

GAHC010187932021



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

Case No. : Cont.Cas(C)/420/2021

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

VERSUS

MUKESH C SAHU, IAS AND 7 ORS.
REPRESENTS THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, SOCIAL WELFARE DEPARTMENT, DISPUR-06, GUWAHATI, ASSAM

2:PARTHA PRATIM MAJUMDER
ACS
REPRESENTS THE SECRETARY TO THE GOVERNMENT OF ASSAM
SOCIAL WELFARE DEPARTMENT
DISPUR-06
GUWAHATI, ASSAM

3:DEBAJIT KHANIKAR
ACS
REPRESENTS THE JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
SOCIAL WELFARE DEPARTMENT
DISPUR-06
GUWAHATI, ASSAM

4:S.R. CHAKRABORTY
REPRESENTS THE DEPUTY SECRETARY TO THE GOVERNMENT OF
ASSAM
SOCIAL WELFARE DEPARTMENT
DISPUR-06
GUWAHATI, ASSAM

5:BIBHASH MODI
REPRESENTS THE DIRECTOR TO THE GOVERNMENT OF ASSAM
SOCIAL WELFARE DEPARTMENT
UZANBAZAR

GUWAHATI-01, ASSAM

6:GAUTAM MAJUMDER

ACS

REPRESENTS THE ADDITIONAL DIRECTOR TO THE GOVERNMENT OF
ASSAM

SOCIAL WELFARE DEPARTMENT

UZANBAZAR

GUWAHATI-01 ASSAM

7:DEBEN BHUYAN

REPRESENTS THE DEPUTY DIRECTOR TO THE GOVERNMENT OF ASSAM
SOCIAL WELFARE DEPARTMENT

UZANBAZAR

GUWAHATI-01 ASSAM

8:KUKHESHWAR BORA

REPRESENTS THE BRANCH OFFICER TO THE GOVERNMENT OF ASSAM
SOCIAL WELFARE DEPARTMENT

UZANBAZAR

GUWAHATI-01, ASSAM

Advocate for the Petitioner : SWATI. B. BARUAH (TG)

Advocate for the Respondent : MS. M BHATTACHARJEE (R1-8)

BEFORE

HON'BLE MR. JUSTICE N. KOTISWAR SINGH

HON'BLE MRS. JUSTICE MALASRI NANDI

:: O R D E R ::

21.01.2022

[N. Kotiswar Singh, J]

Heard Ms. Swati B. Baruah, learned counsel for the petitioner. Also heard Ms. M. Bhattacharjee, learned counsel appearing for the respondents.

2. This Court had passed an order on 22.09.2021 in PIL No. 24/2021 directing the Social Welfare Department to make arrangements for funds for the three shelter homes at Kamrup (Metro), Bongaigaon and Dhubri districts, at least by making an interim arrangement for the next 2 (two) months so that these shelter homes may run properly.

The relevant portions of the order dated 22.09.2021 passed in PIL No. 24/2021 reads as

follows,

“7. Considering the submissions made and also the materials placed before this Court, before we pass any order regarding the regular funding, which is required to be given to the Transgender community, process for which the State respondent claims to have initiated, to meet the immediate requirements, we reiterate the earlier order passed by this Court on 27.04.2021 for an interim mandamus directing the Social Welfare Department to make arrangements for funds for the three shelter homes, at least by making an interim arrangement for the next 2 (two) months so that these shelter homes may run properly.

8. Accordingly, we again issue interim mandamus directing the Social Welfare Department to make arrangements for funds for the three shelter homes, at least by making an interim arrangement for the next 2 (two) months so that these shelter homes may run properly.”

3. It is the alleged violation/non compliance of the aforesaid order dated 22.09.2021 passed by this Court concerning which the present Cont. petition has been filed.

4. This matter was taken up on several occasions earlier including on 17.01.2022.

5. On 17.01.2022 after considering the matter, this Court passed the following order.

“17.01.2022

Heard Ms. Swati. B. Baruah, learned counsel for the petitioner. Also heard Ms. M. Bhattacharjee, learned counsel appearing for the respondents.

2. The present cont. petition has been filed alleging non-compliance/violation of the order passed by this Court on 22.09.2021 in PIL No. 24/2021 by which this Court reiterated earlier interim order issued on 27.04.2021 directing the Social Welfare Department to make arrangements for funds for the three shelter homes, at least by making an interim arrangement for the next 2(two) months so that these shelter homes may run properly.

3. In this cont. petition, it has been alleged that no funds have been released as directed by this Court even as an interim measure.

4. The respondent Nos. 1-5 have filed their affidavit-in-opposition through one Sri Bivash Ch. Modi, Director, Social Welfare, Assam in which it has been, inter-alia, stated that as per the State Policy for Transgender, a District Level Committee is to be constituted under the Chairpersonship of the District Magistrate which will monitor the implementation of various

welfare and other programmes of Transgenders along with other functions for the welfare of the Transgenders in the district and in this regard certain reports have been received from the Deputy Commissioner, Bongaigaon and District Social Welfare Officer, Dhubri which reveal that there are no functional homes for Transgenders in the above two districts.

As regards the Transgenders in the Kamrup (Metro) District, it has been submitted that though the Social Welfare Department accorded necessary financial sanctions for the activities of the Transgenders and which was drawn and credited to the NGO NEVARD which was the implementing agency, the Deputy Commissioner, Kamrup (Metro) had been asked to submit the report as regards actual utilization of the amounts released for the year 2019- 2020 along with the list of activities and beneficiaries list vide letters dated 08.03.2021 and subsequent letter dated 15.03.2021, 18.08.2021. Vide letter dated 31.08.2021, NEVARD was also asked to submit the list of activities and list of beneficiaries to which though NEVARD had submitted the list of beneficiaries vide letter dated 13.09.2021, it required further information and since the said reports are yet to be received, no further action could be taken for release of the funds.

5. In this regard, Ms. M. Bhattacharjee, learned counsel has referred to I.A.(Civil) No. 1894/2021 which was filed for modification of the order dated 22.09.2021 passed in PIL No. 24/2021 out of which the present cont. petition, Cont.Cas(C) 420/2021 has arisen.

6. Drawing attention of this Court to the aforesaid I.A.(C) No. 1894/2021, Ms. Bhattacharjee submits that the said interim order dated 22.09.2021 is sought to be modified for reason that as regards Bongaigaon and Dhubri Districts, there is no effective shelter homes for Transgenders for which the funds may be released. As regards Kamrup (Metro) District, as stated above, certain reports have been sought from the Deputy Commissioner, Kamrup (Metro) regarding the actual utilization of amounts released for the period 2019-2020 for the Transgender Community with list of activities and beneficiaries list as the authority are under obligation to ascertain how the released amount had been utilized.

Accordingly, Ms. Bhattacharjee, learned counsel submits that if the aforesaid interim order dated 22.09.2021 is modified, perhaps, the present cont. petition would not lie.

7. We have also noted that I.A.(Civil) No. 1894/2021 for modifying the interim order dated 22.09.2021 was filed more or less at the same time when the cont. petition was filed.

8. Accordingly, we also deem it appropriate that I.A.(Civil) No. 1894/2021 be also taken

up for the reason that the Cont. Cas(C) No. 24/2021 would lie only when the violation or non implementation is deliberate and willful and as such, to that extent, we also deem it appropriate that I.A.(Civil) No. 1894/2021 is also taken up when considering the Cont. Cas(C) No.24/2021.

9. Ms. Swati B. Baruah, learned counsel for the petitioner submits that in view of the averments made in the cont. petition, it may not be necessary to file objection in I.A.(C) No. 1894/2021.

10. We will accordingly, consider I.A.(C) No. 1894/2021 and Cont. Cas(C) No.24/2021 together and pass appropriate orders in these two applications.

11. However, today, Ms. Swati B. Baruah has submitted a copy of the letter dated 23.11.2021 [No. DSWO((K)M/142/2020] written by the Deputy Commissioner, Kamrup (Metro), (signed on 25.11.2021) to the Principal Secretary to Govt. of Assam, Social Welfare Department, Dispur, Guwahati-6, in which it has been mentioned as follows,

“No. DSWO((K)M/142/2020 Dated Guwahati the 23rd Nov, 2021

From : Deputy Commissioner

Kamrup Metropolitan District

Guwahati-1.

To : The Principal Secretary to the Govt. of Assam

Social Welfare Department

Dispur, Guwahtai-6.

Sub : Report on proper management of Shelter Homes for homeless transgender under Kamrup Metropolitan District.

Ref : No. SWD. 134/2020/38 Dtd. 30th Oct, 2021

Sir,

With reference to the subject and as per the official letter as stated above to enquire into the functional and management of Shelter Homes for homeless Transgenders, Mrs. Suswapna Kakoty, ACS, Additional Deputy Commissioner, I/c Social Welfare, Kamrup Metropolitan District accompanied by District Social Welfare Officer, Kamrup Metropolitan District visited the Shelter Home “TritiyoNivas” jointly

run by North East Voluntary Association of Rural Development (NEVARD) and All Assam Transgender Association at Harigaon, Ajanta Path, By-lane Ashoka Path, H/No.-37 A, Kamrup (M) District, Pin-781038 on 17.11.2021. During the visit, it was found that the Shelter Home is running in a rented accommodation which is located at Ajanta Path, Beltola, Guwahati-38. At the time of visit 50 nos. of inmates were present. Swati Bidhan Baruah, the Vice Chairman of Assam State Transgender Welfare was also present at the time of visit.

The Home was found to have adequate staff i.e. Project Manager, Home Superintendent, Social Worker, Counsellor, Yoga Teacher, M.P.W., Senior & Junior faculty for Vocational Training Centre like Beautician, Makeup Artist, Cutting, Tailoring and Knitting trainees etc.

As per records, they have received only one time grant-in-aid of Rs.1.60 (Rupees One Crore sixty lacs) only in the year 2019-2020. For regular maintenance of Homes and Vocational Training Centre they have not received any fund for the financial year 2020-2021 & 2021-2022. A tentative projected budget for the financial year 2020-2021 & 2021-2022 has been enclosed herewith.

This is for favour of your kind information and necessary action.

.....”

12. The aforesaid letter of the Deputy Commissioner, Kamrup (Metro), indicates that in the inspection, as many as 50 inmates were found sheltered in the Shelter Home “TritiyoNivas” jointly run by North East Voluntary Association of Rural Development (NEVARD) and All Assam Transgender Association at Hatigaon, Ajanta Path though the report also indicates that as many as 61 inmates were given shelter.
13. Be that as it may, this document shows that the Shelter Home which is managed by NEVARD in Kamrup (Metro) District is functioning and also the said letter would indicate that certain proposals have been made for release of funds for the financial year 2020-2021 and 2021-2022.
14. In our view, the said letter of the Deputy Commissioner, Kamrup (Metro), Guwahati, signed on 25.11.2021 would be highly relevant to consider the issues raised before this Court.
15. Accordingly, the petitioner is directed to file the said document by way of an affidavit.

16. In the meantime, Ms. Bhattacharjee, learned counsel for the respondents who has been furnished with the copy of the said letter of the Deputy Commissioner, Kamrup (Metro), signed on 25.11.2021 may take necessary instructions.

17. Accordingly, both the matters, the Cont.Cas(C) 420/2021 as well as I.A.(Civil) No. 1894/2021 will be taken up on 21.01.2022 for passing appropriate orders.”

6. As directed by this Court, the said letter of the Deputy Commissioner, Kamrup (Metro), Guwahati, signed on 25.11.2021 has been filed by way of affidavit.

7. Ms. Bhattacharjee, learned counsel for the respondents was furnished with the copy of the said letter of the Deputy Commissioner, Kamrup (Metro), signed on 25.11.2021 and was directed to take necessary instructions.

8. Today, Ms. Bhattacharjee, learned counsel for the respondents has submitted before this Court that she has received the instruction vide letter dated 20.01.2022 issued by the Director, Social Welfare, Assam.

The aforesaid letter dated 20.01.2022 reads as follows,

“No. DSW(LC) 16/2021/255

Guwahati the 20th January, 2022

From : The Director,
Social Welfare, Assam

To : Ms. M. Bhattacharjee
Addl. Sr. Advocate, Assam.
Gauhati High Court, Assam.

Sub : Submission of additional instruction in Cont. Cas (C) No. 420/2021 All Assam Transgender Association Vs. State of Assam and Others.

Ref : 1. Letter No. SWD. 134/2020/38 Dated 30th October/2021
2. Letter No. DSWO (KM)/142/2020 Dated 23rd November/2021
3. Govt. Letter No. SWD. 134/2020/46 Dated. 10th December/2021

Madam,

With reference to the subject cited above, I would like to inform you that the Govt. of Assam in Social Welfare Department vide Letter No. SWD. 134/2020/38 Dated 30th October/2021 requested the Deputy Commissioners of Kamrup(M), Bongaigaon and Dhubri to

enquire and look into the functioning and management of the Shelter Homes for homeless transgender in their respective districts and ensure that such shelter homes properly function under the **District Level Committee constituted under the Assam State Policy for Transgender**. Demand for fund required for managing the shelter homes with due break up and justification may be submitted by the Deputy commissioners concerned to the Director of Social Welfare, Assam and same will be released to the District Level Committee from time to time against admissible budget provision **(Copy of Letter is enclosed as Annexure-A)**.

In pursuance with the above communication the Deputy Commissioner, Kamrup (Metro) submitted a report on the management of shelter home for homeless transgender under Kamrup Metro district vide Letter No. DSWO(KM)/142/2020 Dated 23rd November/2021 wherein it is informed that the ADC, Kamrup (Metro) and District Social Welfare, Kamrup (Metro) visited the shelter Home “Tritiyo Nivas” jointly run by NEVARD and All Assam Transgender Association at Hatigaon, Ajanta Path, Guwahati on 17th November/2021. The home was running in rented accommodation and 50 nos. of inmates were present during the time of the visit. List of beneficiaries, projected budget for running the homes and inspection report were enclosed along with the report of the Deputy Commissioner, Kamrup (Metro) **(Copy of the letter is enclosed at Annexure-B)**.

In response to the above letter the Govt. of Assam in Social Welfare Department issued a letter the Deputy Commissioner, Kamrup (Metro) Vide Letter No. SWD. 134/2020/46 Dated. 10th December/2021 stating that vide letter under reference (1) the Deputy Commissioner was requested to ensure proper functioning of Shelter Homes under **District Level Committee constituted under the Assam State Policy for Transgender and to work out management of the Shelter Homes through mechanism similar to One Stop Centre and submit demand of fund from his end to the Director, Social Welfare Assam**. The fund will be released to the District Level Committee for proper accountability. Therefore, Deputy Commissioner, Kamrup (Metro) was requested to assess the fund requirement to smoothly run the shelter home for transgender accordingly from his end and to submit fund requirement proposal to the Director, Social Welfare, Assam for taking further necessary action **(Copy of the letter is enclosed at Annexure-C)**.

In this regard it may be mentioned that necessary action will be taken from this Directorate on receipt of fund requirement proposal from the Deputy Commissioner, Kamrup

(Metro) for smooth running of the Shelter Home situated at Guwahati.

Therefore, you are requested kindly to apprise the above facts before the Hon'ble Gauhati High Court.

This is for your kind information and necessary action.

.....
.....”

9. Perusal of the aforesaid instruction, however, shows that it does not indicate the reasons for which the order passed by this Court on 22.09.2021 in PIL No. 24/2021 could not be complied with.

10. From the aforesaid letter dated 20.01.2022, what appears is that the authorities are examining the matter afresh for release of funds on being satisfied that the funds will be properly utilized, but there is no explanation as to why the order passed by this Court on 22.09.2021 could not be implemented.

Thus, the crux of the aforesaid letter is how to ensure proper utilization of funds to be released.

11. In our view, though the authorities will be always at liberty to examine if the funds had been properly utilized or not and also to take necessary actions if there be any misutilisation of funds but these could not be grounds for not releasing the funds as directed by this Court on 22.09.2021 in PIL No. 24/2021 and more so, when the issue relating to release of funds in respect of shelter home “TritiyoNivas” jointly run by NEVARD and All Assam Transgender Association at Hatigaon, Ajanta Path, Guwahati, was already considered by the District authorities as also reflected in the order dated 17.01.2022 referred to above.

12. We have also noted that utilization certificate was issued on 22.02.2021 under GFR 12-C in respect of an amount of Rs.1,60,00,000.00 (Rupees one crore sixty lakhs) only out of Rs.2,00,00,000.00 (Rupees two crores) which was sanctioned during the year 2019-20 and also certifying that there was no unspent balance at the end of the financial year, which was signed by the Director, Social Welfare, Assam, Deputy Director, Directorate of Social Welfare, Assam and Finance & Accounts Officer, a copy of which is annexed as Annexure-X to the PIL No. 24/2021.

It may be also noted that nothing has been brought to our notice so far about any allegation of mis-utilization or improper utilization of the funds allotted earlier.

13. We are, therefore, not satisfied with the affidavit in opposition filed by the Respondents No. 1 to 5 nor by the instruction furnished by Ms. Bhattacharjee, learned counsel for the respondents today as referred to above, to explain the circumstances because of which the order passed by this Court on 22.09.2021 in PIL No. 24/2021 could not be complied with.

14. Accordingly, we direct the Respondent Nos. 2 and 5 to appear before this Court in person on **01.02.2022 at 10:30 Hrs.** and explain as to why they should not be proceeded further under the provisions of the Contempt of Court Act, 1971.

15. As regards modification of the interim order dated 22.09.2021 passed in PIL No. 24/2021, we are of the opinion that the matter relating to Dhubri and Bongaigaon districts where the authorities have been able to show *prima-facie* that the shelter homes for Transgenders in these two districts are not functional as on date, we are not considering the issue of release of funds in respect of shelter homes in the aforesaid Dhubri and Bongaigaon Districts and, in this contempt petition, we will confine ourselves with non release of funds for the shelter home in Kamrup (Metro) district only.

16. As regards the shelter homes for Transgenders in Dhubri and Bongaigaon Districts, necessary orders will be passed after getting response from the respondents in I.A. (Civil) No. 1894/2021 (petitioner in the PIL).

17. List the matter again on **01.02.2022.**

18. A copy of this order be furnished to Ms. Bhattacharjee, learned counsel appearing for the respondents for intimating the concerned respondents no. 2 and 5.

JUDGE

JUDGE

Comparing Assistant