

(5)

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

(ORIGINAL JURISDICTION)

W.P. No. 19706 / 2021 (PIL)

**BETWEEN**

Dr. Trinetra Haldar Gummaraju

D/o Mr. Suresh Gummaraju

Aged 24 years

Residing at: 3G East Wing,

Klassik Benchmark, Kalena Agrahana

Bannerghatta Road

Bangalore- 560076

...PETITIONER

**AND**

1. State Government of Karnataka

Department of Women and Child Development,

1st Floor, M.S. Building

Dr. B.R. Ambedkar Veedhi

Bengaluru - 560 001

Represented By Its Principal Secretary.

2. State Government of Karnataka

Higher Education Department

6

M.S. Building

Dr. B. R. Ambedkar Veedhi

Bengaluru – 560 001

Represented by its Principal Secretary

3. State Government of Karnataka

Directorate of Medical Education

Anand Rao Circle,

Bangalore- 560 009,

Represented by its Director

4. The University Grants Commission

Bahadur Shah Zafar Marg,

New Delhi - 110002.

Represented by its Secretary

5. National Medical Commission

Pocket- 14, Sector - 8,

Dwarka Phase -1

New Delhi – 110077

Represented by its President

...RESPONDENTS

---

**MEMORANDUM OF PETITION UNDER ARTICLE 226 OF THE**

**CONSTITUTION OF INDIA, 1950**

The Petitioner most respectfully submits as follows:

1. This petition is filed in public interest by the Petitioner seeking separate hostels and accommodation of transgender students in hostels of their chosen gender identity in higher and professional educational institutions in Karnataka.

**Array of Parties**

2. The Petitioner is a transgender person who identifies her gender identity as female. She is one of India's first transgender doctors. She studied for her M.B.B.S. degree at Kasturba Medical College, Manipal and is completing her internship presently. She has undergone gender affirming medical and surgical transition and treatment. She is an active voice for transgender rights in the country and has taken up many issues for the protection for the rights of the transgender and intersex community. This petition is filed as a public interest petition by the Petitioner on behalf of all transgender students in Karnataka, who are unable to approach this Hon'ble Court for relief.

(A copy of the newspaper article dated 29.11.2020 titled 'Against All Odds: The inspirational journey of Karnataka's First Trans-woman doctor' published by India.com is annexed herein and marked as **ANNEXURE-A)**

(A copy of the newspaper article dated 08.04.2019 titled 'Trinetra set to be Karnataka's first transwoman medico' published by Times of India is annexed herein and marked as **ANNEXURE-B)**

(A copy of the newspaper article dated 28.12.2020 titled 'The Inspiring Story of Karnataka's First Trans-woman Doctor: Trinetra Haldar Gummaraju'

published by Be! Life Beyond Numbers is annexed herein and marked as **ANNEXURE-C)**

3. The 1<sup>st</sup> Respondent is the Department of Women and Child Development. It was established to promote social, economic and political empowerment of women through various policies and programmes, mainstreaming gender concerns, creating awareness about their rights and facilitating institutional and legislative support for enabling them to develop their full potential. All issues relating to rights of transgender persons would come within the scope of this Respondent.
4. The 2<sup>nd</sup> Respondent is the Social welfare Department. The Department of Social Welfare working at the State, District and Taluk Level was established for the welfare of Scheduled Caste/Scheduled Tribes/ Other backward classes/ Women and Children. Further, the department works towards the implementation of schemes which cover the main priority sectors of education, employment and housing etc.
5. The 3<sup>rd</sup> Respondent is the Directorate of Medical Education, Government of Karnataka ensures the smooth functioning of all medical colleges and attached teaching hospitals, nursing schools and nursing colleges.
6. The 4<sup>th</sup> respondent is the University Grants Commission is a statutory organization of the Government of India for the coordination, determination and maintenance of standards of teaching, examination and research in university education in India.



7. The 5<sup>th</sup> Respondent is the National Medical Commission which is a statutory body responsible for establishing uniform and high standards of medical education in India and to ensure availability of adequate and high quality medical professionals in all parts of the country.

### **Brief Facts**

8. This petition has been filed in public interest seeking access to housing and accommodation for transgender and intersex students in higher education in Karnataka.
9. It is submitted that the Hon'ble Supreme Court for the first time in the judgement in *NALSA v. Union of India* (2014) 5 SCC 438 [hereinafter '*NALSA*'] granted legal recognition of third gender and upheld the right to self-identified gender, and went on to grant many rights and pass directions for the improvement and welfare of the transgender community. The Hon'ble Supreme Court held:

*"113. Therefore, gender identification becomes very essential component which is required for enjoying civil rights by this community. It is only with this recognition that many rights attached to the sexual recognition as 'third gender' would be available to this community more meaningfully viz. the right to vote, the right to own property, the right to marry, the right to claim a formal identity through a passport and a ration card, a driver's license, the right to education, employment, health so on.*

*114. Further, there seems to be no reason why a transgender must be denied of basic human rights which includes Right to life and liberty with dignity, Right to Privacy and freedom of expression, Right to Education and Empowerment, Right against violence, Right against Exploitation and Right against Discrimination. Constitution has fulfilled its duty of providing rights to transgenders. Now it's time for us to recognize this and to extend and interpret the Constitution in such a manner to ensure a dignified life of transgender people. All this can be achieved if the beginning is made with the recognition that TG as third gender."*

10. Even after 6 years of the *NALSA* judgement being passed, transgender persons are discriminated and stigmatised.

11. Thereafter in 2019, the Transgender Persons (Protection of Rights) Act 2019 was passed. Section 3(a) of the Act prohibits discrimination in educational establishments and section 3(g) of the Act prohibits unfair treatment in regard to right to reside, purchase, rent or otherwise occupy any property. On the same note, Section 13 of the said Act provides that all educational institutions, funded or recognised by the appropriate Government, are to provide inclusive education and opportunities in sports, recreation and leisure activities of transgender persons. On 25.09.2020, the Transgender Persons (Protection of Rights) Rules, 2020 came into force. Rule 10 provides for the appropriate government to create institutional and infrastructure including but not limited to, temporary shelters, short-stay homes and accommodation, choice of male, female or separate wards in hospitals and washrooms in the establishment within two years from the date of coming into force of these rules to protect the rights of transgender persons. However, there are no specific rules framed for housing and hostel facilities for transgender students. Though the said legislation addresses inclusive education, it does not provide for any measures relating to inclusive housing and hostel accommodation in higher education. One of the main reasons why transgender students often are forced to drop out of higher education is because of harassment faced in hostels by them as they are not accommodated in hostels based on their gender identity but based on their sex assigned at birth and hence are placed in opposite gender hostels.

12. Within the transgender community, it is very common for young people to be thrown out of their homes as they are not accepted due to their gender identity. Often they face so much violence, that they are forced to leave their homes. Due to this violence and discrimination that young transgender students face, it has a serious impact on their education. Transgender students across the State of Karnataka face various difficulties in access to education and in particular, safe accommodation in access to higher education. Transgender students face huge difficulties in finding affordable housing. If university accommodation and hostels are not available to them, they are forced to get separate accommodation which is highly unsafe for them, they are often required to pay relatively higher rents and face the constant threat of being evicted – both of which result in transgender persons occupying a rather fragile position when it comes to housing.

13. The Petitioner has herself experienced the complete lack of housing and accommodation as a transgender medical student. The Petitioner was studying for her MBBS degree from Kasturba Medical College, Manipal where she joined in 2015. The Petitioner was earlier admitted to the MBBS course as a male student and was placed in the Boys hostel at the time of the commencement of the course in September 2015. The Petitioner found it increasingly difficult to reside in the Boys Hostel. As a person who identified as female, the continued residence in the boy's hostel caused serious mental trauma to the Petitioner. In the boys hostel she was subjected to continuous ragging, abuse and humiliation on account of her transgender identity. Due



to this and other reasons stated earlier, the Petitioner had to shift her residence from the said hostel to a private apartment in March 2018. During the course, the Petitioner changed her name and gender and also underwent gender reassignment surgery. Despite the Petitioner's name and gender identity being changed to female, her requests to shift to a female hostel were not accepted by the college and university authorities. Thus, she had no other option but to reside in a separate housing of her own, with the financial support from her parents. If she did not have the financial support of her parents, she would have no other option but to continue in the Boys' hostel and face harassment and violence or drop out of the MBBS course.

14. Further, there was no procedure that the University had, to address the Petitioner's request for her change of gender identity. There was invasive scrutiny in asking the Petitioner about her genitalia/anatomy, especially from the college authorities and the authorities demanded all kinds of documents from the Petitioner including her prescription of hormones, and even her estrogen levels. A mental health professional's letter or any legal ID document such as Aadhaar/Form 3/4/5/6 as per the Trans Persons' Rules 2020 should suffice for initiating processes at the university to either admit a trans person, or change their assigned gender at birth on university documentation to their identified gender. There was no standard procedure to acknowledge the Petitioner's transition in the second year and it took nearly a year before all the registers in the college departments were changed to reflect her gender identity as female.



15. This is a serious concern faced by all transgender students in higher education in the State. Transgender students are not provided hostel accommodation that matches with their gender identity and are placed in opposite gender hostels due to which they face ragging, abuse and harassment within the hostel. Due to this harassment and violence, they are often forced to move out. Those who cannot afford separate accommodation, often end up dropping out of their course and are unable to complete their courses. Those who do stay in private accommodation with the financial support of their families, are still subjected to great harassment commuting to and from the college. Transgender students prefer living in university accommodation compared to other options since the former is affordable and safer.

16. It is submitted that in October 2017, the government of Karnataka issued the Karnataka State Transgender Policy. It covered areas of prohibiting discrimination against transgender persons and enable better access and opportunities to them. Clause 1.3 Remedial Measures of the policy states that discrimination against transgenders on the basis of gender in matters of education, employment, housing and public accommodation should be prohibited.

(A copy of the Karnataka State Policy for Transgenders is annexed as **ANNEXURE – D**)

17. The Karnataka State Policy for Transgender Persons does not address housing and hostel accommodation for transgender students. With regard to

housing, transgender people face numerous hardships. Not only do university hostels do not allow them to stay in the hostels of their chosen gender identity, it is even difficult for transgender students to find private rented accommodation to stay during the course of their studies. They are unable to find safe places of renting for their sustained well being. The International Commission of Jurists authored a report titled "Living with Dignity: Sexual Orientation and Gender Identity- Based Human Rights Violations in Housing, Work and Public Spaces in India" In June 2019. The report states:

***"LGBTQ persons in India typically face serious difficulties in seeking access to rental accommodation, adverse consequences of a lack of security of tenure, and vulnerability to homelessness. This includes discrimination and sometimes violence committed against LGBTQ persons by landlords and property owners, as well as by family members in their own homes – violence that often forces them to leave the house."***

(A copy of the relevant pages of the report titled "Living with Dignity: Sexual Orientation and Gender Identity- Based Human Rights Violations in Housing, Work and Public Spaces in India" by International Commission of Jurists (June 2019) is annexed herein and is marked as **ANNEXURE – E**)

I. **Need for Hostels that match with gender identity of Transgender Students**

18. Most universities have mandated gender-based hostel and housing policies which force transgender students into gendered rooming and hostel situations based on biological sex, instead of gender identification. Harassment of transgender individuals is not an isolated event at school, but an ongoing epidemic. Recognition of this harassment faced by transgender

students in hostels is a critical first step in achieving inclusive, non-discriminative and safer, inclusive university campuses.

19. It is submitted that transgender students should have the right to hostel accommodation arrangements according to their self-identified gender, rather than their birth sex. Universities should provide housing options that protect gender expression and identity of transgender students and take into account these interests.
20. As a first step, higher educational institutions could change their hostel and housing forms to include a transgender option, which gives students the option to self-identify outside of the male and female categories. In addition, institutions should not force transgender students to provide official documentation of sex reassignment surgery. Based on the requirements of the students, the institution could provide hostel accommodation in the gender-based hostel of their choice or a separate gender-neutral hostel, if such facility is available in the said institution. In order to accommodate transgender and gender non-conforming individuals and to ensure that transgender students benefit from academic and social life.
21. It is submitted that the need for transgender students at university level to have inclusive hostels and university accommodation on campus, to ensure safety and inclusiveness has been the subject of many academic papers and journals in the United States. Some of these papers are produced herein for reference.



(A copy of the paper by Lara E. Pomerantz titled, "Winning the Housing Lottery: Changing University Housing Policies for Transgender Students" published in 12, University of Pennsylvania Journal of Constitutional Law, 1215 (2010) is annexed herein and is marked as **ANNEXURE - F**)

## II. **Separate Gender-Neutral Hostels for transgender persons**

22. In addition to hostels that match one's gender identity, there is also the need for gender neutral hostels in higher education institutions. It is submitted that some State governments and universities have started providing separate hostels for transgender persons. Panjab University Chandigarh has announced that it will be providing a separate hostel for transgender students in the Panjab University Campus.

(A copy of the news item, "Why Indian campuses need gender neutral hostels dated 26.04.2021 published in Casino Days is annexed herein and is marked as **ANNEXURE-G**)

(A copy of the new item titled, Transgenders hail PU authorities: After washrooms, now separate hostels for third gender" dated 25.11.2017 published in News Number is annexed herein and is marked as **ANNEXURE -H**)

(A copy of the new item titled, "PU to provide separate hostel facilities for transgender students" dated 21.11.2017 published in Times of India is annexed herein and is marked as **ANNEXURE - J**)

23. Similarly, the Tata Institute of Social Sciences ("TISS") has also announced that a separate hostel wing will be allocated for self-identified transgender,



non-binary and gender non-conforming students in keeping with the principle of inclusion and affirmation of gender diversity. The gender neutral hostels have also been included in the TISS University Handbook for students.

(A copy of the new item titled, "In big step for equal rights, TISS gets gender-neutral hostel" dated 06.04.2018 published in QRIUS is annexed herein and is marked as **ANNEXURE - K**)

(A copy of the TISS Students Handbook is annexed herein and is marked as **ANNEXURE - L**)

24. While the main requirement in higher education institutions, in many states, even schools are building hostels for transgender and gender non-conforming children, so as to prevent them from dropping out of education. This has been done in Tamil Nadu.

(A copy of the news article "This TN School is building a hostel for transgender teens" dated 27.07.2019 published in The News Minute is annexed herein and is marked as **ANNEXURE - M**)

25. The Petitioner being aggrieved by this, and seeking to improve the situation, submitted a representation to the respondents on 22.09.2020 seeking that necessary arrangements to direct all appropriate authorities and all universities in Karnataka to ensure that all transgender students studying in higher education institutions of any stream are provided hostel accommodation as per their self-determined gender so that they are able to safely complete their higher education and are not subject to discrimination, harassment and abuse. However, no response has been received from the

Respondents and no action has been taken to provide gender identity based hostel accommodation for transgender students in higher education in Karnataka

(A copy of the representation dated 22.09.2020 is produced herewith and marked as **ANNEXURE – N**)

26. Aggrieved by the refusal to transgender students in the hostels as per their self-identified gender and to agitate the grievances of the transgender student community as a whole in the State, the Petitioner has filed the present Public Interest Litigation 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 this cause of action. The Petition is filed on the following, among other grounds.

### **GROUND**

27. **THAT** as per the Hon'ble Supreme Court as held in *NALSA v. Union of India*, the right to gender identity through self-determination is an aspect of personal autonomy and is a substantive right. Transgender students have a right to self-determination of their gender identity and a consequent right to enjoy the benefits which flow out of this determination. Just like any other student, transgender students who identify as male or female are entitled to be accommodated in the Hostels of their chosen gender, in the higher educational institutions of the state and when higher educational institutions do not provide hostels as per their chosen gender or separate gender neutral hostels, it amounts to a denial of their rights to their self-identified gender

identity and a violation of their fundamental rights under Articles 14, 15, 19 and 21 of the constitution and deserves the interference of this Hon'ble Court.

28. **THAT** the non-allotment of hostels to transgender students as per their self-identified gender is in contravention to the Transgender Persons (Protection of Rights) Act, 2019 (the Act). Section. 3 of the Act prohibits discrimination against a transgender person on the grounds of denial, or discontinuation of, or unfair treatment in, educational establishments and services thereof. S. 13 ensures that every educational institution funded or recognized by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities to transgender persons without discrimination on an equal basis with others. Under s.2(d), inclusive education has been defined as a "system of education wherein transgender students learn together with other students without fear of discrimination, neglect, harassment or intimidation and the system of teaching and learning is suitably adapted to meet the learning needs of such students. Transgender students are deprived of such an inclusive and accommodating educational environment, since sufficient hostel facilities are denied to them. It is submitted that the refusal to provide hostel accommodation in accordance with the self-identified gender of the transgender students in the state also constitute discrimination under the above provisions.

29. **THAT** according to Rule 10 of the Transgender Persons (Protection of Rights) Rules, 2020, the Ministry or Department concerned under the



appropriate Government shall review all existing educational, social security and health schemes and welfare measures to include transgender persons so as to protect their rights and interests and facilitate their access to such schemes and welfare measures framed by that Government. These schemes and programmes should be formulated in a manner so as to be transgender sensitive, non-stigmatising and non-discriminatory to transgender persons. Therefore, the governments are vested with appropriate duties to ensure that the educational schemes are accommodative of the interests of the transgender persons. In the instant case, no directions are passed as regarding the hostel facilities of transgender persons, to the knowledge of the petitioner. Because of this void, transgender students do not get sufficient hostel facilities in the educational institutions where they study. This situation is violative of the fundamental rights of transgender students across the State.

30. **THAT** in *NALSA v. Union of India, (2014) 5 SCC 438*, the Hon'ble Supreme Court has categorically recognized the rights of transgender persons and the importance of recognizing their gender identity. A right to self-determination of their gender identity was upheld by the court. The plight of the transgender community was taken note, in the following words:

*"34. ...Discrimination faced by this group in our society, is rather unimaginable and their rights have to be protected, irrespective of chromosomal sex, genitals, assigned birth sex, or implied gender role. Rights of transgenders, pure and simple, like Hijras, eunuchs, etc. have also to be examined, so also their right to remain as a third gender as well as their physical and psychological integrity.*

*55. Petitioners have asserted as well as demonstrated on facts and figures supported by relevant materials that despite constitutional guarantee of equality, Hijras/transgender persons have been facing extreme*



*discrimination in all spheres of the society. Non-recognition of the identity of Hijras/transgender persons denies them equal protection of law, thereby leaving them extremely vulnerable to harassment, violence and sexual assault in public spaces, at home and in jail, also by the police. Sexual assault, including molestation, rape, forced anal and oral sex, gang rape and stripping is being committed with impunity and there are reliable statistics and materials to support such activities. Further, 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. Hijras/transgender persons face huge discrimination in access to public spaces like restaurants, cinemas, shops, malls etc. Further, access to public toilets is also a serious problem they face quite often. Since, there are no separate toilet facilities for Hijras/transgender persons, they have to use male toilets where they are prone to sexual assault and harassment. 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....*

*.....60. TGs have been systematically denied the rights under Article 15(2) that is not to be subjected to any disability, liability, restriction or condition in regard to access to public places. TGs have also not been afforded special provisions envisaged under Article 15(4) for the advancement of the socially and educationally backward classes (SEBC) of citizens, which they are, and hence legally entitled and eligible to get the benefits of SEBC..."*

31. **THAT** privacy is an essential aspect of the right to liberty under Article 21.

Transgender students have a right to self-determine their gender and they are entitled to this determination and its consequential benefits. Transgender students, depending on which gender they identify with, are entitled to be accommodated in the respective hostels. In **Justice K. S. Puttaswamy v.**

**Union of India (2017) 10 SCC 1**, it was held as follows:

*"322. Privacy is the constitutional core of human dignity. Privacy has both a normative and descriptive function. At a normative level privacy subserves those eternal values upon which the guarantees of life, liberty and freedom are founded. At a descriptive level, privacy postulates a bundle of entitlements and interests which lie at the foundation of ordered liberty.*

*323. Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way*

*of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being."*

Denying the transgender students of hostel accommodation on the basis of their gender identity violates their fundamental right to privacy and also affects their dignity.

32. **THAT** in the Hon'ble Supreme Court in the case of ***Navtej Singh Johar & ors. v. Union of India (2018) 10 SCC 1***, in reference to deconstructing polarities of binary genders, especially in public places and in specific reference to pleas and difficulties raised by alumnus of Indian Institute of Technology belonging to the LGBTQ community, held as follows:

*"In Anwesh Pokkuluri v. UOI112, with which this case is connected, the Petitioners are a group of persons belonging to the LGBTQ community, each of whom has excelled in their fields but suffer immensely due to the operation of Section 377. To cope with the growing isolation among the community, these Petitioners, all alumni of Indian Institutes of Technology across the country, created a closed group called "Pravritti". The group consists of persons from the LGBTQ community. They are faculty members, students, alumni and anyone who has ever stayed on the campus of any IIT in the country. The group was formed in 2012 to help members cope with loneliness and difficulties faced while accepting their identity along with holding open discussions on awareness. ...*

***...one among them was forced to drop out of high school as she was residing in a girl's hostel where the authorities questioned her identity.***

*458. Apart from the visible social manifestations of Section 377, the retention of the provision perpetuates a certain culture. The stereotypes fostered by Section 377 have an impact on how other individuals and non-State institutions treat the community. While this behaviour is not sanctioned by Section 377, the existence of the provision nonetheless facilitates it by perpetuating homophobic attitudes and making it almost impossible for victims of abuse to access justice. **Thus, the social effects of such a provision, even when it is (quaere not) enforced with zeal, is to sanction verbal harassment, familial fear, restricted access to public***



**spaces and the lack of safe spaces. This results in a denial of the self. Identities are obliterated, denying the entitlement to equal participation and dignity under the Constitution. Section 377 deprives them of an equal citizenship.**

459. *The Constitution envisaged a transformation in the order of relations not just between the State and the individual, but also between individuals : in a constitutional order characterised by the Rule of Law, the constitutional commitment to egalitarianism and an anti-discriminatory ethos permeates and infuses these relations... Constitution enjoins upon every individual a commitment to a constitutional democracy characterised by the principles of equality and inclusion. In a constitutional democracy committed to the protection of individual dignity and autonomy, the State and every individual has a duty to act in a manner that advances and promotes the constitutional order of values*

461. *History has been witness to a systematic stigmatisation and exclusion of those who do not conform to societal standards of what is expected of them. Section 377 rests on deep-rooted gender stereotypes. In the quest to assert their liberties, people criminalised by the operation of the provision, challenge not only its existence, but also a gamut of beliefs that are strongly rooted in majoritarian standards of what is "normal". In this quest, the attack on the validity of Section 377 is a challenge to a long history of societal discrimination and persecution of people based on their identities. They have been subjugated to a culture of silence and into leading their lives in closeted invisibility. **There must come a time when the constitutional guarantee of equality and inclusion will end the decades of discrimination practised, based on a majoritarian impulse of ascribed gender roles. That time is now.***

33. **THAT** the right to determine gender identity is part of one's autonomy and right to life under Article 21 of the constitution. When transgender students are denied the facility of residence in their chosen gender hostels, it infringes this right since this accommodation is a necessary consequence of gender identity. Exclusion from the hostel therefore denies them the right to self-determine their gender identity. If there is full recognition of transgender identity by the state and its institutions, transgender students would not be unfairly excluded from hostel accommodation. Denying them respective hostels is in essence a denial of their identity and the benefits of

acknowledgment of their choice. This denial also has a chilling effect on transgender students who will not pursue higher education due to social stigma and prejudice. Hence, transgender students are entitled to hostel accommodation as per the self-determined gender identity under the right to privacy under Article 21 of the Constitution.

34. **THAT** the refusal to accommodate transgender students as per their self-identified gender is a violation of the right to equality under Articles 14 and 15 of the Constitution of India. Cisgender Male and cis gender female students are accommodated in the hostels as per their gender identity. Transgender students alone are denied this right solely due to their gender identity and a refusal of others to acknowledge their identity. This constitutes an impermissible discrimination on the basis of sex, which includes gender identity under Article 15 of the Constitution. Under Article 15(2), not only the state, but private individuals are also enjoined from discriminating on grounds of sex. Therefore, all educational institutions, whether under the state or not, are prohibited from refusing to extend the benefit of hostel accommodation to transgender students.

35. **THAT** in *S. Tharika Banu v. The Secretary to Government, Health and Family Welfare Department 2017 SCC OnLine Mad 10220*, it was held by the Hon'ble Madras High Court concerning the admission of transgender persons into educational institutions that:

*"This Court hopes that this order would be a first step to throw open doors of educational institutions for the entry of "Transgenders" for their social empowerment, employment status, dignity, right etc., which have been*



*denied to them till date, violating the fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India."*

However, for ensuring full access to educational opportunities, sufficient hostel facilities are needed, which respect the self-determined gender identity of transgender students.

36. **THAT** in *Jackuline Mary v. The Superintendent of Police, Karur District, Karur. 2014 SCC OnLine Mad 987*, the Hon'ble High Court of Madras has repelled the argument that the authorities have difficulties in providing for sufficient toilet facilities for transsexual persons:

*"It was also argued before this court that it will be difficult for the authorities to provide facilities for these transsexuals, for example, they cannot use Toilets meant for either women or men; there is likelihood of allegation that the girl by birth who has been declared as a transsexual having manly qualities may molest a fellow female, etc. Of course, there are these kinds of practical difficulties, but, on that score, the courts cannot allow these people [FTMs] being treated inhumanely denying them any right including the basic human rights. It is for the authorities concerned to take note of these difficulties and provide separate facilities for these medically declared transsexuals as directed by the Hon'ble Supreme Court in the above judgement."*

Similarly, it is the duty of the educational institutions to make available separate facilities for transgender students.

37. **THAT** the Yogyakarta Principles, 2006 have acknowledged the violence against the members of the transgender community. Principle 15 of the Yogyakarta Principles specifically states that everyone has the right to adequate housing, including protection from eviction, without discrimination on the basis of sexual orientation or gender identity. Additionally, Principle 2 places the obligation upon the States to take all appropriate action, including programmes of education and training, with a view to achieving the

elimination of prejudicial or discriminatory attitudes or behaviours which are related to the idea of the inferiority or the superiority of any sexual orientation or gender identity or gender expression. By not providing the transgender students with hostel facilities matching their self-identified gender identity, the Respondents are not eliminating prejudice or discrimination. Instead they are enforcing the said prejudice and discrimination on the basis of the gender identity, which is against the tenets of the Yogyakarta principles.

38. **THAT** in the United States, the Maine Supreme Judicial Court in *Doe v. Regional School Unit 26*: January 30, 2014: 86 A.3d 600, 600 (2014) has upheld the right of a transgender student to use female toilet in her high school. It was held: *"Where, as here, it has been clearly established that a student's psychological well-being and educational success depend upon being permitted to use the communal bathroom consistent with her gender identity, denying access to the appropriate bathroom constitutes sexual orientation discrimination in violation of the MHRA."* In a series of cases, various courts in the United States have held that transgender persons can not be discriminated against in the use of toilets based on their gender identity. A parallel can be drawn in case of hostel facilities as well. Merely on account of their gender identity, transgender students must not be denied their equal access to a safe housing facility in higher educational institutions. They are entitled to reside in the hostels as per their self-determined gender. This will be necessary for the psychological well-being and educational



success of the students and for the protection of their right to life and autonomy guaranteed under Article 21 of the constitution.

### 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 of mandamus or any other appropriate writ, order or direction, directing the Respondents to issue appropriate Circulars or orders directing all higher education institutions in the State to include in their admission and hostel forms the option for including the gender identity of students as 'transgender' in addition to male and female gender;
- B. Issue a writ of mandamus or any other appropriate writ, order or direction, directing the Respondents to ensure that transgender students in all higher educational institutions in Karnataka be accommodated in hostels according to their self-determined gender identity;
- C. Issue a writ of mandamus or any other appropriate writ, order or direction, directing the Respondents to provide separate hostel facilities for transgender students in higher education institutions;
- D. Issue a writ of mandamus directing all higher educational institutions to frame guidelines for admissions of transgender students or when student want to change their gender identity in university records during the

course, by requiring only self-declaration affidavits for their gender identity status and not to require proof of surgery and / or medical intervention for transgender students; and

E. 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: Bengaluru

Counsel for the Petitioner

Date:

ROHAN KOTHARI

Address for Service:

D6, Dona Cynthia Apartments,

35 Primrose Road

Bangalore – 560025