



Gaikwad RD

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 9961 OF 2023

X

...Petitioner

Versus

The Dean & Anr

...Respondents

Ms Rebecca Gonsalves, *for the Petitioner.*

Mr Rakesh Singh, with Heena Shaikh, i/b MV Kini & Co, *for*
Respondent No.1.

Mrs PH Kantharia, **Government Pleader**, *for Respondent-State.*

CORAM: G.S. Patel &
Neela Gokhale, JJ.

DATED: 25th April 2023

PC:-

1. The Petition is simple and it is clearly one supported by every recent decision of the Supreme Court regarding the rights of those who have traditionally been held to be marginalized. The decisions of the Supreme Court direct us towards greater inclusiveness and acceptance of individuality and individual traits. These are not to be compromised because of some bureaucratic requirements.

2. Prayer clauses (a) and (b) in the Petition read thus:

“a. for a writ of Mandamus or a writ, order, or direction in the nature of Mandamus directing the Respondent No. 1 to change the Petitioner’s name and gender in their education records, and re-issue the Petitioner’s education documents including the grade card, degree certificate,

migration/transfer certificate, bonafide certificate and any other required documents to the Petitioner in their chosen name and gender;

b. for a writ of Mandamus or a writ, order, or direction in the nature of Mandamus directing the Respondent No. 1 to suitably modify the form available to alumni at Alumni_Application_From_for_Transcript_Feb_2022.pdf (tiss.edu) to make it flexible to include requests by alumni for change of particulars such as name and gender in their education records and documents;

3. The facts are not contentious. In 2013, the Petitioner, described as 'X' in this Petition received an MA in Development Studies from the Tata Institute of Social Sciences, the 1st Respondent, in a certain name and describing her gender to be female. In 2015 the Petitioner adopted another name, self-identifying as transgender. She swore an affidavit to that effect in November 2018. The Petitioner filed Writ Petition (L) No. 1200 of 2019 for directions for publishing the Petitioner's change of name in the gazette. This Court made an order on 16th April 2019 following which the Petitioner's change of name was gazetted. Copies of the order and the gazette are annexed. In 2022, the Petitioner decided to change the Petitioner's name again, now for numerological reasons. An affidavit was prepared in August 2022 to that effect. This was gazetted in August 2022 and other documents such as the PAN and Aadhar Cards were updated.

4. The Petitioner had as long ago as 2019 desired to study law but various reasons, including the delay in gazetting and then COVID pandemic and lockdown, delayed that plan. The

Petitioner's last grade card, degree certificate and other documents were issued by the 1st Respondent in the previous name with the gender female. The Petitioner submits that the Petitioner is entitled to a re-issuance of these documents in the current name and with the current gender. The Petitioner made a representation dated 6th January 2023 to the 1st Respondent. A reminder followed on 9th February 2023. There was no response.

5. The Petition points out that there is in fact no process on the 1st Respondent's website to deal with a situation such as this, i.e., for a change of name and gender and the re-issuance of documents. This is particularly true for cases of transgenders. Despite the decisions of the Supreme Court in *National Legal Services Authority v Union of India & Ors*,¹ the 1st Respondent and other institutes have not made the required arrangements.

6. We do not believe that there is any possible answer to this Petition at all. This is not a case of there being any conceivable adversary. This is a case of a denial of a human being's self-identity and self-identification. That cannot be done and cannot be permitted. Nor can an institute be permitted to force upon the Petitioner a name, identity or a gender that the Petitioner has chosen to reject in preference to some other.

7. The even stranger requirement that we are told across the Bar and which is on affidavit is that certain previous qualifications and educational documents are required. But this is bound to send

1 (2014) 5 SCC 438.

everything into a tailspin because those documents, for example, a school leaving certificate or a birth certificate will not reflect the changes that are now being sought. In fact, the Affidavit says that the Petitioner should make all those changes first before coming to the 1st Respondent. That is not even remotely tenable. It would be a manifest injustice and a complete denial of fundamental rights including the right to privacy and the right to dignity, covered by Article 21 of the Constitution of India, to refuse the Petitioner relief or to accept what the 1st Respondent says that all previous records must now be updated.

8. The approach of the Affidavit is quite simply wrong. It fails to recognize that questions of identity, self-identification and gender perception do not happen at a biologically definable point in time. These are matters of self-realisation without predictable time frames. That does not mean that every person who, in exercise of these Article 21 rights, desires the necessary changes to be made must be put through the additional trauma of having to get reissued every single document from birth onwards. What is required is a recognition and acknowledgment of the rights that the Petitioner invokes. The insistence by the 1st Respondent on getting other records changed and on a production of previous documents is not merely obstructive. To our mind, it is in and of itself nothing short of a denial of the Petitioner's fundamental rights under Article 21. What has to be acknowledged is a movement forward in point of time and in life, that is to say, what is required to be provided to the Petitioner from a particular point onwards without having to go back in time.

9. We expressly find, acknowledge and record in this Petition that the Petitioner has voluntarily self-identified as transgender in a name other than that which was given at birth. We also acknowledge that at birth the gender of the Petitioner was noted as female. This is all that is required to be done and so far as the Petitioner's past is concerned. For the rest, we see no impediment to the grant of relief in terms of prayer clause (a), and we would be entirely remiss if we did not issue that mandamus. Clearly, the Petitioner has demanded justice in accordance with law but has not received it. The mandamus will issue. Rule will thus be absolute in terms of prayer clause (a).

10. But we also must issue a mandamus in terms of prayer clause (b) for future cases. There is absolutely no reason why the online forms on the website of the 1st Respondent and indeed every other educational institution that is or are subject to our writ jurisdiction should not have a form for precisely such changes, i.e., noting a change in name and a change in gender. It is for the 1st Respondent to make this change on the 1st Respondent's website and for the 2nd Respondent State Government to issue the necessary instructions to all similar educational institutions across Maharashtra.

11. Rule is made absolute in these terms. The Petition is disposed of with no orders as to costs. The necessary documents are to be issued to the Petitioner within two weeks from today.

(Neela Gokhale, J)

(G. S. Patel, J)