

**Under Article 226 of the Constitution of India**

**IN THE HIGH COURT OF JUDICATURE AT MADRAS  
(Special Original Jurisdiction)**

**W.P. No.                      of 2019**

Sai Rahul Vijayakumar  
S/o Vijaya Kumar  
Aged about 34 years  
13/661, Shree Chitra Kavu Street,  
Sekhariapuram  
Pallakkad – 678 010

...Petitioner

-vs-

1. The Registrar, Bharathiar University  
Marudhamalai Road,  
Coimbatore - 641 046  
Represented by the Registrar

2. State of Tamil Nadu  
Represented by its Secretary, Department of Higher Education  
Secretariat, Fort St. George  
Chennai – 600 009

...Respondents

**AFFIDAVIT OF THE PETITIONER**

I, Sai Rahul Vijayakumar, S/o Vijaya Kumar, aged about 36 years, residing at 13/661, Shree Chitra Kavu Street, Sekhariapuram, Palakkad, presently in 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 am competent to affirm and swear to this Affidavit.
2. I submit that the present Petition has been filed before this Hon'ble Court seeking directions to the Respondent No. 1 to accept my request to change my name and gender in my Bachelor of Engineering (Computer Science & Engineering) mark sheets and B.E. Degree Certificate to indicate my name as 'Sai Rahul Vijaykumar' and gender as 'male'.

## **BRIEF FACTS**

3. I submit that I am a transgender person. I was born as biologically female and my name in my birth certificate is 'Gayathri V' and gender was marked as 'female'.
4. I submit that I completed my schooling and passed my S.S.L.C. examination in March 1998 at GM Model Girl's Higher Secondary School, Palakkad. Thereafter, I completed my Pre-University Education from University of Calicut in April, 2000. In April 2004, I completed my Bachelor of Engineering (Computer Science & Engineering) from Amrita Institute of Technology & Science, Bharathiar University, Coimbatore. I submit that all of the above certificates and mark sheets reflect my name as 'Gayathri V' and gender as 'female'.
5. I submit that I have identified my gender as male from a very young age. In order to affirm my chosen gender identity, I underwent female to male gender reassignment surgery - Laparoscopic hysterectomy with Bilateral salpingo oophorectomy and top surgery (Bilateral breast reduction surgery) on 29.03.2019 in Polakulath Narayanan Renai Medicity Multi Super Speciality Hospital in Kochi.
6. I submit that thereafter, vide publication dated 27.03.2019 in the Official Gazette of the State of Kerala, I officially changed my name from 'Gayathri V' to 'Sai Rahul Vijayakumar'. Earlier, I have also issued a public notice on 01.14.2019 in 'The Hindu' newspaper regarding the change of my name and gender, for the information of the general public.
7. I further submit that pursuant to the above, I have changed my name to 'Sai Rahul Vijayakumar' and gender to 'male' in other identification documents including my Aadhaar Card, Driving License bearing No. 9/108422/2004 and PAN Card bearing No. AMTPG6203C.
8. I further submit that at present, my name and gender for all purposes is 'Sai Rahul Vijayakumar' and 'male' respectively in all Government records, barring the University records, B.E. Degree Certificate and mark sheets issued by the

Respondent No. 1. In fact, I had applied for changes to be carried out in my SSLC Certificate and Pre-Degree Certificates with the respective institutions in Kerala to reflect my current name and gender. The said application has been acknowledged by the concerned authorities and is currently under process.

9. I submit that with a view to change my name and gender in my B.E. Degree Certificate and marks sheets, I sent a written representation dated 10.06.2019 through registered post to the Respondent No. 1 seeking change of name and gender in my B.E Degree Certificate and mark sheets to reflect my current name and gender as 'Sai Rahul Vijayakumar' and gender as 'male'. Along with the written representation, I also sent a copy of my medical certificate, Gazette Notification, Aadhaar Card, Driving License, Degree Certificate and Mark Sheet as produced in the present Petition.
10. However, despite having made this request for change of my name and gender, the Respondent No. 1 has failed to take any action and has failed to carry out the required changes to my name and gender in the said University documents and records.
11. I submit that in my written representation dated 10.06.2019, I also relied on the decision of this Hon'ble Court in K. Gowtham Subramanyam v. The Controller of Examination, Anna University & Ors. [W.P. No.7536/2017], wherein this Hon'ble Court held that:

*"...when a transgender undergoes a sex re-assignment surgery and makes an application thereafter for changing of name and sex in the relevant records on the basis of the various documents including documents issued by the medical officer, the educational authorities or the concerned authorities are expected to verify the records and make consequential changes in the concerned records. Merely because the petitioner belongs to the third gender, he or she cannot be made to run from pillar to post on the ground that there are no rules available permitting such changes".*

12. I submit that despite pointing out this Hon'ble Court's ruling on change of name and gender in educational documents, the Respondent No. 1 is still denying my lawful request.
13. I submit that my existing Government identification documents like Aadhaar Card, PAN Card and Driving License reflect my current identity, whereas my degree certificate and mark sheet issued by the Respondent No.1 still bear my old name and gender. Hence, it is inconsistent with my present name and gender identity and forces me to live a dual life. Further, the inconsistency in my name and gender in Government documents and educational records are causing problems as educational documents are relevant for employment prospects.
14. I submit that having no other alternative and equally efficacious remedy, I am approaching this Hon'ble Court through the present Petition, seeking appropriate reliefs on the following, among other grounds.

## **GROUND**

- A. **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 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 in identity documents is essential for me to lead a dignified life. Depriving me of this option is not only contrary to the decision in *NALSA*, but also subjects me to a life without my true identity and violates Articles 14, 19 and 21 of the Constitution.

- B. **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 Respondent No.1 in issuing a revised Degree Certificate and mark sheets reflecting my present name and gender amounts to discrimination on the basis of gender and violates the right against discrimination in Article 15.
- C. **THAT** the Hon'ble Supreme Court ruled in *NALSA* 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.*" Based on this ruling, I have a right to express my chosen gender identity through words, images and text under Article 19(1)(a) and this would include making changes to my name and gender identity in all identification documents. In ignoring my request to change my name and gender on my educational certificates, the Respondents are not recognizing my right to self-identify as a male with a new name. It has resulted in violating my fundamental right to express myself under Article 19(1)(a).
- D. **THAT** the Hon'ble Supreme Court in *NALSA* ruled that gender is a core and integral part of a person's identity and 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 Respondent No.1 violates my fundamental right to life with dignity by forcing me to live dual lives, one on my education certificates with my old identity as female with the name of 'Gayathri V' and the other, the present life and gender identity as male with the name 'Sai Rahul Vijayakumar'. The incongruence between the name and gender identity on the educational certificates and the identification documents issued to me by the Government of India in the Aadhaar Card, PAN Card and Driving

License which records my current name and gender identity leads to me facing several unnecessary questions, harassment, embarrassment, discrimination. It is thus a violation of my right to life with dignity and personal liberty under Article 21 of the Constitution.

E. **THAT** in *Justice K. Puttaswamy (Retd.) & Anr. V. Union of India & Ors.* [(2017) 10 SCC 1], the Hon'ble Supreme Court has recognized the right to privacy as one of the facets of the right to life and dignity under Article 21. The right to identity, personal autonomy and the right to be left alone, all form a part of this right to privacy which has been infringed by denial of the Respondent No. 1 to my request to issue fresh educational certificates reflecting my current name and gender. In *NALSA*, the Hon'ble Supreme Court of India held that Article 21 of the Constitution protects one's right to privacy, which has been affirmed by the Hon'ble Supreme Court in *Justice K. Puttaswamy (Retd.)* wherein it held that *NALSA* provided the rationale for grounding the right to privacy in the 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*".

F. **THAT** the operative directions of the Hon'ble Supreme Court in *NALSA* provide that "*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 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. The failure of the Respondent No.1 to act on my request is a direct violation of this direction of the Hon'ble Supreme Court.

G. **THAT** the Madurai Bench of this Hon'ble 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 held that:

*“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 extend their helping hand to a 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.”*

Therefore, this Hon'ble Court has acknowledged and categorically held that educational institutions should process applications for change of name and gender where sufficient documentary proof has been submitted, as in the present case and as such, my request ought to have been considered and necessary changes to my name and gender ought to have been carried out in the University records including my B.E. Degree Certificate and mark sheets.

H. **THAT** in the case of *K. Gowtham Subramaniam v. the Controller of Examination* [W.P. No. 7536 of 2017], this Hon'ble 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 Aadhaar card, there was no impediment to making necessary changes in the certificates based on the Petitioner's representations.

- I. **THAT** in *Jeeva M Vs State of Karnataka, Department of Pre-University Education & Anr.* [W.P. No. 12113/2019], relying on *NALSA*, the Hon'ble High Court of Karnataka held that:

*"...it is mandatory for the State of Karnataka represented by the Principal Secretary of Educational Department to issue circular instructions to the authorities/institutions concerned to act in consonance with the directions issued by the Hon'ble Apex Court. The Principal Secretary, Education Department, State of Karnataka shall consider the same and take necessary action to implement the directions of the Hon'ble Apex Court in an expedite manner without driving the Transgenders to Courts in as much as change of their name and gender is concerned".*

Therefore, this ruling of the Hon'ble Karnataka High Court directs the authorities to issue standing instructions in order to ensure that transgender persons are not forced to approach the courts for every case requesting for change of name and gender in educational certificates. It is submitted that similar guidelines as issued may be issued in the State of Tamil Nadu as well, in furtherance of the decisions of this Hon'ble Court in *S. Swapna (Transgender) v. The State of Tamil Nadu* and the Hon'ble Apex Court in *NALSA*, and in the interest of justice and equity.

#### **PRAYER**

WHEREFORE, in light of the above facts and circumstances, it is prayed that this Hon'ble Court may be pleased to:

- A. Issue a writ in the nature of mandamus directing the Respondent No.1 to make changes in the University records and issue a revised B.E. (Computer Science & Engineering) Degree Certificate and B.E. mark sheets reflecting the Petitioner's name as 'Sai Rahul Vijayakumar' and gender as 'Male';



B. Direct the Respondent No. 2 to issue a circular / instructions to all the educational authorities, universities and institutions in Tamil Nadu to act in consonance with the directions issued by the Hon'ble Supreme Court and carry out changes of name and gender in marks sheets and all educational certificates when applications for such changes are made by transgender and intersex persons so that they are not required to approach the courts for change of their name and gender in educational documents; and pass any other order in the interests of justice and equity.

Solemnly affirmed at Chennai

Before me

On this \_\_\_\_ day of June 2019

And signed his name in my presence

Advocate: Chennai