

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

W.P. No. of 2021

Grace Banu
D/o Ganesan, Aged about 31 years
Residing at No.202, Ambedkar Nagar,
2nd Street, Melur,
Thoothukudi-628002

...Petitioner

-vs-

1. The Chief Secretary,
Government of Tamil Nadu,
Secretariat, For St.George,
Chennai-600 009
2. The Government of Tamil Nadu,
Represented by its Secretary,
Cooperation, Food and Consumer Protection Department,
Secretariat, Fort St. George
Chennai – 600 009
3. The Government of Tamil Nadu,
Represented by its Secretary,
Social Welfare & Nutritious Meal Programme Department,
Secretariat, Fort St. George
Chennai – 600 009
4. The Government of Tamil Nadu
Represented by its Secretary,
Health & Family Welfare Department,
Secretariat, Fort St. George
Chennai – 600 009
5. The Government of Tamil Nadu
Represented by its Secretary,
Revenue and Disaster Management Department,
Secretariat, Fort St. George
Chennai – 600 009

...Respondents

AFFIDAVIT ON BEHALF OF THE PETITIONER

I, Grace Banu D/o Ganesan, a Transgender Person aged about 31 years, residing at No.202, Ambedkar Nagar, 2nd Street, Melur, Thoothukudi-628002, having temporarily come down to Chennai, do hereby solemnly affirm and sincerely state as follows:

1. I am the Petitioner herein and I am well acquainted with the facts and circumstances of the case and I am competent to affirm and swear to this Affidavit.
2. I submit that I am a transgender rights activist and have been active in the movement to secure the rights of transgender persons in India and more particularly in the State of Tamil Nadu since the year 2010. I am the first transgender person to be admitted to and have graduated from an engineering college in Tamil Nadu and to have secured an engineering degree. I have established the Trans Rights Now Collective, which is a national collective of transgender persons established with the objective of building capacity and leadership among the transgender community across India. Through the Trans Right Now Collective, I have advocated for securing the rights of SC and ST Transgender persons in India. I have also assisted many transgender persons in securing employment opportunities in the State of Tamil Nadu through advocacy and assistance with litigation. I have also written in the media actively on transgender rights and concerns.
3. I submit that I have filed the present Petition seeking to secure life and livelihood of transgender persons residing in the State of Tamil Nadu by directing the Respondents to conduct awareness programme for Transgender Persons regarding Covid19 Vaccination and also direct the Respondents to include the benefit of G.O. (Ms) 37; dated 07.05.2021 of the Department of Cooperation, Food and Consumer Protection providing Covid19 cash relief of Rs. 4000/- to the transgender persons who do not possess Ration Card and Transgender Identity Cards.
4. I submit that the present writ petition is filed in public interest and there is no vested interest in the filing of the present petition. This petition is filed out of my own money. My annual income is about Rs.1,50,000 and my PAN number is _____. My Aadhaar card copy bearing _____ is enclosed

as part of the typed set of papers filed before this Hon'ble Court. I state that no other public interest litigation seeking the same relief has been filed, to my knowledge. I state that I am willing to pay costs, if any imposed by this Hon'ble Court. I have filed the above affidavit from my personal knowledge and from the documents that I have acquainted myself with. I submit that to my knowledge, no public interest litigation has been filed on the issue of.

5. I submit that the amid spread of Covid19 pandemic all over the State of Tamil Nadu, Transgender Persons are finding it difficult to meet their medical and livelihood requirements. The complete lockdown imposed by the Government of Tamil Nadu from 10.05.2020 to 24.05.2021 has made life and livelihood difficult for the Transgender Persons who were already facing problem for past one year due to the first wave of Covid19 Pandemic.

I. COVID -19 Cash relief needed for Transgender persons: Majority of Transgender Persons in Tamil Nadu do not possess Ration Cards:

6. I submit that there are more than 50,000 Transgender Persons in the State of Tamil Nadu. However, the Social Welfare Department (3rd Respondent) claims that only 11,449 Transgender Persons have been identified in the survey conducted by it (year of the survey not specified). Out of the said 11,449 transgender persons, only 2541 Transgender Persons were issued Ration Card. This claim of the Social Welfare Department was made through a counter affidavit filed before this Hon'ble in the pending Writ Petition of W.P.No.6052 of 2019 on 28.10.2020, where I am the Petitioner.
7. I submit that presently, the 2nd Respondent has announced a scheme to provide Covid19 cash relief of Rs.4000/- to those people who are having ration card and out of this, the first instalment of Rs. 2000/- is being made now in the month of May 2021. Limiting this cash relief only for persons who possess ration cards would deny the benefit of cash relief to thousands of poor transgender persons in

Tamil Nadu who does not having Ration Card due to various reasons like absence of Transgender Identity Card, Delay on the part of the Civil Supplies Department's processing of ration card applications etc.

8. I submit that during the first wave of the Covid19 lock down, the Government of Tamil Nadu has provided Rs.1000/- in April, 2020 as cash relief to not only all rice ration card holders to meet livelihood expenses but also extended the said benefit to the Transgender persons who did not have ration cards and they were also able to avail crucial cash relief.
9. I submit that the 2nd Respondent failed to consider the right to life and livelihood of socially and economically backward Transgender Persons who have lost their livelihood due to the Covid19 lockdown imposed by the Government of Tamil Nadu.
10. I submit that already the Transgender Persons have been facing social stigma and even their own family disowns them. In such a situation, it is very tough to even get employment since the society discriminates them on the basis of gender identity and sexual orientation. A large number of persons from the transgender community is engaged in begging and sex work. Now, even that is also not possible for them. Because of this, their livelihood have been severely affected and their life has also become in danger due to lack of medical attention towards them.
11. I submit that over the last two years, transgender persons in Tamil Nadu are not even being issued Transgender Identity Cards. Prior to the enactment of the Transgender Persons (Protection of Rights) Act, 2019 Act, the State Transgender Welfare Board was issuing ID cards to transgender persons. Now with the enactment of Transgender Persons (Protection of Rights) Act, 2019, and The Transgender Persons (Protection of Rights) Rules 2020, the Board is not issuing

any transgender identity cards. The office of District Magistrate (which is the authority to the issue Identity Card for Transgender Persons) has also not been issuing identity cards and has not been accessible due to pandemic restrictions since 2020. Now, amid second wave of Covid19 pandemic, getting transgender Identity card has become impossible.

12. I submit that the most of the Transgender Community are illiterate and hardly have enough knowledge to use online portal for getting Transgender Identity Card as per the above said new law. Even the government did not made effort to bring awareness among the Transgender Community as to how to get the Transgender Identity Card through online mode. Even for online application, there is requirement to get Notary Affidavit, which is impossible to get during lockdown restrictions.
13. I submit that even as per the old system of issuing Identity Card by the Transgender Welfare Board, Tamil Nadu, only 6553 Transgender Persons even had a transgender Identity Cards. However, due to Covid19, the Transgender Persons could not get the benefit of new law.
14. Presently the situation is such that a majority of transgender persons do not have ration cards, and many of them even do not have specific transgender identity cards, though they may have other government identity cards. not having a ration card due to the hurdles faced by them due to the change of their name and gender identity and the discrimination faced by them has resulted in them not being able to access the new scheme of cash relief by the State government which is only for those who have ration cards.

II. COVID-19 vaccination for Transgender Persons'

15. I submit that beside loss of livelihood, transgender persons' lives are also in danger due to the uncertainty over the issue of taking vaccination doses. Neither

the 4th Respondent nor 1st Respondent has taken any steps to issue guidelines or awareness programmes to take into the confidence of the Transgender Community and their unique needs since some of the Transgender Persons would be on the Hormone Therapy and some might be going through (Sex Reassignment Surgery) SRS surgery.

16. I submit that there is dilemma/fear in the minds of the Transgender Persons, who are going through various stages of Hormone Therapy, (Sex Reassignment Surgery) SRS surgery etc. as to whether taking Covid19 vaccination would be appropriate during these stages of their medical treatment.
17. I submit that the 4th Respondent also failed to come up with awareness programme or special arrangement to cater to the needs of the HIV+ Transgender Persons, who are vulnerable to the Covid19 Pandemic.
18. Thus, the government is required to conduct special measures for assist transgender persons for registration for vaccination, as they are often not able to register online. There should also be special drives for vaccination in the community health centres where transgender persons can easily access and they should be given special slots for vaccination.
19. I submit that the government failed to provide medical attention to them even during this 2nd wave of Covid19 pandemic in terms of providing them vaccination doses and providing special attention to the HIV+ transgender persons.
20. Therefore, having no other alternative and equally efficacious remedy, I am therefore filing this petition as a public interest litigation, seeking the reliefs on the following among other grounds:

GROUND

21. **THAT** Transgender Persons are finding it difficult to meet their medical and livelihood requirements. The complete lockdown imposed by the Government of Tamil Nadu from 10.05.2020 to 24.05.2021 has made life and livelihood difficult for the Transgender Persons who were already facing problem for past one year due to first wave of Covid19 Pandemic.
22. **THAT** beside the livelihood, the Transgender Persons' life is also in danger due to the uncertainty over the issue of taking vaccination doses. Neither the 4th Respondent nor 1st Respondent have taken any steps to issue guidelines or awareness programmes to take into the confidence of the Transgender Community and their unique needs since some of the Transgender Persons would be on the Hormone Therapy and some might be going through (Sex Reassignment Surgery) SRS surgery.
23. **THAT** transgender persons face discrimination, prejudice and violence from all sections of society, from the police and face lack of access to medical facilities, health care and housing. Further, transgender persons are also face socio-economic disadvantages due to their low levels of education and consequent limited access to employment opportunities.
24. **THAT** the 4th Respondent also failed to come up with awareness programme or special arrangement to cater to the needs of the HIV+ Transgender Persons, who are most vulnerable to the 2nd wave of Covid19 Pandemic.
25. **THAT** the right to health is a part of Right to life of Citizen under Article 21 of Indian Constitution. Therefore, the Respondents has to ensure that the Transgender Persons requirement's including HIV+ transgender person's health are protected from Covid19 second wave by making appropriate provision of Covid19 vaccination doses.

26. THAT the Transgender Persons are not even able to get Transgender Identity Card as per the provisions of Transgender Persons (Protection of Rights) Act, 2019 due to the pandemic situation.
27. THAT all transgender persons in Tamil Nadu do not have ration card. Therefore, the act of limiting the cash relief of Rs.4000/- under G.O.(Ms) No.37; Dated 07.05.2021 of 2nd Respondent by limiting benefit to rice ration card holders will leave poor transgender persons who do not have ration card. This denies right to livelihood of thousands of the Transgender Persons.
28. **THAT** during the first wave of Covid19 Pandemic (2020), the 2nd Respondent has provided cash relief to not only all rice ration card holders but it was extended to all transgender persons who had Transgender Identity Cards. However, this time, they have been denied.
29. **THAT** none of the Respondent take action to safeguard right to life and livelihood of the Transgender Persons in these tough time of second wave of covid19 pandemic.
30. **THAT** in *NALSA Vs Union of India (AIR 2014 SC 1863)*, the Hon'ble Supreme Court noted the centuries of discrimination faced by transgender persons and held that "*...[a]rticle 14 does not restrict the word 'person' and its application only to male or female. Hijras/transgender persons who are neither male/female fall within the expression 'person' and, hence, entitled to legal protection of laws in all spheres of State activity, including employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizen of this country...Discrimination on the ground of sexual orientation or gender identity, therefore, impairs equality before law and equal protection of law and violates Article 14 of the Constitution of India.*" Therefore, it is duty of the Respondents to secure rights of the Transgender Persons in this time of the pandemic.

31. **THAT** transgender and intersex persons are among the most disadvantaged groups in India with very low levels of education and employment as they are discriminated on the basis of their gender identity and sex characteristics.

PRAYER

THEREFORE, in light of the above facts and circumstances, it is therefore prayed that this Hon'ble Court may be pleased to issue **INTERIM DIRECTION** to the 2nd Respondent to provide the first instalment of Rs. 2000/- of cash relief to be paid in the month of May 2021 under the G.O. (Ms) 37 dated 07.05.2021, is also paid to transgender persons who do not have ration cards, either on the basis of their transgender identity cards or any other government ID pending disposal of the Writ Petition.

THEREFORE, in light of the above facts and circumstances, it therefore prayed that this Hon'ble Court may be pleased to issue a WRIT OF MANDAMUS directing the Respondents:

- i. To issue a Corrigendum to the G.O.(Ms) 37 dated 07.05.2021 of the Department of Cooperation, Food and Consumer Protection to extend Covid-19 cash relief Rs.4000/- to transgender persons in Tamil Nadu who do not possess Ration Cards;
- ii. Direct that the first instalment of Rs. 2000/- of cash relief to be paid in the month of May 2021 under the G.O. (Ms) 37 dated 07.05.2021, is also paid to transgender persons who do not have ration cards, either on the basis of their transgender identity cards or any other government ID;
- iii. To conduct awareness programmes for Transgender Persons in the State of Tamil Nadu, regarding Covid-19 Vaccination, especially to clarify and assure them on the safety of vaccines for those who are undergoing hormone therapy and other treatment; and

- iv. To conduct special vaccination drives for transgender persons in Tamil Nadu by assisting them to register online and get special vaccination slots in local community health centres;
- v. Pass any other order in the interests of justice and equity.

Solemnly affirmed at Chennai

Before me

On this 15th day of May 2021

And signed his name in my presence

Advocate: Chennai

WRIT PETITION

The Address for services of all notices and processes on the petitioner is C.Prabhu, Advocate at _____.

The address for services of all notices and processes on the Respondents as stated above.

For the reasons stated in accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue the Writs of Mandamus directing the Respondents:

- i. To issue a Corrigendum to the G.O.(Ms) 37 dated 07.05.2021 of the Department of Cooperation, Food and Consumer Protection to extend Covid-19 cash relief Rs.4000/- to transgender persons in Tamil Nadu who do not possess Ration Cards;
- ii. Direct that the first instalment of Rs.2000/- of cash relief to be paid in the month of May 2021 under the G.O. (Ms) 37 dated 07.05.2021, is also paid to transgender persons who do not have ration cards, either on the basis of their transgender identity cards or any other government ID;
- iii. To conduct awareness programmes for Transgender Persons in the State of Tamil Nadu, regarding Covid-19 Vaccination, especially to clarify and assure them on the safety of vaccines for those who are undergoing hormone therapy and other treatment; and
- iv. To conduct special vaccination drives for transgender persons in Tamil Nadu by assisting them to register online and get special vaccination slots in local community health centres;
- v. Pass any other order in the interests of justice and equity.

Dated at Chennai on 15th day of May, 2021

Counsel for the Petitioner

MEMORANDUM OF WRIT MISCELLANEOUS PETITION

Under Article 226 of the Constitution

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5. The Government of Tamil Nadu
Represented by its Secretary,
Revenue and Disaster Management Department,
Secretariat, Fort St. George
Chennai – 600 009

...Respondents

INTERIM DIRECTION PETITION

For the reasons stated in accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue INTERIM DIRECTION to the 2nd Respondent to provide the first instalment of Rs.2000/- of cash relief to be paid in the month of May 2021 under the G.O.(Ms) 37 dated 07.05.2021, is also paid to transgender persons who do not have ration cards, either on the basis of their transgender identity cards or any other government ID pending disposal of the Writ Petition.

Dated at Chennai on 15th day of May, 2021

Counsel for the Petitioner