

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

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THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 08TH DAY OF JUNE 2020 / 18TH JYAISHTA, 1942

WP(C).No.9890 OF 2020(S)

PETITIONER/S:

KABEER C ALIAS ANEERA KABEER
D/O. SRAJU C, CHORAMPADATH HOUSE,
PAVUKKONAM POST,
VANIYAMKULAM , VIA PALAKKAD-679 522.

BY ADV. KUM.THULASI K. RAJ

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF SOCIAL JUSTICE,
SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 2 DIRECTOR,
DEPARTMENT OF SOCIAL JUSTICE,
THIRUVANANTHAPURAM-695 001.
- 3 STATE POLICE CHIEF,
POLICE HEADQUARTERS,
VAZHUTHACAUD,
THIRUVANANTHAPURAM-695 010.

R1-3 BY SRI.RANJITH THAMPAN,ADDL.ADVOCATE GENERAL
SR. GP. SRI. SURIN GEORGE IPE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
08.06.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Dated this the 8th day of June, 2020.

JUDGMENT

SHAJI P. CHALY, J

This is a public interest litigation filed by a transgender person, who is issued with an identity card. The paramount contention put forth is that the respondents have not undertaken to ensure the distribution of ration, medicines, access to medical treatment etc. to the transgender community in Kerala. It is further alleged that the transgender persons have been specifically discriminated in the matter of relief measures during lock-down due to the spread of covid-19 and the transgender community in Kerala, including the petitioner, continuously suffer due to the illegal and arbitrary attitude of the respondents and thereby, violate Articles 14, 15 and 21 of the Constitution of India.

2. The petitioner has also a case that she is excommunicated from her parental home several years before, on revealing her transgender identity and thereafter, she has suffered serious social disadvantages on the basis of her

sexual identity. The petitioner is also recognised as a transgender person by the State of Kerala and it was thereupon that the Social Justice Department has issued Ext.P1 identity card. So also, it is stated that in the national level, the 12th Five-Year Plan (2012-2017) recommended the empowerment of the transgender community by supporting their education, housing, access to healthcare, skill development, employment etc. The petitioner is also seeking the benefits of proposition of law laid down by the Apex Court in ***National Legal Services Authority v. Union of India and others*** [(2014) 5 SCC 438], wherein the Apex Court had held that all transgender persons have a right to self-determine their gender identity as male, female or transgender and non-recognition of their gender identity violates Articles 14 and 21 of the Constitution of India. So far as the State of Kerala is concerned, the Government of Kerala has recognised the plight of transgender people in Kerala and started pro-active measures to eliminate the disparities. A survey was conducted during 2014-2015 in respect of the

transgender community and a report was submitted to the Director, Department of Social Justice during the year 2015 and it was found that 54% of the transgenders had a monthly income of less than Rs.5000/- and 58% of transgender students drop out from the schools before completing 10th grade. Taking into account all these aspects, Ext.P2 transgender policy was evolved for the transgender persons in Kerala during the year 2015. With the above background submissions, it is contended that the transgender community consequent to the lock-down is facing severe crisis due to the lack of essential food supply, medicines and treatment and they are facing threat of torture at the hands of police authorities. It is also pointed out that they do not have access to ration and community kitchen and in spite of earnest efforts made by them, there is no supply of food, medicines etc. to the transgenders and it is also alleged that several members of the community do not have, ration cards, and access to food. Medical treatment is also alleged to be declined to the transgenders. That apart, it is submitted that they are unable

to pay rent and also facing threat of eviction and further that they are entitled to get allowances under the social employment scheme. However, due to the reasons best known to the authority, such financial benefits are not extended to the transgender community. Therefore, the following prayers are sought for:

1. To issue a writ of mandamus directing the first respondent to ensure adequate distribution of food rations, vegetables and essentials to transgender persons in Kerala from Civil Supplies Offices and other outlets without insisting for production of ration cards as long as the threat of Covid-19 persists;
2. To issue a writ of mandamus directing the first respondent to ensure adequate medicines, including HIV and hormone therapy medicines from primary health centres, government hospitals and dispensaries to the transgender persons in Kerala as long as the threat of Covid-19 persists;
3. To issue a writ of mandamus directing the first respondent to ensure unemployment allowance to the transgender persons as long as the threat of covid-19 persists;
4. To issue a writ of mandamus directing the first

respondent to ensure cooking facilities, access to community kitchens, free LPG cylinders and rehabilitation for transgender persons in Kerala as long as the threat of covid-19 persists;

3. An affidavit is filed for and on behalf of the second respondent, i.e., the Director of Social Justice, Thiruvananthapuram refuting the allegations and the claims and demands raised by the petitioner. Among other contentions, it is stated that earnest efforts are made by the State Government to provide all necessary facilities to the public at large, including the persons belonging to the transgender community, enabling them to lead a normal life, despite the restrictions imposed during lock-down due to the pandemic -Covid 19. The State of Kerala is the first State in India to implement the transgender policy for the overall empowerment of the transgender community. In order to have a holistic approach for the upliftment of the transgender community, a two tier implementation mechanism has been adopted, wherein a transgender Justice Board has been constituted at the State Level and a Transgender Justice

Committee at the District Level, with the District Collector as the Chairperson, and the District Social Justice Officer as the member Secretary. The committee consists of the District Police Chief, District Medical Officer, District Labour Officer, Deputy Director of Education, District Child Protection Officer, representatives from NGOs who are working among the transgenders and also representatives from the transgender community itself. The Government of Kerala has also formulated various schemes for the overall upliftment and protection of persons belonging to transgender community, which includes the assistance relating to self employment, marriage assistance for legally married transgender couples, financial aid for self employment, and for sex reassignment surgery. That apart, a 24 x 7 helpline has also been launched for providing necessary assistance to transgenders who are distressed and to protect their basic rights by providing counselling and legal assistance.

4. The Government has also instituted scholarship for transgender students at the rate of Rs.1000/- for students

from Standard VII to X, Rs.1500/- for transgender students pursuing +2 course, and for all other studies Rs.2000/-, per month is provided. The Social Justice Department has also made an initiative for providing a unique identity card for ensuring that the benefit of the welfare scheme reached the transgenders. So far as the general allegations with respect to the failure on the part of the Government to take necessary steps for supplying ration kits and other articles to the members of the community are concerned, it is stated that earnest efforts were made for the supply of the ration, ration kits and other articles, and also for providing shelter for those persons who were in crisis during the period of lock down. Necessary medicines were provided to all transgender persons who had undergone hormone therapy and arrangements were made through the Transgender Justice Committee and other NGOs. It is also brought to the notice of this Court that only 96 applications were received for hormone replacement therapy (HRT) medicines through the District Transgender Justice Committee. Majority of the

applications received were incomplete as the same were not supported with valid prescriptions issued by the Medical Practitioners and thereupon, sincere efforts were made to collect the details from the community through transgender cell of Transgender Justice Committee and NGOs working among the transgenders, and necessary arrangements were provided.

5. It is also pointed out that Social Justice Department is running an HIV Surveillance Centre under the aegis of Kerala Social Welfare Board and the Government is providing free antiretroviral (ART) medicines through 'Pulari Clinics' which are functioning in Government Medical Colleges and in selected District/Taluk hospitals across the State. In order to address the issue relating to HIV among transgenders, the Government of Kerala is running Transgender Suraksha Projects through Kerala Aids Control Society which provides for free counselling, safety tips, preventive materials from sexually transmitted diseases. So also, in addition to general supply of ration articles, the Social Justice Department had

provided additional food kit to all transgender persons who were having transgender identity cards during this lock-down period. The district-wise details of the supply so made are stated to be as follows:

1. Thiruvananthapuram	: 160
2. Kollam	: 133
3. Pathanamthitta	: 50
4. Alappuzha	: 70
5. Kottayam	: 35
6. Ernakulam	: 127
7. Thrissur	: 110
8. Idukki	: 22
9. Palakkad	: 55
10. Malappuram	: 80
11. Kozhikode	: 70
12. Wayanad	: 19
13. Kannur	: 45
14. Kasaragode	: 24
Total	: 1000

6. Above all, the Social Justice Department had also instituted 4 short stay homes, to accommodate members of transgender community at Thiruvananthapuram, Kottayam, Ernakulam and Kozhikode, and all facilities, including food and medicines are being provided free of cost. The Government had taken policy decisions to distribute ration articles to all persons without insisting for ration cards and the same was implemented through the Civil Supplies Department. After the commencement of the nationwide lockdown due to pandemic- covid 19, the Government had taken all the necessary steps for the adequate distribution of food grains to all without any discrimination. The Civil Supplies Department had provided the facility for transgender community to mark their gender as 'T' in the ration card, so that they could also avail the facility to buy ration articles through their ration cards. It is prominently submitted that the Social Justice Department, the State as well as the District Authority functioning for the transgender community have not

received any complaint with respect to non-access to food supply, medicines and threat of eviction. However, due to the relaxation of the restrictions, public life is regaining back to normal. There are also no police atrocities specifically pointed out, and in the event of any person approaching the District or state authorities, necessary steps would be taken to address their issues without fail.

7. Statement is also filed for and on behalf of the petitioner basically contending that though there are 3902 transgender people in the State as per the census of 2011, the population of the transgender is around 10,000 as of now, however even now a significant part of the transgender community in Kerala are deprived of basic necessities, such as ration, ration kits, medicines for hormonal therapy, during and after the lock-down period. A list of five persons who are deprived of necessities are also indicated therein. Therefore, according to the petitioner, significant number of transgender persons in Kerala have not received ration and ration kits, and no steps are also taken by the Government to issue ration card

to the members of the transgender community.

8. We have heard the learned counsel for the petitioner, Adv. Smt. Thulasi K. Raj, and the learned Senior Government Pleader Sri. Surin George Ipe, and perused the pleadings and documents on record.

9. Even though the petitioner has generally submitted that during the lock-down period, the members of the transgender community did not receive ration articles, medicines and the food kit, no specific instances are pointed out in the writ petition. It is true, in the statement filed subsequently, names of 5 transgender persons are shown, to contend and canvass that those persons have not received the necessary food articles and medicines. However, the counter affidavit filed for and on behalf of the second respondent shows that at the State level and District level, in order to address the issues of the Transgender Community, Committees are constituted, and whenever any complaint or representation from transgender persons are received on account of the inconvenience faced by them due to the non-

supply of food or medicines, police atrocities, students grievances etc. they are immediately addressed by the committee constituted for the purpose. On going through pleadings in the writ petition, it is apparent that no specific instances are pointed out with respect to the non-supply of food, ration and medicines to any of the transgender persons. Though in a statement, names of 5 persons are pointed out by the petitioner, in the writ petition, based on the judgment rendered by the Apex Court in *National Legal Services Authority* (supra), the benefits are sought for. However, it is not specified in the writ petition as to whether any such benefit on the basis of the judgment are denied to the transgender persons within the State of Kerala. It is true, the petitioner has alleged that she was not issued with a ration card. However, consequent to the filing of this writ petition on 11.05.2020, on 13.05.2020, the petitioner was issued with a ration card. The petitioner has not stated specifically any of the instances whereby the ration articles, ration kit and the ration card was denied to the transgender persons on them

approaching appropriate statutory authority.

10. We are of the view that when the State Government has taken enough and more steps to provide various facilities and the authorities are appointed for addressing their issues, it is for members of that community or the NGOs or the members representing the transgender community to approach the said authorities and put forth the rights, they are entitled to. Even though it is contended that the members of the transgender community are being harassed by the police, we are unable to act upon such a contention, since no specific instances are pointed out by the petitioner enabling us to direct the respondents to take appropriate action against the police officials.

11. By now, it is trite and well settled that even a person approaching a constitutional court with a public interest litigation should provide necessary materials, and facts and figures enabling the constitutional court to rely upon the same and issue appropriate directions to the State and its authorities. Anyhow, as per the additional statement filed, the

instances of non-supply of ration articles and medicines to 5 persons are pointed out. On a query to the learned Senior Government Pleader, it was submitted that if they are approaching the Nodal Officer of the concerned District, necessary steps would be taken to address their issues and settle the same. We also find force in the contention advanced by the learned Senior Government Pleader that without medical prescriptions from the doctors, medicines cannot be supplied, and the petitioner has not pointed out any instance where a member of the transgender community was denied with medicine when such members approached the authorities with prescription from the doctors. We are also of the view that the medicines to be supplied are for serious medical issues as stated above, and the authorities are prevented by law from supplying such medicines without prescription

12. We are also of the view that the issue with respect to the issuance of identity card and ration card can only be done by the authorities only on the members of the community

approaching the authorities concerned, for the issuance of the same. The identification of the transgender community is an issue involving privacy and therefore, unless and until such persons approach the authorities and their identity is so revealed and recognised, the authorities are unable to take action for supplying them medicines, ration, ration cards and identity cards and that too after thorough medical examination. We are also of the view that the issue with respect to the gender identity of the transgender has been considered by the Apex Court in the judgment in *National Legal Services Authority* (supra), after taking in depth study with respect to the problems and issues faced by the transgenders all over the world. The Apex Court has also held therein that gender identification becomes a very essential component which is required for enjoying the civil rights of the members of the community. It is only with the recognition that many rights attached to the sexual recognition as 'third gender' would be available to this community more meaningfully ie., the right to own property, right to marry,

right to claim a formal identity through a passport and a ration card, a driver's licence, the right to education, employment, health and so on. We are also of the view that there are no reasons for denying any basic human right to a member of the transgender community. But, unless and until such efforts are made by the members of the community to secure their rights through appropriate statutory authority constituted by the State Government due to the peculiar nature of the issue, statutory authorities may find it difficult, especially due to the right to privacy, and right to choice, enjoyed by such persons, which are referable to the right of life and liberty enjoyed by the citizens under Article 21 of the Constitution of India. Therefore, in order to translate the rights into a reality, and to avoid practical difficulties, we are of the firm opinion that it is for the members of the community, or NGOs and others who are working with the transgender community to identify the problems faced by the members of the community and point out the same to the officers. Anyhow, even though specific instances are not

pointed out in the writ petition with respect to the denial of right to ration, food kit and medicine, in the statement filed by the petitioner, it is stated that 5 persons have not received ration, medicines and kit. Therefore, we are of the view that the writ petition can be disposed of with suitable directions:

1. If five persons mentioned in the statement filed by the petitioner are approaching the concerned District Authority constituted by the Government for the purpose of addressing the issues of the transgenders, the same shall be looked into and provide necessary articles and medicines to such persons and their grievances shall be alleviated.
2. We also direct the respondents to ensure that medicines are supplied free of cost in accordance with the policy of the State Government, whenever any member of the transgender community is approaching the concerned statutory authority with the medical prescription of a doctor.
3. If and when any member of the transgender community approaches the District Authority or Nodal Officer appointed for the purpose of issuing gender identity card and the ration card, necessary steps shall be taken at the earliest to address the issues, and on being satisfied, to

take immediate steps to issue identity card and ration card to such persons.

4. Any other issues raised by the transgenders in writing shall also be addressed appropriately.

Writ petition is disposed of with the above specific directions.

sd/-
S. MANIKUMAR,
CHIEF JUSTICE.

sd/-
SHAJI P. CHALY,
JUDGE.

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APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1** **A COPY OF THE TRANS-GENDER IDENTITY CARD OF THE PETITIONER.**
- EXHIBIT P2** **A COPY OF THE STATE POLICY FOR THE TRANS-GENDER PERSONS IN KERALA, 2015.**
- EXHIBIT P3** **A COPY OF THE NEWS REPORT IN DOWN TO EARTH DATED 01.04.2020.**
- EXHIBIT P4** **A COPY OF THE NEWS REPORT IN THE HINDU DATED 06.04.2020.**

RESPONDENTS' EXHIBITS: NIL

/True Copy/

PS to Judge.