

MANU/KA/0824/2024

Equivalent/Neutral Citation: 2024:KHC:574

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

Writ Petition No. 12606 of 2023 (EDN-RES)

Decided On: 05.01.2024

Vihaan Peethambar **Vs.** Manipal University and Ors.

Hon'ble Judges/Coram:

Ravi V. Hosmani, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Jayna Kothari, Sr. Adv. for Naveen Chandra V., Advocate

For Respondents/Defendant: Vinay N. for Manmohan P.N., Advs. and Mamatha Shetty, AGA

ORDER

Ravi V. Hosmani, J.

1. This writ petition is filed by petitioner seeking for following reliefs:-

"A. Issue a writ in the nature of mandamus directing the Respondents No. 1 to issue a fresh M.S. (Communication) Degree Certificate reflecting the change in his name as 'Vihaan Peethambar' and gender as 'Male'; and

B. To issue a writ of mandamus or any other writ or order directing all universities in Karnataka that they should update the degree certificates of transgender persons to reflect the change in their name and gender identity and to provide revised degree certificates to transgender persons based on applications made by them without having to approach the courts;"

2. Smt. Jayna Kothari, learned Senior counsel appearing for Sri Naveen Chandra V., Advocate for petitioner submitted that petitioner pursued P.G. degree Course in MS Communication with name as 'Jyothi Peethambar' in respondent no.1-University and was awarded degree on 05.11.2008 with registration no.060702029. It is submitted that petitioner was also issued with marks cards as per Annexures-B, C to C4.

3. It was further submitted that though petitioner was female at birth, he underwent gender reassignment surgeries in '2015' and thereafter, changed gender to Male and named as 'Vihaan Peethambar, vide publication in Official Kerala Gazette Notification dated 02.05.2017. Subsequently, petitioner applied to concerned authorities for change of name and gender in PAN Card, Aadhaar Card, Voter ID, Passport etc., which was granted. She had also obtained change of name and gender in her Bachelor Degree Certificate from Mahatma Gandhi University. Referring to same, petitioner submitted representation to respondent no.1-University for change of name and gender in Post Graduate Degree Certificate.

4. It is submitted that vide its reply to petitioner's e-mail dated 27.05.2017, request

was rejected on ground that change would be enabled only for short duration after Degree Certificate was issued. It is submitted that petitioner's subsequent representations at Annexure-P dated 05.03.2023 and 14.03.2023 have remained without consideration even though subject matter was covered by decision of Hon'ble Supreme Court in case of National Legal Services Authority vs. Union of India and Others, MANU/SC/0309/2014 : 2014:INSC:275 : (2014) 5 SCC 438 ('NLSA' for short). Hence petitioner had approached this Court for relief. It is further submitted that this Court in Christina Lobo v. State of Karnataka MANU/KA/3968/2020, had issued writ of mandamus under similar circumstances. Accordingly, learned Senior counsel sought for allowing petition.

5. On other hand, Sri Vinay N, learned counsel appearing for Sri Manmohan P.N, advocate for respondents no.1 and 2 and Smt. Mamatha Shetty, learned AGA appearing for respondent no.3 submitted that for purpose of seeking change, petitioner was required to return original Degree Certificate and Marks Cards and upon receipt of same, respondents would consider petitioner's request in light of decision of Hon'ble Supreme Court in NLSA's case(supra).

6. Heard learned counsel for parties and perused writ petition records.

7. From above, it is seen that there is no dispute about petitioner having underwent gender change surgery and issuance of notification about change of gender and name and thereafter submitting request to respondent no.1-University for change of name and gender in Post Graduate Degree Certificate. On perusal of writ petition records, it would appear that petitioner has already obtained change of name and gender in Bachelors Degree Certificate and other public records. But, as pointed out for consideration, petitioner would be required to surrender original Degree Certificate and Marks Cards.

8. Hon'ble Supreme Court in NLSA's case (supra) has upheld rights of transgender. Following same, this Court in Christina Lobo's case (supra) at para no.8 has held as follows:

"8. The Transgender persons right to decide their self-identity is upheld by the Hon'ble Supreme Court of India in the celebrated case in NATIONAL LEGAL SERVICES AUTHORITY v. UNION OF INDIA, MANU/SC/0309/2014 : 2014:INSC:275 : (2014) 5 SCC 438. It may be pertinent to refer to the relevant portions of the judgment which recognizes the rights of the Transgenders to decide their self-identity viz.,

74. The recognition of one's gender identity lies at the heart of the fundamental right to dignity. Gender, as already indicated, constitutes the core of one's sense of being as well as an integral part of a person's identity. Legal recognition of gender identity is, therefore, part of right to dignity and freedom guaranteed under our Constitution.

75. Article 21, as already indicated, guarantees the protection of "personal autonomy" of an individual. In Anuj Garg v. Hotel Association of India MANU/SC/8173/2007 : (2008) 3 SCC 1 (paragraphs 34-35), this Court held that personal autonomy includes both the negative right of not to be subject to interference by others and the positive right of individuals to make decisions about their life, to express themselves and to choose which activities to take part in. Self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article

21 of the Constitution of India.

Legal Recognition of Third/Transgender Identity

76. The self-identified gender can be either male or female or a third gender. Hijras are identified as persons of third gender and are not identified either as male or female. Gender identity, as already indicated, refers to a person's internal sense of being male, female or a transgender, for example Hijras do not identify as female because of their lack of female genitalia or lack of reproductive capability. This distinction makes them separate from both male and female genders and they consider themselves neither man nor woman, but a "third gender". Hijras, therefore, belong to a distinct socio-religious and cultural group and have, therefore, to be considered as a "third gender", apart from male and female. The State of Punjab has treated all TGs as male which is not legally sustainable. The State of Tamil Nadu has taken lot of welfare measures to safeguard the rights of TGs, which we have to acknowledge. Few States like Kerala, Tripura, Bihar have referred TGs as "third gender or sex". Certain States recognize them as "third category". Few benefits have also been extended by certain other States. Our neighbouring countries have also upheld their fundamental rights and right to live with dignity.

9. By the time this order could be pronounced, the Central Government has notified the Rules viz., the Transgender Persons (Protection of Rights) Rules, 2020 in exercise of the powers conferred by section 22 of the Transgender Persons (Protection of Rights) Act, 2019 and a notification in this regard is issued on 25.09.2020.

10. Sub-rule (3) of the Transgender Persons(Protection of Rights) Rules, 2020 provides for application for issue of certificate of identity under Rules 6 and 7. It reads as under:-

(3) "Transgender persons who have officially recorded their change in gender, whether as male, female or transgender, prior to the coming into force of the Act shall not be required to submit an application for certificate of identity under these rules:

Provided that such persons shall enjoy all rights and entitlements conferred on transgender persons under the Act".

11. As could be seen from sub-rule(3) above, transgender persons who have officially recorded their change in gender, whether as male, female or transgender, prior to the coming into force of the Act are not required to submit an application for certificate of identity under these rules.

12. Since the identity of the petitioner is officially recorded in the Aadhaar card issued by Unique Identification Authority of India(UIDAI) and the passport issued by the Central Government, in view of Rule 3 of Transgender Persons(Protection of Rights) Rules, 2020, the petitioner is not required to make an application for certificate of her identity. In the result, the petition deserves to be allowed."

9. In view of above, writ petition is disposed of.

Petitioner is permitted to file representation appending Original Marks Cards and Degree Certificate to Registrar of respondent no.1-University, within a period four weeks from today.

10. Upon receipt of same, respondent no.1-University shall consider it for taking action as per ratio laid down by Hon'ble Supreme Court in NLSA's case (supra) and Christina Lobo's case (supra), within four weeks thereafter.

11. At this stage, since it is brought to notice of this Court that there are innumerable such instances awaiting consideration before Universities/Educational Institutions, it is observed that would be appropriate for said authorities to process applications for change of name and gender upon receipt of requests keeping in mind ratio laid down by Hon'ble Supreme Court in NLSA's case (supra) and this Court in Christina Lobo's case (supra) instead of driving all applicants to Court for securing directions.

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