

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 01st DAY OF OCTOBER 2020

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

WRIT PETITION NO.8024 OF 2020 (EDN-RES)

BETWEEN:

CHRISTINA LOBO

...PETITIONER

(BY SMT: JAYNA KOTHARI, SENIOR COUNSEL FOR
SRI : ROHAN KOTHARI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
EDUCATION DEPARTMENT
MULTI-STOREYED BUILDING
BANGALORE-560001
THROUGH ITS PRINCIPAL SECRETARY
2. STATE OF KARNATAKA
DEPARTMENT OF PRE-UNIVERSITY EDUCATION
SAMPIGE ROAD, 18TH CROSS
MALLESHWARAM
BANGALORE-560012
THROUGH ITS SECRETARY

3. THE KARNATAKA SECONDARY EDUCATION
EXAMINATION BOARD
6TH CROSS, MALLESHWRAM
BANGALORE-560003
THROUGH ITS SECRETARY
4. THE CENTRAL BOARD OF SECONDARY EDUCATION
NEW NO-3, OLD NO.1630 A
"J" BLOCK, 16TH MAIN ROAD
ANNA NAGAR WEST
CHENNAI-600040
THROUGH ITS SECRETARY
5. ST. ALOYSIUS PRE-UNIVERSITY COLLEGE,
KODAILBAIL, MANGALORE
KARNATAKA-575003
THROUGH ITS PRINCIPAL
6. RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES
32ND E CROSS ROAD, 4TH T BLOCK EAST
PATTABHIRAMA NAGAR, JAYANAGAR
BENGALURU-560041
THROUGH ITS VICE-CHANCELLOR
7. FATHER MULLER MEDICAL COLLEGE
FATHER MULLER ROAD, KANKANADY
MANGALORE, KARNATAKA-575002
THROUGH ITS DEAN

...RESPONDENTS

(BY SMT: PRAMODHINI KISHAN, AGA FOR R1 TO R3;
SRI : M.R.SHYLENDRA, ADVOCATE FOR R4;
SRI : N.K. RAMESH, ADVOCATE FOR R6;
R5 & R7 ARE SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DIRECTING THE R-2 AND R-3 TO ISSUE TO THE PETITIONER REVISED PRE-UNIVERSITY CERTIFICATE PRODUCED HEREIN AS ANNEXURE-C BY AMENDING THE SAME AND SHOWING HER NAME AS CHRISTINA LOBO AND ISSUE A WRIT IN THE NATURE OF CERTIORARI AND MANDAMUS DIRECTING THE R-4 CBSE TO SET ASIDE THE ORDER DATED 12.2.2020, BEARING NO. CBSE.RO(M)/LEGAL/ORDER/2020/SP, PRODUCED HEREIN AS ANNEXURE-S AND ISSUE A NEW AND REVISED CBSE MARKS CARD SHOWING HERE NAME AS CHRISTINA LOBO AND ISSUE A WRIT IN THE NATURE OF MANDAMUS DIRECTING THE R-6 AND R-7 TO CHANGE THE NAME AND GENDER OF THE PETITIONER IN THE MBBS RECORDS AS CHRISTINA LOBO AND HER GENDER AS FEMALE AND ISSUE HER REVISED MARKS CARDS AND EDUCATIONAL RECORDS.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 23.09.2020 AND COMING ON FOR BEING SPOKEN TO AND PRONOUNCED THE ORDER IN OPEN COURT THROUGH VIDEO CONFERENCE, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner claims to be a transgender whose gender does not match with the gender assigned to her at birth. The petitioner was born as biological male and in the birth certificate, her gender is shown as male and her name as 'Clafid Claudy Lobo'. According to the petitioner, she has identified herself as a female from a very young age. Even though, she was assigned as male at birth, her self-identified gender identity is female. The petitioner underwent psychological evaluation by a Consultant Clinical Psychologist, Mr. Syam K.R., at the Kasturba Medical College Hospital and underwent gender reassignment surgery on 26.07.2018 to female at Namaha Hospital, Mumbai performed by Dr. Umang Kothari. Thereafter, the petitioner changed her name from 'Clafid Claudy Lobo' to 'Christina Lobo' by executing an affidavit dated 31.10.2019 regarding her intent to change her name and gender in two news paper publications in 'Vijaya Karnataka' dated 5.11.2019 and 'Times of India' dated 05.11.2019. The petitioner also obtained Aadhaar Card bearing No.43316399 5091 with her name as 'Christina Lobo' and gender as female. She has been issued with a passport bearing

No.U4707151 with the name 'Christina Lobo' and gender as female. But the respondents refused to change the name and gender of the petitioner in SSLC and PUC marks cards and therefore the petitioner has sought for a writ in the nature of mandamus directing respondent Nos.2 and 3 viz., The Department of Pre-University Education, Bengaluru and the Karnataka Secondary Education Examination Board, Bengaluru to issue a revised Pre-university certificate and to set-aside the order passed by respondent No.4-The Central Board of Secondary Education, Chennai at Annexure-S and to issue revised CBSE marks card showing her name as 'Christina Lobo' and also for a writ of mandamus directing respondent Nos.6 and 7 viz., Rajiv Gandhi University of Health Sciences, Bengaluru and Father Muller Medical College, Mangalore to change the name and gender of the petitioner in MBBS Marks card as 'Christina Lobo' and her gender as female and issue revised marks card and educational records.

2. When the petition was taken up for hearing, learned Addl. Government Advocate appearing for respondent Nos.1 and

2 submitted a memo to the effect that pursuant to the circular dated 04.06.2019, the second respondent-Department of Pre-University Education has issued a fresh marks card to the petitioner in the name of Christina Lobo and the said marks card has been sent to the college, wherein the petitioner has studied the pre-university and a copy of the said certificate is produced alongwith a memo, wherein the name of the petitioner is shown as 'Christina Lobo'.

3. Learned counsel for respondent No.3 Sri. N.K. Ramesh appearing on behalf of Karnataka Secondary Education Examination Board however raised a plea that The Transgender Persons (Protection of Rights) Act, 2019(for short ' the Act') has been promulgated by the Parliament on 5th December 2019. As per the provisions of the said Act, a Transgender is required to make an application to the District Magistrate for issuance of a certificate of identity as a transgender person. Further, the learned counsel would submit that there is no provision in Examination Bye-laws of the Board to effect change in gender

and name of the students and therefore, the order passed by the third respondent at Annexure-S cannot be faulted with.

4. Learned Senior counsel appearing for the petitioner placing reliance on the decision of the Hon'ble Supreme Court in *NATIONAL LEGAL SERVICES AUTHORITY v. UNION OF INDIA AND OTHERS* (for short 'NALSA' case), (2014) 5 SCC 438 emphasized that the transgender persons rights to decide their self-identity gender is recognized by the Hon'ble Supreme Court and the Central and State Governments are directed to grant legal recognition of the gender identity of the transgender status as male, female or third gender. Under the said circumstances, the petitioner having identified herself as female and having undergone psychological evaluation and gender reassignment surgery, the State Government as well as School/college authorities are bound to recognize the self-identified gender of the petitioner and therefore the refusal of the respondents to effect necessary changes in the school/college/university records showing the self-identified gender and the name of the petitioner is arbitrary and violative of Article 21 of the Constitution of India

as laid down by the Hon'ble Supreme Court in the above decision and is also contrary to the provisions of the Act.

5. To buttress this submission, learned Senior counsel has referred to the decision of this Court in the case of JEEVA M vs. State of Karnataka and Another decided on 26.03.2019 in W.P.No.12113/2019(Edn-Res), wherein directions were issued to the Principal Secretary, Education Department, State of Karnataka to implement the directions of the Hon'ble Apex Court in *NALSA's case* and has pointed out that pursuant to the said directions, the Education Department having issued a circular dated 04.06.2019 at Annexure-P directing the CBSE and Pre-University Board to effect changes in the school and college records in terms of the directions of the Hon'ble Supreme Court, the respondents were not justified in rejecting the request of the petitioner.

6. Further, referring to the relevant provisions of the Act, learned Senior Counsel emphasized that when the identity of the petitioner having been changed much prior to the Act coming into force, the procedure contemplated under the Act is not

applicable to the petitioner and therefore in view of the directions issued by the Apex Court in NALSA's case, the State Government as well as all its instrumentalities are required to grant recognition to the self-identified gender of the petitioner and therefore the respondents be directed to effect necessary changes in the records maintained in their respective offices relating to the petitioner.

7. I have bestowed my anxious thought to the submissions made at the Bar and have considered the contentions urged by the petitioner in the light of the newly enacted legislation and the decisions cited by the learned senior Counsel.

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 AND OTHERS*, (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 (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."

8. 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.

9. 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".

10. 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.

11. 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.

Accordingly, the petition is allowed. Respondent Nos.2 and 3 are directed to issue revised pre-university certificate to the petitioner showing her name as 'Christina Lobo'.

The order dated 12.02.2020 passed by respondent No.4 vide Annexure-'S' is set-aside. Respondent No.4 is directed to issue revised CBSE marks card showing the name of the petitioner as "Christina Lobo" and her gender as "female".

Likewise, respondent Nos.6 and 7 are directed to change the name and gender of the petitioner in MBBS records as "Christina Lobo" and her gender as "female" and issue revised marks card and the respondents shall maintain the educational records relating to the petitioner accordingly.

**Sd/-
JUDGE**

*mn/-