



W.P.(MD)No.10766 of 2015

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2023

CORAM:

**THE HONOURABLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

W.P(MD)No.10766 of 2015

S.Muthu Kumar

... Petitioner

-VS-

1. The Cabinet Secretary,
Union of India,
Cabinet Secretariat,
Rashtrapathi Bhavan,
New Delhi - 110 001.

2. The Secretary,
Department of Law, Justice and Company Affairs,
Union of India,
New Delhi.

3. The Chief Secretary,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai - 9.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to implement the Judgment of the Supreme Court laid down in Writ Petition (Civil) No. 400 of 2012, National Legal Services Authority vs. Union of India along with Writ Petition (Civil) No.604 of 2013 on 15.04.2014 read with Writ Petition (Civil) No.



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604 of 2013 on 15.04.2014 read with Articles 14, 15, 16, 19 and 21 of the Constitution of India as any further delay invites contempt of the Apex Court's order.

For Petitioner : Mr.S.Baskar Mathuram
For R1 & R2 : Mr.R.Nandakumar,
Senior Central Government Standing Counsel
For R3 : Mr.P.Thilakkumar, Government Pleader

ORDER

[Order of the Court was made by The Hon'ble CHIEF JUSTICE]

We have heard Mr.S.Baskar Mathuram, learned counsel appearing for the petitioner, Mr.R.Nandakumar, learned counsel appearing for the respondent Nos.1 and 2 and Mr.P.Thilakkumar, learned Government Pleader appearing for the respondent No.3.

2. The petitioner seeks implementation of the judgment of the Apex Court in Writ Petition (Civil)No.400 of 2012, National Legal Services Authority vs. Union of India along with Writ Petition (Civil)No.604 of 2013 without any further delay.

3. The counter affidavit is filed by the State. The counter states



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about the implementation of the said judgment of the Apex Court. Various schemes have been introduced as is detailed in the said affidavit. Some of the action initiated is reproduced herewith:

"Third Genders are registered with Third Gender Welfare Board and are given identity cards. The District Level Committee headed by the District Collector and other members shall identify and verify the third gender so as to issue Identity Cards and other benefits.

By recognizing them as Third Genders, they are also provided with documents like Birth Certificate, Educational Certificate, Community Certificate and other essential identity cards like Ration Card, Voter Identity Card etc., and housing facilities are provided through convergence with other departments.

<i>No. of Third gender as per survey done by the Department</i>	<i>11,449</i>
<i>No. of Identified Third Genders</i>	<i>7,574</i>
<i>No. of Identified Card Issued</i>	<i>6,553</i>
<i>No. of bank loans with subsidy to Self Help Groups</i>	<i>51 (441 Third Genders)</i>
<i>No. of Ration Card issued</i>	<i>2,541</i>
<i>No. of House Pattas</i>	<i>1,671</i>
<i>No. of Health Insurance Card</i>	<i>1,489</i>
<i>No. of Educational Assistance</i>	<i>09</i>
<i>No. of tenements allotted</i>	<i>515</i>
<i>No. of Sewing Machines</i>	<i>90</i>

7. It is respectfully submitted that the details of the Action taken



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by the Government of Tamil Nadu to implement the directions passed by the Hon'ble Supreme Court of India in W.P(C) No.400 of 2012 are as follows:

Direction 1 & 2

(a) Huras, 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 Legislatures.

(b) 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.

The following actions were taken:-

Necessary Government orders have been issued vide G.O.(Ms) No.71, Social Welfare and Nutritious Meal Programme Department, dated 06.11.2015 as detailed below:-

i. Transgenders will be identified as 'Third Gender' apart from the Binary Gender system.

ii. The categories of Transgenders like 'Hijras, Eunchas, Aravani, Thirunangai, Kothis, Jogcas/Jogappas, Shiv-Shakthis' and any other names for Transgenders prevalent in Tamil Nadu shall be included in the term 'Third Gender'.

iii. The category 'Third Gender' shall also be included along with Male/Female categories in all places where gender identity is required to be mentioned.

iv. The Transgender persons referred to above in the preceding clauses will also have the right to decide their self-identified gender as



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male or female or as the third gender.

Direction 3

We direct the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.

It is submitted that orders have been issued vide G.O(Ms) No. 90, Social Welfare and Nutritious Meal Programme Department, dated 22.12.2017 regarding the determination of community and communal reservation in employment for the Third Gender in order to streamline the procedures to be followed by the recruiting agencies like Tamil Nadu Public Service Commission, Teachers Recruitment Board, Uniformed Services Recruitment Board, Medical Recruitment Board, etc., and Employment Exchange offices / appointing authorities, in sponsoring / recruiting / selecting the third gender person for the jobs.

For the appointment of Third Gender candidates in Government Service the method of determination of community of a Third person is ordered as detailed below:-

Determination of the Community:-

i. The Third Gender candidates, who do not possess any community certificate may be considered under Most Backward Class as per G.O.(Ms).No.28, Backward Classes, Most Backward Class and Minorities Welfare Department, dated 06.04.2015;

ii. The Third Gender candidates who belong to Scheduled Caste/ Scheduled Caste(A) / Scheduled Tribe communities, and possess community certificates as such, may be considered as per their respective



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community; and,

iii. The Third Gender candidates who belong to the communities other than Scheduled Caste/Scheduled Caste(A)/Scheduled Tribe and possess community certificate as such (not covered under point (i) above) may be considered as per their own community or as Most Backward Class whichever is advantageous to them as per their option and once the individual exercises option for community selection it should be crystallized and this option should not be changed in future.

Reservation in Employment:-

i. In G.O. (Ms) No.127, Labour and Employment Department, dated 27.10.2014, orders were issued that Third Genders may register their names in Employment Exchange offices based on the certificate identifying them as Transgender issued by the Tamil Nadu Transgender Welfare Board (TNTGWB) and to sponsor their names for appointment in the vacancies reserved for women category namely 30% and as well as vacancies reserved for General Category (both men & women) namely 70%;

In G.O. (Ms) No.28, BC, MBC & MW department, dated 06.04.2015, orders were issued classifying the "Transgender of Eunuch (Thirunangai or Aravani)" as Most Backward Class by including at Sl.No. 36-C in the list of Most Backward Classes;

The Third Gender candidates who identify themselves as "Female" by self-declaration supported by the certificate (ID card) issued by the Tamil Nadu Third Gender Welfare Board may be considered against both 30% reservation for women as well as 70% reservation for the General category (both Men & Women); and,

The Third Gender candidates, who identify themselves as "Male"



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WEB COPY or "Third Gender", may be considered against the 70% reservation for General category (both Men & Women) as the case may be

The above concessions may be granted subject to production of certificate identifying them as Third Gender or Third Gender (Male) or Third Gender (Female) issued by the Tamil Nadu Third Gender Welfare Board, as the case may be. It is respectfully submitted that the third genders have been appointed in the various posts in the Government Departments as detailed below:-

Sl. No.	Name of the Third Gender Thiruvallargal	Post
1	K.Prithika Yashini	Sub-Inspector of Police, Dharmapuri.
2	Thatchayini	Police Constable, Cuddalore.
3	Praba Mohan	Police Constable, Krishnagiri.
4	Jagatheeswaran Nashriya	Police Constable, Ramanathapuram.
5	Subasri	Police Constable, Uniformed Service Training Wing, Vellore.
6	Dr.S.Selvi	Physiotherapist, Government General Hospital, Chennai.
7	S.Neha	Lab Assistant, Government General Hospital, Chennai.
8	Sathish	Office Assistant, Office of the Collectorate, Krishnagiri.
9	Sneka	Government Jeep Driver, Trichy.
10	M.P.Selvi Santhosh	Physiotherapist, Grade-II, Chennai.
11	Jaya	Nutritious Meal Organiser, Thiruvannamalai.
12	C.Dhanalakshmi	Nutritious Meal Organiser, Perambalur.
13	Ragini.M	Watchman, Thanjavur Medical College.
14	Mayil.R	Watchman, Thanjavur Medical College.



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15	Sathya.S	Watchman, Thanjavur Medical College.
16	Dharshini.B	Watchman, Thanjavur Medical College.
17	Rajenthiran.K	Watchman, Thanjavur Medical College.
18	Balamurali.K	Watchman, Thanjavur Medical College.
19	Manivannan.V	Watchman, Thanjavur Medical College.
20	Panjamoorthi.V	Watchman, Thanjavur Medical College.

It is also submitted that based on the determination of community by the Third Gender and identification of Third Gender or Third Gender (male) or Third Gender (Female) as per their option, they can claim all the benefits applicable under the respective category both is Employment and Education.

Direction 4

Centre and State Governments are directed to operate separate HIV Sero-surveillance Centres since Hijras/Transgenders face several sexual health issues.

Various welfare measures were taken by the Health & Family Welfare Department as detailed below:-

Ensuring Social entitlement

Tamil Nadu AIDS Control Society (TANSACS) intervention project's beneficiaries are being followed up for any need of social security schemes, and are being linked to the respective departments. Follow-up action is also taken by the respective District Aids Prevention and Control



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WEB COPY Unit (DAPCU) at district level so as to ensure the services are passed on to the Third genders.

Stigma mitigation and Redressal Committee

District level committees are in place with block level net-works for early identification of crisis and other violence against Third Gender. Incidence, if any is being addressed within 24 hours. Coordination with legal AID clinic is also done to redress the legal issues. Family members of Third genders have been sensitized to be positive speakers.

Inclusion and Mainstreaming

Beneficiaries have been regularly followed up for educational and job related needs and advocacy done with educational institutions, employers, through Red Ribbon Clubs, Crisis mitigation committees and District AIDS Prevention and Control Unit in order to include them for job placement and sizeable TGs have been put into the placement.

Direction 5

Centre and State Governments should seriously address the problems being faced by Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc., and any insistence for Sex Realignment Surgery for declaring one's gender is immoral and illegal

The following actions were taken:-

Formation of Third Genders Socio Cultural Group

Under the Targeted Intervention projects, there are sizable number of



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WEB COPY communities registered. The Third genders have formed cultural troops and are actively focusing on various activities like awareness creation among the rural population. Tamil Nadu State AIDS Control Society and other Non Governmental Organizations engage them for folk media campaigns extensively in the State.

Gender Assessment and Sex Realignment Surgery

A Committee is in position for primary screening of ideal beneficiaries. There are safety measures prescribed for the earlier preparatory assessment under standardized criteria for undergoing Sex Realignment Surgery. However, in accordance with orders passed by the Hon'ble Madurai Bench of Madras High Court, the Health and Family Welfare Department of the Government of Tamilnadu has been issued necessary orders for banning the Sex Realignment Surgery on intersex infants and children.

Direction 6

Centre and State Governments should take proper measures to provide medical care to Transgenders in the hospitals and also provide them separate public toilets and other facilities.

Tamil Nadu AIDS Control Society (TANSACS) is taking the following steps:

Access to Health:-

Tamil Nadu AIDS Control Society is giving top priority to access the clinical services for prevention activities by the Thirdgenders. An exclusive Thirdgenders intervention programme has been initiated for providing comprehensive service to them by engaging various Civil



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Direction 7

Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.

The Government of Tamil Nadu is already implementing various welfare schemes/measures provided to the Third Gender through Third Gender Welfare Board in the State as detailed below:-

i. Government have formed Transgender Welfare Board during 2008 itself and subsequently revised as Third Gender Welfare Board as per the directions passed by the Hon'ble Supreme Court of India in W.P. No.400 of 2012;

ii. Government have issued Identity Cards to 6,553 Third Genders;

iii. At District Level, Training programmes are being imparted to the Third Genders;

iv. A sum of Rs.1,000 is being provided as monthly pension to the deserted Third Genders in the age group of 40 years and above;

v. Existing loan subsidy of Rs.20,000 has been enhanced to Rs. 50,000 for the self employment of Third Genders as per G.O. (2D) No.69, Social Welfare and Nutritious Meal Programme [SW 8(2)] Department, dated 26.09.2018;

vi. A sum of Rs.1.00 crore is being provided every year towards implementation of various welfare measures inclusive of educational scholarship to the Third Genders. Providing loan to Transgenders' Self Help Groups and individual Third Genders have also been provided with financial assistance for start-up businesses like setting up of provision



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stores, rearing of milch animals, canteens, production units of soap, napkin, milk products, plying passenger autos, load autos and business 75 activities related to cloth, coir, rice etc. Upto 2017-2018, the Government have provided subsidy of Rs.2.05 crore for starting their own business. 1,175 Third genders benefitted since inception of the schemes;

vii. During 2018-2019, an amount of Rs.75.00 lakh have been allotted and 150 Third genders were benefitted during the year 2019-2020;

viii. During 2019-2020, the grant amount for third gender for carrying out self-employment businesses as per G.O. (Ms) No.14, Social Welfare and Nutritious Meal Programme [SW.3(1)] Department, dated 09.03.2020 through which an amount of Rs.88.25 lakh have been allotted;

ix. From the above amount a sum of Rs.19,68,568/- has been spent for ration items to 4,022 Third genders and three spells of cash assistance of Rs.1000/- have been provided at a total cost of Rs.1.24 crore through which 5,334 Third Genders persons covered during Covid-19 period;

x. Schemes like that of implementing the issuance of the Housing Scheme, Ration Cards, Education Loan, Loan for Self employment which are already appreciated by the Hon'ble Supreme Court of India in the Judgment itself;

xi. Further, 515 Third Genders were given allotment of Tamil Nadu Slum Clearance Board built tenements in Chennai vide G.O.(2D) No.202, Housing and Urban Development [SC1(1)] Department, dated 22.12.2015 and G.O Ms) No.174, Housing and Urban Development Department,



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WEB COPY dated 17.12.2018; and,

xii. Registration of Third Genders' marriage is also implemented in the State of Tamil Nadu for providing all legal measures.

Direction 8

Centre and State Governments should take steps to create public awareness so that Transgenders will feel that they are also part and parcel of the social life and be not treated as untouchables.

As an awareness measure, a lesson on Transgender is given in XI Standard Social Science Text book under the title "Selvi-Narthaki Natraj" (an Interview with a classical dancer) to learn about the Transsexuals and their problems (copy enclosed). The department of Social Welfare has also taken various steps to create awareness in society for better treatment of Transgenders.

Direction 9

Centre and State Governments should also take measure to regain their respect and place in the society which once they enjoyed in our cultural and social life.

Various income generating schemes are being implemented in the State of Tamil Nadu to empower the Transgenders to live a respectable life inclusive of all measures referred supra.

8. The Government of Tamilnadu, apart from the directions of the Hon'ble Supreme Court of India, have initiated many innovative steps for the welfare of Third Gender as detailed below:

(i) Mobile App for Third Gender:-



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The Government of Tamilnadu has initiated an innovative steps to create a Mobile App at a total cost of Rs.10.00 lakh inclusive of Information, Education & Communication Activities for the Welfare of Third Genders. The advantages of the Mobile App are as follows:

- i. All the persons who feel that they are Third Gender can be enrolled without any omission/inhibition;
- ii. Convenient to assess Third Gender training requirements at the Department level;
- iii. Employment opportunities for Third Genders can be increased;
- iv. Self esteem can be raised to their maximum level by improving employment opportunities;
- v. Financial assistance can be provided for their further education, business activities, skill training etc;
- vi. Skill training and other activities can be arranged in convergence with other Departments/ Institutions, etc.

(ii) Award for Third Gender

The Government have instituted An Award at a total cost of Rs.1.00 lakh for Third Gender to be presented every year. The norms for the award are as follows:-

- i. An Award for Third Gender is instituted and will be given to a Third Gender who has a valid ID card issued by the Social Welfare Department and has done eminent work for the Welfare of Third genders as a role model among them;
- ii. The Selection Committee is constituted towards the selection of nominee for the Third Gender Award among Third Genders as detailed below:



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<i>Hon'ble Minister for Social Welfare and Nutritious Meal Programme</i>	<i>Chairperson</i>
<i>Secretary to Government, Social Welfare and Nutritious Meal Programme Department, Chennai - 9,</i>	<i>Member</i>
<i>Joint Director (Women Welfare), Commissionerate of Social Welfare, Chennai - 15.</i>	<i>Member</i>
<i>One non-official member, Tamil Nadu Third Gender Welfare Board, Chennai - 15.</i>	<i>Member</i>
<i>Commissioner of Social Welfare, Chennai - 15.</i>	<i>Member - Convener</i>

iii. The eligibility criteria shall be as detailed below:

- a) Third Gender who has built up their career without any support.*
- b) Third Gender who has done eminent work for the welfare of Third Gender and have helped at least 5 Third Genders to get a livelihood support and lead a decent life.*
- c) should not be a member of the Third Gender Welfare Board.*

iv. The Award shall be presented on the "Third Gender Day" i.e. 15th April of every year by the Hon'ble Chief Minister.

(iii) Formation of Third Gender Tailoring Cooperative Society for enhancing the livelihood:-

An innovative initiative has been taken by Government of Tamilnadu to form an exclusive Tailoring Co-operative Society for Third Gender persons to get themselves as members and to impart Skill Training for tailoring, distribute modernized tailoring machine and job opportunity to



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stitch uniforms for school children under Puratchi Thalaivar MGR Nutritious Meal Programme. If this concept workouts in Chennai and the purpose is served it will be extended to other areas too.

8. Hence, with reference to the prayer of the petitioner, mentioned in the paras, 6, 7, 8, 9 in the W.P it is respectfully submitted that the Government of Tamilnadu have taken serious efforts towards the welfare of Third Gender such as right to the life, liberty with dignity, Right to privacy, freedom of expression including the policy taken regarding the reservation in the educational institutions and public employment, by means of selecting the most advantageous community issuance of Identity Cards, adequate representation of Third Gender persons in the Third Gender Welfare Board as stated in the previous paras.

9. Concluding the above, it is submitted that Government of Tamilnadu is the pioneer State in implementing various welfare measures for the Third Gender persons and respectfully prayed that the Hon'ble Court may please be accepted the action taken on the directions of Hon'ble Supreme Court of India and various welfare measures taken by the Government of Tamilnadu including the concessions by keeping them in the most advantageous community that paved a way for easy access to both education and employment, issuance of Identity Cards, monthly pension, innovative measures taken for creation of Mobile App, formation of Tailoring Society, Award for best practices to a Third Gender person as stated supra and dismiss the Writ Petition"



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4. In view of the above, the Writ Petition stands disposed of. No costs.

[S.V.G., .C.J.]

[K.K.R.K., J.]

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Index : Yes / No
Neutral Citation : Yes / No
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Union of India,
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Rashtrapathi Bhavan,
New Delhi - 110 001.

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THE HONOURABLE CHIEF JUSTICE
and
K.K.RAMAKRISHNAN, J.

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