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IN THE HIGH COURT OF KARNATAKA AT BANGALORE
(ORIGINAL JURISDICTION)

W.P. No. ____ / 2019

BETWEEN:

Jeeva M

PETITIONER

AND

State of Karnataka and Anr.

RESPONDENTS

SYNOPSIS

The present petition has been brought by the Petitioner who is a transgender person challenging the inaction of the Respondents in not issuing a new SSLC Certificate and PU Certificate to the Petitioner reflective of his change of name and gender identity. The Petitioner was born as a biological female and his name given at birth and which was recorded in his school certificates (10th and 12th) was 'Jishu kanti Saikia' and gender as 'female'. However, the Petitioner identified as a male at a very young age. He approached the Respondents to issue him fresh educational certificates reflecting his self-identified name and gender. However, the Respondents have not taken any action. This is in complete violation of the fundamental rights to life, equality and gender identity of the Petitioner and his right to live a dignified life, and to have his privacy protected under Articles 14, 15, 19(1)(a), and 21 of the Constitution respectively. Aggrieved by the inactions of the Respondent, the Petitioner has filed this petition.

LIST OF DATES

| Dates | Events |
|-----------|---|
| | The Petitioner is an 18 year-old transgender person. The Petitioner was born as biologically female and his given name in his birth certificate was M. Jeevitha. |
| 13.5.2014 | The Petitioner completed his schooling and passed his S.S.L.C. examination and was awarded an S.S.L.C Certificate by the Respondent No. 2. His SSLC certificate records his name as |

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| | Jeevitha M. or M. Jeevitha and gender as "Girl". |
| 31.03.2016 | The Petitioner completed his Pre-University Education from ASC Independent PU College, Bangalore, and was awarded a Pre-University Education Pass Certificate. His PUC certificate also records his name as Jeevitha M. or M. Jeevitha and gender as "Girl". |
| 04.12.2017 | The Petitioner has identified as male from a very young age. Even though the Petitioner was assigned female at birth, his self-identified gender identity was male. Therefore, the Petitioner then changed his name from Jeevitha M. to Jeeva M by executing an Affidavit dated 04.12.2017 bearing [REDACTED] recording his intent to change his name and gender, and expressing his wish to be known henceforth as Jeeva M. |
| 10.12.2017 | The Petitioner subsequently issued a public notice advertising the change in his name in two newspaper publications – one in Deccan Herald and the other in Praja Vani. |
| 18.12.2017 | The Petitioner has been issued an Aadhaar Card [REDACTED] [REDACTED] with his name as Jeeva M. and gender identity as male. |
| 23.03.2018 | The Petitioner also underwent psychological evaluation by the Consultant Psychiatrist, Dr. B.G. Girishchandra, at the Aster CMI Hospital and was diagnosed with Gender Identity Disorder. |
| 03.10.2018 | The Petitioner sent a representation to the Respondents requesting that his name and sex on his educational certificates be changed to reflect his current name and gender identity (male). |
| 12.10.2018 | The Petitioner sent additional representations by registered post to the Respondents. |
| 24.11.2018 | Thereafter the Respondent No.2 replied stating that the change of name and change and gender can only be done if the Petitioner produces a court order. The Respondent No.1 has not replied and taken on action. Hence this Petition. |

Place: Bangalore

Counsel for the Petitioner

Date:

(Rohan Kothari)

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

(ORIGINAL JURISDICTION)

W.P. No. 12113/2019

BETWEEN:

Jeeva M

S/o Mr. Murugesan R.

[REDACTED]

[REDACTED] r,

[REDACTED]

[REDACTED]

...PETITIONER

AND

1. State of Karnataka

Department of Pre-University Education,

Sampige Road, 18th cross,

Malleswaram,

Bangalore – 560 012

Through its Secretary

2. The Karnataka Secondary Education Examination Board

6th Cross, Malleshwaram

Bangalore – 560 003

Through its Secretary

... RESPONDENTS

MEMORANDUM OF WRIT PETITION UNDER ARTICLES 226 AND 227 OF THE

CONSTITUTION OF INDIA

The Petitioner submits as follows:

1. The present petition has been brought by the Petitioner who is a transgender person challenging the inaction of the Respondents in not issuing a new SSLC

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Certificate and PU Certificate to the Petitioner reflective of his change of name and gender identity. The Petitioner was born as a biological female and his name given at birth and which was recorded in his school certificates (10th and 12th) was 'Jishu kanti Saikia' and gender as 'female'. However, the Petitioner identified as a male at a very young age. He approached the Respondents to issue him fresh educational certificates reflecting his self-identified name and gender. However, the Respondents have not taken any action. This is in complete violation of the fundamental rights to life, equality and gender identity of the Petitioner and his right to live a dignified life, and to have his privacy protected under Articles 14, 15, 19(1)(a), and 21 of the Constitution respectively. Aggrieved by the inactions of the Respondent, the Petitioner has filed this petition.

Brief Facts:

2. It is submitted that the Petitioner is an 18 year-old transgender person. The Petitioner was born as biologically female and his given name in his birth certificate was M. Jeevitha.

(A copy of the Petitioner's Birth Certificate is annexed herein and is marked as **ANNEXURE – A)**

3. The Petitioner completed his schooling and passed his S.S.L.C. examination and was awarded an S.S.L.C Certificate dated 13.05.2014 [REDACTED] by the Respondent No. 2. The Petitioner then completed his Pre-University Education from ASC Independent PU College, Bangalore, and was awarded a Pre-University Education Pass Certificate 31.03.2016 [REDACTED] by the Respondent No. 1. Both his SSLC certificate and PUC certificate record his name as Jeevitha M. or M. Jeevitha and gender as "Girl".

(A Copy of the Petitioner's S.S.L.C. certificate and Marks card dated 13.05.2014 with [REDACTED] is annexed herein and marked as **ANNEXURE – B)**



(A Copy of the Petitioner's Pre-University Education Pass Certificate dated 31.03.2016 with [REDACTED] is annexed herein and marked as **ANNEXURE – C)**

4. It is submitted that the Petitioner has identified as male from a very young age. Even though the Petitioner was assigned female at birth, his self-identified gender identity was male. Therefore, the Petitioner then changed his name from Jeevitha M. to Jeeva M. He executed an Affidavit dated 04.12.2017 bearing Certificate [REDACTED] recording his intent to change his name and gender, and expressing his wish to be known henceforth as Jeeva M. The Petitioner subsequently issued a public notice advertising the change in his name in two newspaper publications - one in Deccan Herald dated 10.12.2017, and the other in Praja Vani dated 10.12.2017.

(A copy of the Affidavit dated 04.12.2017, recording the name and gender change of the Petitioner is annexed hereto and marked as **ANNEXURE- D)**

(A Copy of the public Notice issued in the Deccan Herald dated 10.12.2017 is annexed hereto and marked as **ANNEXURE – E)**

5. After his name change, the Petitioner also underwent psychological evaluation by the Consultant Psychiatrist, Dr. B.G. Girishchandra, at the Aster CMI Hospital on 23.03.2018 and was diagnosed with Gender Identity Disorder. The concerned medical professional recorded the Petitioner to be free of any psychiatric contradiction for sex reassignment procedures. Subsequently, the Petitioner underwent Bilateral Mastectomy Surgery at the Aster CMI Hospital, Bangalore. He was admitted to the hospital on 18.05.2018 and discharged on 19.05.2018.

(A copy of the Out Patient Summary issued by Dr. B.G. Girishchandra dated 23.03.2018 issued to the Petitioner is annexed hereto and marked as **ANNEXURE –F)**

(A Copy of the Petitioner's Discharge Summary from Aster CMI Hospital dated 19.05.2018 is annexed herein and marked as **ANNEXURE – G)**

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6. Pursuant to the Petitioner having undergone sex re-assignment surgery and changing his name and gender through Affidavit dated 4.12.2017, he has been issued an Aadhaar Card [REDACTED] with his name as Jeeva M., and gender identity as male. It is submitted that the identity of the Petitioner for all purposes is 'Jeeva M', who is a male in all government records, barring the educational certificates he seeks to amend through this Petition.

(A copy of the Petitioner's Aadhaar Card [REDACTED] dated 18.12.2017 is annexed herein and is marked as ANNEXURE – H)

7. It is submitted that the Petitioner's educational certificates still bear his old name and gender identity, and is hence, inconsistent with his present name and gender identity. This inconsistency in legal documentation prior to his sex reassignment surgery and his present legal identity, which is also reflected in government identification documents results in grave inconvenience and hardship to the Petitioner. It leads to a dual life, one on documentation and one in reality, and this is a cause for great harassment and discrimination against the Petitioner, for his future education and employment prospects.

8. The Petitioner therefore sent a representation to the Respondents requesting that his name and sex on his educational certificates be changed to reflect his current name and gender identity (male). The Petitioner hand delivered an application dated 3.10.2018 to the Respondents, requesting for change of name and gender in his educational certificates. The Respondents refused to even acknowledge the receipt of both the applications. Consequently, the Petitioner sent the representations by registered post on 12.10.2018 to the Respondents. Despite receipt of the registered post, neither of the Respondents undertook any action pertaining to the Petitioner's request.

(A copy of the Petitioner's representation dated 3.10.2018 to Respondent No. 1 is annexed herein and is marked as ANNEXURE – J)

(A copy of the Petitioner's Representation dated 3.10.2018 to Respondent No. 2 is annexed herein and is marked as ANNEXURE – K)



(A copy of the Petitioner's Representation dated 12.10.2018 to Respondent No. 1 is annexed herein and is marked as **ANNEXURE – L**)

(A copy of the Petitioner's Representation dated 12.10.2018 to Respondent No. 2 is annexed herein and is marked as **ANNEXURE – M**)

(A copy of the Acknowledgment card showing receipt of registered post to Respondent No. 1 is annexed herein and is marked as **ANNEXURE – N**)

(A copy of the tracking status of both the registered posts sent to the Respondents is annexed herein and is marked as **ANNEXURE – P**)

9. Thereafter the Respondent No. 2 replied vide letter dated 24.11.2018 stating that the change of name and change and gender can only be done if the Petitioner produces a court order. The Respondent No 1 has not responded, nor has taken any action pursuant to such representation for the change of the Petitioner's name and gender in the educational certificates.

(A copy of letter dated 24.11.2018 issued by the Respondent No.2 is annexed herein and is marked as **ANNEXURE – R**)

10. It is submitted that the Petitioner has not been able to pursue higher education owing to this incongruence in name and gender in his educational certificates, and government identification documents. Delays in the pursuit of education potentially restricts the quality of life that the Petitioner would otherwise have been able to lead.

11. Being aggrieved by the inaction of the Respondents in not issuing an SSLC and PU certificates to the Petitioner reflective of his name change and gender identity despite his numerous representations, and having no other alternative and efficacious remedy, the Petitioner has filed the present writ petition before this Hon'ble Court. The Petitioner has not filed any other Petition either before this Hon'ble Court or any other Court in respect of the present case. The Petition is filed on the following, among other grounds:



GROUND:

12. **THAT** the Petitioner has the right to change his name and gender identity and the inaction on the part of the Respondents in carrying out such a change violates the Petitioner's right to life and liberty guaranteed under Article 21 of the Constitution.
13. **THAT** the Hon'ble Supreme Court in ***National Legal Services Authority v. Union of India*** (2014) 5 SCC 438 (hereinafter referred as "**NALSA**") recognized the right of persons to self-identify their gender. Noting gender identity to be one's deeply felt internal and individual experience of gender, the Hon'ble Court in paragraph 19 of *NALSA* (supra) recognized that this includes "*the personal sense of the body which may involve a freely chosen, modification of bodily appearance or functions by medical, surgical or other means and other expressions of gender, including dress, speech and mannerisms.*" Therefore, changing the name and gender assigned at birth is essential for the Petitioner in leading a dignified life. Depriving him of this option is not only contrary to the decision in *NALSA* (supra), but also subjects him to a life without his true identity and is thus violative of Articles 14, 19 and 21 of the Constitution.
14. **THAT** the Hon'ble Supreme Court in ***NALSA*** recognized the discrimination faced by transgender persons and ruled that discrimination on the ground of gender identity violates Article 14 of the Constitution by impairing equality before law and the equal protection of the law. The Hon'ble Supreme Court noted that, "*(d)iscrimination is so large and pronounced, especially in the field of health care, employment, education, leave aside social exclusion*" and also that "*non-recognition of identity of Hijras/transgender persons results in them facing extreme discrimination in all spheres of society, especially in the field of employment, education, healthcare etc.*" It is submitted that the act of the Respondents in not issuing fresh educational certificates to the Petitioner which reflects his change of name and gender results in grave inconvenience to the Petitioner who has undergone sex-reassignment surgery and has changed his



name and gender identity from that assigned at birth. The ruling of the Hon'ble Supreme Court seeks to prevent discrimination on the grounds of gender identity, which puts persons through "*immense stress, trauma, humiliation and embarrassment*".

15. **THAT** the Hon'ble Supreme Court in **NALSA** also observed that any discrimination on the ground of 'sex' under Articles 15 and 16 includes discrimination on the ground of gender identity. The Court observed that both biological characteristics such as genitals, chromosomes and secondary sexual features, as well as gender attributes such as one's self-image and the deep psychological and emotional sense of sexual identity and character, constitute distinct components of sex. It is submitted that the inaction of the Respondents in issuing a new SSLC and PU certificate reflecting the current sex and name of the Petitioner amounts to discrimination and is therefore, violative of Article 15 and 16.

16. **THAT** the Hon'ble Supreme Court in paragraph 66 of **NALSA** ruled that the "*values of privacy, self-identity, autonomy and personal integrity are fundamental rights guaranteed to members of the transgender community under Article 19(1)(a) of the Constitution of India and the State is bound to protect and recognize those rights.*" It is submitted that the decision to undergo sex reassignment surgery is one of the Petitioner's free will and that which must be respected and protected by the Respondents. In ignoring the request of the Petitioner's request to change his name and gender on his educational certificates, the Respondents are not recognizing the Petitioner's right to self-identify as a male with a new name. It has resulted in violating the fundamental right of the Petitioner to express himself, under Article 19(1)(a).

17. **THAT** the Hon'ble Supreme Court in **NALSA** ruled that gender being a core and integral part of a person's identity, the "*legal recognition of gender identity is, therefore, part of right to dignity and freedom guaranteed under our Constitution.*"

Thus, the Hon'ble Supreme Court ruled that recognition of gender identity is at the heart of Article 21 and the fundamental right to life with dignity. It is submitted that the action of the Respondents violates this fundamental right to life with dignity of the Petitioner by forcing him to live dual lives, one on paper with his old identity as female with the name of Jeevitha M and the other, the present life and gender identity as male with the name Jeeva M. The incongruence between the name and gender identity on the educational certificates of the Petitioner and the identification documents issued to the petitioner by the Government of India, in the Aadhaar Card, which records the Petitioner's current name and gender identity leads to the Petitioner facing delayed higher education, several unnecessary questions, harassment, embarrassment, discrimination. It is thus a violation of his right to life with dignity and personal liberty under Article 21 of the Constitution.

18. **THAT** the Hon'ble Supreme Court of India in ***Justice K. Puttaswamy (Retd.) & Anr. V. Union of India & Ors.*** 2017 SCC Online SC 996 has recognized the right to privacy as one of the facets of the right to life and dignity. The right to identity, personal autonomy and the right to be left alone, all form a part fo this right to privacy that is infringed by denial of the Respondents of the Petitioner's request to issue fresh educational certificates. In the **NALSA** judgment, the Hon'ble Supreme Court of India held that Article 21 of the Constitution protects one's right to privacy. This has been recognized by the 9 judge bench in ***Justice K. Puttaswamy (Retd.)*** (supra) wherein the Hon'ble Supreme Court of India held that NALSA judgment indicated the rational for grounding the right to privacy in protection of gender identity in Article 15 and that the intersection between Articles 15 and 21 "*locates a constitutional right to privacy as an expression of individual autonomy, dignity and identity*". It is submitted that the inaction of the Respondents with respect to the Petitioner's request for fresh educational certificates results in invasion of the Petitioner's privacy who is forced to disclose his past identity of being female, and having a different name. This is a direct violation of his fundamental right to privacy under Article 21 of the Constitution.

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19. **THAT** the act of the Respondents in not acting upon the Petitioner's request results in violation of his right to self-identify his gender identity. The Hon'ble Supreme Court in **NALSA** concluded that discrimination on the basis of sexual orientation or gender identity would include any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under the Constitution. It is submitted that the inaction of the Respondent to the Petitioner's request for issue of fresh educational certificates is in direct violation of the operative directions of the Hon'ble Supreme Court in **NALSA**, by not legally recognizing the right of the Petitioner to self-identify his gender.

20. **THAT** the Madurai Bench of the Hon'ble Madras High Court in **S. Swapna (Transgender) v. the State of Tamil Nadu** W.P. (MD) No. 10882 of 2014, dealing with the question of name and gender change in educational certificates has ruled that in cases where transgender persons undergo sex reassignment surgery and make applications for change of name and sex in relevant records, especially on the basis of documents such as the certificate issued by a medical officer, there the concerned departmental authorities must make the changes in the records. The Hon'ble Court directed the respondents to make the appropriate changes in all the relevant records and stated:

"The regulations were all made long back without for seeing the future developments. When a transgender undergoes a sex reassignment surgery and makes an application thereafter for change of name and sex in the relevant records on the basis of various documents including the certificate issued by the Medical Officer, the concerned authorities are expected to verify the records and make consequential changes in the concerned records. The petitioner cannot be dragged from pillar to post on the ground that there are no rules permitting such changes in educational records. The petitioner has produced sufficient documents to prove her identity. The application should have been considered on merits by the third respondent. The authorities in a case of this nature must extent their helping hand to a

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transgender rather than denying the relief on technical reasons. I am therefore of the view that the third respondent erred in rejecting the request made by the petitioner."

If this is the ruling of the Hon'ble Madras High Court, then the same guidelines can be applied against the inaction of the Respondents to the Petitioner's legitimate request to issue fresh educational certificates, to reflect the change of name and gender identity.

21. THAT in the case of ***K. Gowtham Subramaniam v. the Controller of Examination*** W.P. No. 7536 of 2017, the Madras High Court reiterated the above rulings. In this case, the petitioner was also a female to male transgender person, who upon requesting his educational certificates for change of name after his sex reassignment surgery, was asked by the respondent institutions to get a certificate from a District Magistrate as mandated under the Transgender (Protection of Rights) Bill, 2016. The Hon'ble Court noted that the Bill was not in operation, and that where the petitioner had submitted sufficient documents such as the medical certificates and the government identity card, Aadhar card in the present case, there was no impediment on the educational institutions making necessary changes in the certificates based on the Petitioner's representations.

22. THAT in ***Shri Vinod H.N VS. State of Karnataka***, W.P.No.54037/2017 this Hon'ble Court directed the Petitioner to make another representation with medical documents as supporting evidence and directed the Respondents therein to make changes to the Petitioner's name and gender. In ***Poojitha B.P. vs. Karnataka Secondary Education Examination Board & Others***, Writ Petition No.54037 of 2017 (EDN-RES) where the Petitioner was a transgender woman who wanted to change her name and gender in her educational records, this Hon'ble Court directed the Petitioner to submit the required documents to the Respondents and directed the Respondent Board to carry out the necessary changes in her school, PUC and college certificates within 3 months.

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PRAYER

WHEREFORE, in light of the above facts and circumstances, the Petitioner most respectfully prays that this Hon'ble Court be pleased to:

- A. Issue a writ in the nature of mandamus directing the Respondents to issue to the Petitioner revised SSLC and PU certificates reflecting his current name as 'Jeeva M.' and gender as 'Male'; and
- B. Grant any other relief, which the Hon'ble Court deems fit in the circumstances of the case in the interests of justice and equity.

Place: Bangalore

Counsel for the Petitioner

Date:

Rohan Kothari

Address for Service:

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35 Primrose Road

Bangalore – 560025