

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5627 of 2020

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Veera Yadav,

... .. Petitioner/s

Versus

The Chief Secretary, Government of Bihar,

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Deepak Kr. Singh, Advocate Mr.Akash Keshav, Advocate Mr.Shaswat, Advocate
For the Respondent/s	:	Mr.Ajay (G.A. 5) Mr.Dr.K.N.Singh, ASG Mr.Ratnesh Kumar Singh, CGC

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

11 21-09-2020 Initially petitioner raised concern of lack of financial assistance to the members of the transgender community necessitating on account of Pandemic- Covid-19.

Appreciably, the State has taken some measures for providing immediate relief. At least, ration is now being distributed without insisting upon furnishing a Ration Card. So, the basic necessity of meeting the need of hunger stands taken care of.

In this regard, we fully appreciate the efforts taken by Shri Ajay, learned Government Advocate No. 5, who has been fairly assisting the Court along with Shri Akash Keshav, learned



counsel for the petitioner.

We also appreciate the efforts put in by the Government in now establishing the Facilitation Centres at the District Level wherein at least two members of the transgender community would be associated.

The other issues warranting immediate attention, are required to be considered in the light of the direction issued by the Hon'ble Apex Court in **National Legal Services Authority Vs. Union of India and others, (2014) 5 SCC 438 paragraph 135.**

Section 8 of the Transgender Persons (Protection of Rights) Act, 2019 mandates the Government to take all steps securing full and effective participation of the members of the transgender community so as to make it an inclusive society. Equally, different welfare measures protecting their rights and interest have to be taken. It is the mandate of the statute that the Government shall formulate schemes and programmes ensuring inclusive growth and protection from stigmatization and discrimination. Fair and equal treatment and opportunities have to be afforded to them.

In the supplementary counter affidavit filed by Shri Atul Prasad, Additional Chief Secretary, steps taken are indicated in a



tabular chart which is reproduced herein under:-

S.No	Direction of the Hon'ble Court passed in NLSA VsUOI Case	Steps taken by the State in the Compliance of the Case	Status
1	Hijras, Eunuchs, apart from binary gender, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.	GAD resolution number 12722 dated 12.09.2014 declares Hijras, Eunuchs and those apart from binary gender as "third gender".	Complied
2	Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.	GAD resolution number 12722 dated 12.09.2014 declares Hijras, Eunuchs, and those apart from binary gender as "third gender".	Complied
3	We direct the Centre and the State	GAD resolution number 12722 dated 12.09.2014 declares "third	Complied

	Governments to take steps to treat them socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.	gender" shall get the beneficial treatment as backward class in cases of admission in Universities and for appointments to State Government services, District Council, Municipal Council, semi-government services and public enterprises.	
4	Centre and State Governments are directed to operate separate HIV Sero-surveillance Centre since Hijras/ Transgender face several sexual health issues.	Letter No. 501 dated 27.02.2019 sent from SWD to Health Dept. about proposal outline prepared regarding: (i) to operate separate HIV Sero-surveillanceCentres since Hijras/ Transgender face several sexual health issues. (ii) to address several psychological problems faced by Transgender.	Partly Complied, remaining under process
5	Centre and State Governments should seriously address the problems being faced by Hijras/Transgender such as fear,	(iii) To provide proper measure for medical care to Transgender. in continuation of earlier letters sent to Health Dept. through letter 123 dated 17.01.2018,	



	shame, gender dysphasia, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal.	letter 889 dated 17.04.2018, letter 56 dated 08.01.2019 and letter 852 dated 15.05.2020 requesting compliance. >> Sensitization and awareness training of the plight of such persons has been done in SWD through meeting and Video Conferencing for all officials/workforce of SWD and its 4 directorates (DSW, ICDS, DSS, DDE) as well as State Disability Commission office. For remaining State government officials and other officers a letter No1352 dated 21.05.2019 from SWD has been sent.	
6	Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.		
7	Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.	Bihar RajyaKalyan Board rules, 2015 (notification 1378 dated 22.07.2015) covers this. According to the decision taken in Bihar Kalyan Board meeting dated 21.03.2018 for the purposes of recommendations and suggestions for transgender welfare, two committees have been formed by SWD order 1320	Complied, ongoing

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		dated 08.06.2018, viz., (i) Executive Committee and (ii) Advisory Committee.	
8	Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.	Sensitization and awareness training of the plight of such persons in the light of the observations contained in WP(Criminal) 76/2016 (before Hon'ble Supreme Court) has been done in SWD through meeting and Video Conferencing for all officials/workforce of SWD and its 4 directorates (DSW, ICDS, DSS, DDE) as well as State Disability Commission office. For remaining State government officials and other officers a letter No1352 dated 21.05.2019 from SWD has been sent. For Police Officials: >> Letter no. 2385 dated 02.05.2019 from Deputy Inspector General of Police (Personnel) sent to SWD annexing copy of Letter no. 5811/400655/X.L. dated 10.12.2018 which was sent by Inspector General of Police (Provision) to apar police	Complied, ongoing



		mahanideshak (aparadhanusandhandept) , all Prashetriya Police Mahanirikshak, all Shetriya Police Up-mahanirikshak, all variya police adhikshak, all police adhikshak (Rail Sahit) requesting them to ensure compliance with the SC directions in WP(Criminal)76/2016.	
9	Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.	GAD resolution number 12722 dated 12.09.2014 declares "third gender" shall get the beneficial treatment as backward class in cases of admission in Universities and for appointments to State Government services, District Council, Municipal Council semi-government services and public enterprises. >> Sensitization and awareness training of the plight of such persons has been conducted as stated above.	Complied, ongoing
10	An Expert Committee has already been constituted to make	Steps taken as above. >>Reply from SWD to Ministry of	State part complied, rest ongoing,

an in-depth study of the problems faced by the Transgender community and suggest measures that can be taken by the Government to ameliorate their problems and to submit its report with recommendations within three months of its constitution. Let the recommendations be examined based on the legal declaration made in this Judgment and implemented within six months.	Social Justice and Empowerment, UOI by Gyapank 1789 dated 05.07.2019 to Letter F.No.P.13011/7(3)/2019-DP-III dated 03.06.2019 from GOI. [This letter also referred to D.O. No. 17-8-2013-DP-II(Vol.II) dated 21.07.2014 sent from the Ministry of Social Justice and Empowerment to all CS which provides in its 'Annexure II' a summary of conclusions and recommendations of the Expert Committee.]	
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We are of the considered view that lot more needs to be done.

- i. Evidently, the proposal for setting up of a separate HIV Surveillance Centre has yet not been established.
- ii. As per the decision taken in the meeting dated 21.03.2018 by the Bihar Kalyan Board established under the Bihar Rajya Kalyan Board Rules, 2015 two committees were formed for making recommendations and giving suggestions for the welfare of the members of the community. What is its outcome is not known.
- iii. The process of sensitization of the residents of the State of the plight and problem faced by the members of the transgender community is under process. But details thereof are not disclosed.
- iv. What are the steps taken for affording reservation in the field of education or services is not clear.

On all these issues, let a supplementary affidavit indicating the latest status and the progress made be filed by the Additional Chief Secretary, State of Bihar. Positively it be done within a period of two weeks.

Let a report with regard to the number of facilitation centres established in Bihar and the names of members of the



transgender community identified be also made known in a tabular form. What facilities including remuneration, if any, are being made available to them be made known.

List on 15.10.2020.

(Sanjay Karol, CJ)

(S. Kumar, J)

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