

GAHC010255252018



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

Case No. : PIL/74/2018

SWATI BIDHAN BARUAH
D/O- SUPTI RANJAN BARUAH,
R/O- PANDU CABIN (NEAR RAILWAY B G OFFICE),
P.O- PANDU, GUWAHATI- 781012,
DIST-KAMRUP(M), ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT OF ASSAM, DISPUR,
GUWAHATI- 06, DIST- KAMRUP(M), ASSAM

2:THE PRINCIPAL SECRETARY
TO THE GOVT OF ASSAM
HEALTH AND FAMILY WELFARE DEPTT
DISPUR
GUWAHATI- 06
DIST- KAMRUP(M)
ASSAM

3:THE UNION OF INDIA
REP. BY THE SECRETARY TO THE GOVT OF INDIA
MIN OF HEALTH AND FAMILY WELFARE
NEW DELH

Advocate for the Petitioner : PETITIONER IN PERSON

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE N. KOTISWAR SINGH
HON'BLE MRS. JUSTICE MALASRI NANDI

ORDER

11.11.2021

[N. Kotiswar Singh, J.]

Heard Ms. Swati Bidhan Baruah, the petitioner-in-person. Also heard Mr. D.P. Borah, learned standing counsel, Health Department and Ms. L. Devi, learned CGC, appearing for the respondents

2. On 07.10.2021, this Court had directed the respondents, both Central and the State, to inform this Court by way of filing affidavit as to the measures taken in terms of the provisions of Sections 13, 14 and 15 of Chapter VI of the Transgender Persons (Protection of Rights) Act, 2019. However, we have also noted that the issue raised in this PIL is primarily related to health of the transgender community, which is covered by Section 15 of the 2019 Act and accordingly, while filing the affidavits, the respondents may give details of the measures undertaken or proposed to be taken in terms of Section 15 of the aforesaid Act.

3. Mr. D.P. Borah, learned standing counsel for the Health Department has submitted that there is some confusion as to whether the State Government will be the appropriate Government to take such necessary measures as contemplated under Sections 13, 14, 15 of the 2019 Act.

4. As regards this, we are of the tentative view that the State Government would be the appropriate Government as regards all those measures mentioned therein except those which are implicitly or explicitly excluded from the purview of the State Government. In this regard, one may refer to Section 2 of the 2019 Act, which states that 'appropriate Government'

means –

(i) in relation to the Central Government or any establishment, wholly or substantially financed by that Government, the Central Government;

(ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, the State Government.

5. Further, in this regard, Section 8 also will be of relevance, which provides that the appropriate Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society and the appropriate Government shall take such welfare measures as may be prescribed to protect the rights and interests of transgender persons, and facilitate their access to welfare schemes framed by that Government. Section 8 of the said Act reads as follows:-

"8. (1) The appropriate Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society.

(2) The appropriate Government shall take such welfare measures as may be prescribed to protect the rights and interests of transgender persons, and facilitate their access to welfare schemes framed by that Government.

(3) The appropriate Government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory.

(4) The appropriate Government shall take steps for the rescue, protection and rehabilitation of transgender persons to address the needs of such persons.

(5) The appropriate Government shall take appropriate measures to promote and protect the right of transgender persons to participate in cultural and recreational activities."

6. From the above definition, it will be clear that wherever any health measures are undertaken by the State Government, the State Government is to ensure that the

transgenders are also given the similar facilities in terms of Section 15 of the 2019 Act.

7. Accordingly, we are of the tentative view that the measures to be undertaken as provided under Section 15 by the appropriate Government, are to be undertaken by the State Government so far as such role is not implicitly or explicitly excluded from the purview of the State Government.

8. Accordingly, as prayed by Mr. D.P. Borah, learned standing counsel, Health Department, the matter stands adjourned to 13.12.2021 for filing the necessary affidavit.

9. We would also like to caution the respondents that if there is any undue delay in filing the affidavit, the Court may consider imposing appropriate costs on the concerned authorities.

Sd/- Malasri Nandi
JUDGE

Sd/- N. Kotiswar Singh
JUDGE

Comparing Assistant