in the medical textbooks about LGBTQIA+ community. The learned Standing Counsel further submitted that if there are any further suggestions, the same will be received by the Expert Committee constituted by the NMC and it will be acted upon. The learned Standing Counsel also assured this Court that the NMC will comply with the directions issued by this Court, and wherever necessary corrections should take place in the academic texts and materials, the same shall be directed to be undertaken. The positive step taken by NMC deserves the appreciation of this Court and this Court expects the NMC to act upon any suggestions received from the Community or the organisations which are helping the Community.

11. At this point, the learned counsel appearing on behalf of the Petitioners submitted that the existing competencies of CBME-Curriculum carries offensive and unscientific terms about the LGBTQIA+ community and submitted that if the NMC amends the said competencies listed in their handbook, the authors of medical text books will automatically be obligated to revise their publications accordingly. The learned counsel further submitted a chart highlighting the objectionable terms employed in the competencies of CBME-Curriculum with specific reference to aspects on LGBTQIA+ and virginity, along with suggestions for modification of the said competencies. This chart, the counsel brought to the notice of this Court, was prepared upon their consultation with a number of doctors and professionals in the field of medicine. It will be useful to extract the chart hereunder, and the NMC is directed to give serious consideration to the suggestions made therein and their status report to be filed on the next hearing shall include their justification, if any, on the same.

LGBTQIA+ & Virginity issue: Chart highlighting the objections raised, and changes needed in competencies of CBME- curriculum along with justification.

S.No.	Issue/ Existing competency	Justification	Modified Competency could be
1.	FM3.16: Describe and	Legally offences are not	FM3.16: Describe

S.No.	Issue/ Existing competency	Justification	Modified Competency could be
	discuss adultery and unnatural sexual offences- sodomy, incest, lesbianism, buccal coitus, bestiality, indecent assault and preparation of report, framing the opinion and preservation and despatch of trace evidences in such cases.	described as Natural and unnatural. And Supreme court has said that differentiating it in this way is absurd. Homosexuality and adultery has been decriminalized in India.	history of decriminalization of homosexuality and adultery. Describe sodomy (as per new amendments), bestiality, indecent assault and preparation of report, framing the opinion and preservation and despatch of trace evidences in such cases.
2.	FM3.13: Describe different types of sexual offences. Describe various sections of IPC regarding rape including definition of rape (Section 375 IPC), Punishment for Rape (Section 376 IPC) and recent amendments notified till date		FM3.13: Describe various sections of IPC regarding rape related to medical profession. Describe medicolegal examination of rape victim and accused of rape with special reference to Governments recent guidelines on it. Describe the relevant provisions of POCSO act related to medical examination, emergency medical care and police information.
3.	FM3.17: Describe and	Steps need to be taken	FM3.17: Describe

S.No.	Issue/ Existing competency	Justification	Modified Competency could be
	<p>discuss the sexual perversions fetishism, transvestism, voyeurism, sadism, necrophagia, masochism, exhibitionism, frotteurism, Necrophilia.</p> <p>Derogatory remarks against LGBTQIA+ community, homosexuals are used in textbooks.</p>	<p>to remove Derogatory remarks against LGBTQIA+ community, homosexuals from textbooks</p>	<p>paraphilias and different types of it as per recent Diagnostic and Statistical Manual of Mental Disorders. Describe medicolegal implications of paraphilias by referring scientific literature and legal justification (if any).</p>
4.	<p>Psychiatry competency PS13.1-13.7: Psychosexual and gender identity disorders” homosexuality is taught as a Sexual Disorder and Transgenderism under Gender Identity Disorder</p>		<p>Homosexuality need not appear as a disorder and can be removed. There can be a paragraph on the history of how homosexuality was removed from psychiatric classification</p> <p>In DSM5, the term Gender Dysphoria is used and this can be described based on DSM5 criteria</p>

S.No.	Issue/ Existing competency	Justification	Modified Competency could be
5.	<p>FM3.18: Describe anatomy of male and female genitalia, hymen and its types. Discuss the medico-legal importance of hymen. Define virginity, defloration, legitimacy and its medicolegal importance.</p> <p>It only describes female virginity in detail and not male thus gender discriminatory</p>	<p>Signs of virginity need not be mentioned as virginity has NO medical or medico legal significance</p> <p>Hymen has no special medicolegal importance. It has the same medicolegal importance as any other genital injury (like scrotal or penile injury) and hence need not be described separately.</p> <p>Defloration – This is not a medical term</p> <p>Even though virginity has no medicolegal and legal significance it is taught that it has medicolegal significance.</p> <p>By relying on the information in textbooks courts also presume that there is</p>	<p>FM3.18: Describe legitimacy and its medicolegal importance. Describe how virginity and virginity test including finger test on female is unscientific, inhuman and gender discriminatory and how to appraise the courts about its unscientific basis if court orders it.</p>

S.No.	Issue/ Existing competency	Justification	Modified Competency could be
		<p>scientific basis to know whether the girls is virgin or not. Hence, court has also directed to do virginity test on girls and women.</p> <p>There is a need to teach our doctors on</p> <ol style="list-style-type: none"> 1. how to respond to court's orders about a virginity test and 2. how to appraise court about the unscientific basis of virginity test and 3. how to explain the court that it is beyond medical science to know about the virginity status of a girl/woman 	

12. The learned Senior Panel Counsel for the Union of India submitted that some time is required to file a status report. The learned counsel submitted that during the last hearing, it was represented that the Ministry of Home Affairs will have to be impleaded, under the mistaken impression that

apart from the transgender persons, all others who fall under the LGBTQIA+ Community will be handled only by the Ministry of Home Affairs. However, subsequently, it came to be known that the same does not fall within the Business Rules of the Ministry of Home Affairs. It is therefore clear that it is the Ministry of Social Justice and Empowerment which has to file a status report reporting compliance of the directions issued by this Court.

13. During the last hearing, a status report was in fact filed by the Ministry of Social Justice and Empowerment. This Court was informed that the enlisting of NGOs will be published on the official website shortly. That apart, it was also informed to this Court that the assistance that is rendered under the *Garima Greh* Project will also be reported. That apart, it was also assured that this Court will be updated about the welfare schemes and programmes facilitating and supporting the livelihood of the persons belonging to the Community. Unfortunately, due to the confusion as to the appropriate Ministry responsible for handling the issue, no status report has been filed during this hearing. The learned Senior Panel Counsel, therefore sought some time and assured this Court that a status report will be filed on the action taken and it will be submitted before this Court during the next date of hearing.

14. Subsequent to the earlier Orders passed on 04.10.2021, NCERT, the 21st Respondent in this Writ Petition, came up with an Action Plan to first sensitise school teachers, making them aware and preparing them to accept and handle gender non-confirming children. This is an important and very vital step since it is the teacher who acts as a bridge between the parent and the child. Sensitisation has to start from schools and the home, and without family support, children belonging to this Community will never be able to get support elsewhere. Parents who are ignorant about this issue can be sensitised only by the teachers. Therefore, the NCERT rightly brought out the material after a thorough research by the Committee, to sensitise teachers on this issue. However, in a very shocking development, the material that was posted on the official website of NCERT was taken down within hours of its publication, owing to pressure that was exerted from some quarters. Some press reports stated that the concerned persons who had developed this material were even transferred out to other Departments. This Court is unable to understand the need for such a knee jerk reaction within hours of the material getting uploaded on the website. If someone really had a grievance, the same should have been addressed in a proper manner through proper consultation and meetings, and no one can be allowed to arm twist a State-run council into forcibly withdrawing a material that came out after a long study by a committee. It is quite unfortunate

that such an important development was nipped in the bud. This development only reminds this Court that a continuous follow-up is required to bring in changes in the prevailing education system. This Court hopes that the NCERT understands the concern expressed by this Court and the NCERT is expected to come up with their recommendation based on the report submitted by the Committee. The report of an expert body after a detailed study cannot be dumped just because a handful of persons are opposed to this very idea of recognising persons belonging to the Community. In a democratic country like India, discussions and consultations must form the basis for any policy and pressure tactics cannot be allowed to shut down any policy, and if such an attitude is encouraged, it poses a greater danger to the fabric of this nation. This Court therefore expects NCERT to come up with a status report on this issue before the next date of hearing.

15. This Court in its earlier Order on 04.10.2021 also directed the Tamil Nadu State Judicial Academy (“TNSJA”) to conduct sensitisation programmes to the judges belonging to District Judiciary as well as the High Court. As a follow up to this direction, the TNSJA conducted a sensitisation programme for the civil judges and the newly appointed Assistant Public Prosecutors. The programme was conducted at the State Judicial Academy,

Chennai and the newly appointed APPs participated through virtual mode from Madurai. The TNSJA arranged for a programme in the afternoon session which was solely spearheaded by persons belonging to the LGBTQIA+ Community. This programme was conducted in association with UNICEF and the TNSJA has brought out a study material in this regard.

16. Insofar as the Legal Services Authority is concerned, the Member Secretary, Legal Services Authority shall coordinate with the Director, TNSJA and collect the materials in order to formulate the basis for conducting the sensitisation programmes. The Legal Services Authority will play a larger role since it not only deals with judges and lawyers but also with the general public at large. Therefore, the Member Secretary, Legal Services Authority shall coordinate with the Director, TNSJA and a status report on the plan of action to be taken in this regard, shall be filed before this Court on the next date of hearing.

17. Post this case under the caption “for filing report” on **23.12.2021**
at 2:15 pm.

06.12.2021

Internet: Yes

Index: Yes/No

KP

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Note: Issue order copy on **07.12.2021**

N.ANAND VENKATESH.,J

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