

Presented on: 17 /01/2020

SUB : Denial of change of name and gender in degree certificate of a transgender person

BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM

Writ Petition (Civil) No. /2020

Raghav P R : Petitioner

Vs

State of Kerala & Anr : Respondents

**MEMORANDUM OF WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226
OF THE CONSTITUTION OF INDIA.**

FERHA AZEEZ (F-99)

K/747/2015

AKHILA SHOJI

(K/593/17)

Counsel for the petitioner

BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM

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INDEX

Sl.No	Description	Pages
1.	Synopsis	A
2.	Memorandum of Writ Petition	
3.	Affidavit	
4.	Exhibit-P1 & P1(a):- A copy of the degree certificate and mark list issued by University of Calicut.	
5	Exhibit-P2:- A copy of the post graduate degree certificate and mark list issued by Mahatma Gandhi University.	
6	Exhibit-P3 & P3(a):- A copy of the order dated 3/5/2019 and the corrected mark list.	
7.	Exhibit-P4:- A true copy of the service certificate.	
8.	Exhibit-P5:- The true copy of the gazette publication declaring the name and gender change of the petitioner	
9.	Exhibit-P6:- A copy of the letter to the University of Calicut requesting the change in name and gender in the degree certificate of the petitioner.	
9.	Exhibit-P7:- A true copy of the memo dated 10/05/2019	
10.	Exhibit-P8:- A copy of the order initiating the formulation of transgender policy for the university.	
11.	Exhibit- P9:- A copy of PAN card, driving license, passport, aadhar and transgender Identity card.	

Dated this the 17th day of January, 2020.

Counsel for petitioner

BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM

Writ Petition (Civil) No. /2020

Raghav P R : Petitioner

Vs

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SYNOPSIS

The petitioner was born in Thrissur, Kerala and was assigned a female name ('Rensha', herein after referred to as 'dead name') and female gender at birth. From his childhood onwards the petitioner identified himself as a boy and exhibited gender non-confirming behavior in school, often resulting in reprimand and ridicule from peers and school authorities.

After completing his schooling, the petitioner sought admission for B.Com in his dead name in a women's college under Calicut University, Kerala and managed to complete his graduation despite heavy bullying and harassment. The petitioner was issued degree certificate by University of Calicut bearing the dead name and gender. After the completion of his graduation, petitioner took admission in a college under Mahatma Gandhi University for Post-Graduation in his dead name, since all other official records documented that. He received the Post Graduate degree in his dead name hence he filed a representation to make changes in the Post Graduate degree certificate which was approved by Mahatma Gandhi University.

Later, the petitioner underwent sex reassignment surgery and legally changed his name and gender, vide publication in the Official Gazette so as to align his body with his gender identity of male.

On 23rd March, 2019 the Petitioner wrote a letter to University of Calicut to change his name and gender in Degree certificate and record his present legal name instead of his dead name. He also informed them that he had legally changed his name, via publication in the Official Gazette and had undergone SRS too. The University Of Calicut responded that the changes cannot be accommodated as the petitioner acquired the qualification before the date of Gazette notification. They also informed that a policy for transgender students is not in place and has initiated one by the office of dean. Hence, the writ petition.

LIST OF DATE AND EVENTS

28/05/2010	certificate of All India Secondary School Examination 2010(Class X certificate) bearing Roll No.4157966
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28/05/2012	certificate of All India Senior Secondary School Certificate Examination 2012(Class XII certificate) bearing Roll No.4636879
05/01/2017	Issue of degree certificate by University of Calicut
03/01/2018	Issue of Post Graduate certificate by Mahatma Gandhi University
31/07/2018	Publication of change of name and gender in Kerala Gazette
23/11/2018	Issue of Transgender Identity Card
23/03/2019	Representation made to University of Calicut for change of name and gender in degree certificates
10/05/2019	Memo received rejecting name change and gender change requested by the petitioner
29/04/2019	Request made by students to form Transgender Students Policy in Calicut University

STATUTES –

Constitution of India

Transgender Persons (protection of Rights) Act, 2019.

AUTHORITIES –

NALSA vs. Union of India (2014) 5 SCC 438

Queerala & Anr v. State of Kerala WP(C) 200565/18

Dated this the 17th day of January, 2020.

Counsel for petitioner

BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM

PETITIONER

Raghav P R
Veluthadath House
Pamboor, Kuttur PO
Thrissur 680013
Kerala

Vs-

RESPONDENTS

1. State Of Kerala,
Represented by the Secretary to the Government,
Higher Education Department,
Government Secretariat, Thiruvananthapuram-695 001
2. University of Calicut, represented by its Registrar
Tirur-Calicut Rd,
Thenhipalam,
Kerala 673635

**MEMORANDUM OF WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226
OF THE CONSTITUTION OF INDIA.**

- I. Address for service of all notice and process on the petitioner is that of his Counsel, **Ferha Azeez and Akhila Shoji**, Advocates, Power House Road, Cochin-18.
- II. Address for service of all notice and process on the respondent is as shown above.

STATEMENT OF FACTS

1. The petitioner was born in Thrissur, Kerala on 29th January 1994 to parents, Reghulan P.G and Sheela V.S and was assigned the female name Rensha P.R (hereinafter referred to as 'dead name') and female gender at birth. The petitioner from his childhood, identified as male and exhibited non-conforming gender behavior at school, often resulting in admonition and ridicule from both peers and adults.
2. The petitioner was issued certificates of Class X and Class XII by the central board of secondary education recording his dead name and gender. The present norms of the CBSE prevents the petitioner from making changes in the above mentioned certificates. The case filed by the petitioner to get corrected certificates is still pending at the Delhi High Court.
3. In Jul, 2012, the petitioner sought admission in B.Com in his dead name in St Mary's College under the Calicut University, Kerala. Since it was a Christian women's college, the petitioner's gender non-conformity came under huge

scrutiny. Subjecting him to a lot of shame and ridicule from the college authorities, he was constantly questioned about his gender identity and how he did not fit into the milieu of women's college. The petitioner somehow managed to complete his graduation despite heavy bullying and harassment. On 05.01.2017, the petitioner was issued degree certificate by University of Calicut bearing the Register number STAMBCM027. The true copy of the degree certificate and mark list are annexed hereto as **Exhibit P1 & P1(a)**.

4. On 15 April 2014, the Hon'ble Supreme Court passed the landmark judgment in the National Legal Service Authority v Union of India [(2014) 5 SCC 438, '**NALSA**'], wherein the court upheld the fundamental right of transgender persons to be legally recognized in their self-identified gender. It also held that no transgender person can be discriminated on the grounds of gender identity and affirm their fundamental rights to equality, non-discrimination, gender expression, privacy, dignity autonomy and health guaranteed under articles 14, 15, 16, 19(1), and 21 of the Indian Constitution. It explicitly directed that insistence on Sex Reassignment Surgery (SRS) for legal gender recognition was illegal and immoral.

5. In July 2015, after completing B.Com. (Hons), the petitioner took admission in De Paul Institute of Science and Technology under Mahatma Gandhi University for M.B.A. Though it was a co-educational institute, the petitioner was constrained to take admission in his dead name, since his school records documented that. However, the petitioner began to appear in masculine ways and did not face much harassment from his peers and college authorities, and managed to complete his degree. He received the degree in his dead name and that is annexed as **Exhibit P2**. The petitioner hence filed representation to make changes in the certificate, and Mahatma Gandhi University approved the request. The true copy of the order dated 3/5/2019 and the corrected mark list is annexed as **Exhibit P3 & P3(a)**.

6. From April, 2017 onwards, petitioner joined EKK Infrastructure Limited, Perumbavoor in his male identity but had to complete all documentation in his dead name. The petitioner had informed the organisation about his transgender identity, and that he would like to appear and present himself as male. The organization was initially apprehensive, but finally came around to accept the petitioner's gender identity as male. After working for more than a year, the petitioner decided to undergo sex reassignment surgery so as to align his body with his gender identity. A true copy of the service certificate is attached as **Exhibit P4**.

7. On 12th April 2018, the petitioner underwent Sexual Reassignment Surgery (Hereinafter referred to as 'SRS') at Amrita Institute of Medical Sciences, Kochi, Kerala. Therefore he decided to legally change his name and gender, vide publication in the Official Gazette.

8. On 19th June 2018, relying on the NALSA decision, the petitioner published the change in his name and gender in the Kerala Gazette, published by the Government of Kerala. The notification stated that: "It is hereby notified for the information of all authorities concerned and the public that I, Rensha P.R., Veludath House, Pamboor, Kuttur P.O., Thrissur District, PIN – 680013, have changed my name as Raghav P.R. consequent on change of my gender from female to male and will sign accordingly." The true copy of the gazette publication declaring the name and gender change of the petitioner is annexed hereto as **Exhibit P5**.

9. The petitioner has been exploring opportunities in public employment opportunities, but he has faced significant challenges, since his certificates record his dead name and gender as female. The existence of multiple identities is demeaning his prospects.

10. On 23rd March, 2019 the Petitioner wrote a letter to University of Calicut to change his name and gender in Degree certificate and record his present legal name instead of his dead name. He also informed that he had legally changed his name, via publication in the Official Gazette in June, 2018, and had undergone SRS too. A true copy of the letter dated 23.03.2019 is annexed hereto as **Exhibit P6**.

11. The University Of Calicut responded that the changes cannot be accommodated as the qualification was acquired after the date of Gazette notification and informed that a policy for transgender students was initiated by the office of dean. A true copy of the memo dated 10/05/2019 is annexed as **Exhibit P7**. The order initiating the formulation of transgender policy for the university, is annexed hereto as **Exhibit P8**.

12. The petitioner has put all efforts to change his name and gender and even changed the official documents such as PAN card, driving license, passport and even acquired a transgender Identity card from the Social Justice Department. A copy of PAN card, driving license, passport, Aadhar and transgender Identity card is annexed hereto as **Exhibit P9 series**.

It is submitted that the action of the part of the 2nd respondent in refusing to change name and gender of the petitioner based on his gender status is highly

illegal and arbitrary and liable to be declared so by this Honorable Court from the following among other grounds.

GROUND

- A.** It is submitted that the petitioner have changed his gender in all necessary official documents as can be seen from **Exhibit P9 series**. By not allowing to change the name and gender in the certificate, it violates the rights guaranteed by Section 7 (3) of The Transgender Persons (Protection of Rights) Act, 2019 where the person who has been issued a certificate of identity under section 6 or a revised certificate under sub-section (2) shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person.
- B.** Exhibit P7 to the extent it has rejected the request of the petitioner for change of name in the degree certificate as well as mark list on the premise that such change is possible only if the qualification is acquired subsequently to the Gazette notification is totally illogical and unjustified.
- C.** The name change was required only after the petitioner performed gender reassignment surgery. It was in the above circumstances that the petitioner got his name and gender changed by way of notification dated 31/7/2018. However that doesn't mean that the petitioner is not entitled to change his name in the certificates obtained by him prior to the gender and name change. Therefore, Exhibit P7 is issued without any application of mind and is violation of fundamental rights guaranteed under Article 14 of Constitution.
- D.** In the decisions by the Honorable Supreme Court in NALSA v. Union of India, wherein the honorable Court has declared in clear terms that no transgender person shall be discriminated on the ground of gender identity and further reaffirmed that fundamental rights under Article 14, 15, 16, 19(1) and 21 of Constitution. Exhibit P7 to the extent it has rejected or in other words, rephrased to effect of change of name of petitioner in his academic certificates is nothing but a blatant violation of the decisions laid down by the Honorable Supreme Court.
- E.** It is the responsibility of the university which is a statutory body of the state to know about the recent developments and the updates of gazette notification by the state. Also, ignorance of law or important notifications is not an excuse. It was a mandatory regulation to start a transgender

students policy in universities irrespective of states. The 2nd respondent failed to constitute a transgender students policy in the university by saying lame excuses which is arbitrary and injustice. The Vice Chancellor has also directed the committee to submit the report before 30th June 2019 which is still pending or unfollowed. It shows the ignorance towards the transgender students community and discrimination.

- F.** The respondent being a university is discharging public functions and is a state within the meaning of Article 12 of the Constitution. Therefore, the respondent cannot act in an unreasonable manner affecting the rights of students undergoing various courses in the university as stated earlier. The change of name was necessitated only on account of the change of gender and therefore what is to be take note of by the university is such change of gender and not the technicalities including basing of their objection with reference to the government notification. The university cannot ignore the object and purpose for issuing a gazette notification. Therefore, the issuance of notification at later date after completing the course cannot be stated as a reason for rejecting the legitimate right of the petitioner to change the name in the certificate based on his gender classification. Such a stand adopted by the university cannot be countenanced at all and has to be depreciated by this Honorable Court.
- G.** As per the provision contained in the first statute of Calicut University, change of name in the degree certificates can be effected on the basis of Gazette notification. Admittedly, Exhibit P5 Gazette notification shows that the petitioner's name has been changed with effect from 31st July 2018. There for there cannot be justification for the university to refuse to effect such change in the degree certificate based on the Gazette notification. Hence, Exhibit P7 is illegal and liable to be set aside.
- H.** The petitioner has done what he could do in his power, including change his name legally, through publication in Gazette, and change his identity documents in order to reflect his self identified gender of male. But he has been unable to change his degree certificate, since 2nd respondent does not allow it. The 2nd respondent practices a policy of automatically and categorically denying transgender persons the option to amend their education certificates to align with their gender identity. There is no rational basis for such denial, and as such , there is an imperative need that educational documents should be consistent with the self identified gender and not contrary to it.

- I.** The petitioner cannot live as a female or be compelled to apply as a female, or have documents that record his dead name. The petitioner believes that congruent identification and educational documents, which uniformly identify him as male, is necessary to give him the legal foundation he needs to live as male, without harassment and discrimination. Thus the petitioner has a deep and compelling need to have official documentation that backs up his gender so that he would feel secure and confident living as male.

- J.** The recognition of gender identity in international law started more than 40 years ago. It began in the 1970s, when several cases of transsexual persons who has undergone SRS and wanted recognition of their reassigned sex in law came to light in North America and Western Europe. There after the focus shifted to discrimination and unfair treatment faced by them in the pursuit of recognition of identity. A number of studies has documented the pervasive discrimination faced by the transgender people, due to divergence between their identity educational documents and their gender presentations, which show that it is really difficult to live life where one feels a constant discrepancy between one's sense of self and how the state and society relate to that person.

- K.** Pertinently, the issue at hand is not merely a formal change of name and gender in education documents. Rather, it is about according respect to and treating people as who they are, by recognizing the gender that they identify in, since gender identity lies at the heart of one's sense of self and personhood. Thus, unlike cis gender person, who may choose the change in name is an integral part of their ability to identify and present in their self-identified gender.

- L.** The courts have held that merely because the individual is a transgender person, they cannot be made to run from pillar to post on the ground that there are no rules available permitting such changes. Once the person has produced the relevant documents, including change in name in the Gazette, and identity proof in the new name, in order to prove their identity, the educational authorities are expected to verify the records and make consequential changes in the concerned records.

- M.** Articles 15 and 16 of the Constitution prohibit all forms of gender bias and gender-based discrimination. It is now well-settled that discrimination on the ground 'sex' under Articles 15 and 16 includes discrimination on the ground of gender identity. Any discrimination, direct or indirect, which is

founded on a particular understanding of sex, would amount to prohibited ground of discrimination under Article 15(1).

N. It is further settled that gender identity lies at the core of one's personal identity, gender expression and presentation, and is protected under article 19(1)(a) of the Constitution. State cannot prohibit, restrict or interfere with a transgender person's expression of such personality, which reflects that inherent personality.

The petitioner has no other alternative remedy other than to approach this Hon'ble Court under Art.226 of the Constitution of India. It is therefore most humbly prayed that this Hon'ble Court may be pleased

- i) To issue a writ of certiorari or any other appropriate writ, order or direction, to quash Exhibit P7 issued by 2nd respondent to the extent that it has rejected the request of the petitioner for change of name and gender based on his gender classification in the degree Certificate.
 - ii) To issue a writ of mandamus or any other appropriate writ, order or direction, directing the 1st respondent to change the name of petitioner in the degree certificate and mark list in the light of Exhibit P5 gazette notification.
 - iii) To declare that the inaction on the part of the University in refusing to change name and gender of students is illegal and in violation of the dictum laid down by the Supreme Court in NALSA v. Union of India 2014(5) SCC 538.
- AND
- iv) To pass such other and further orders as are deemed fit and proper in the facts and circumstances of the case;

INTERIM RELIEF

For the reasons stated in the Writ Petition and accompanying affidavit, it is most humbly prayed that this Hon'ble Court may be pleased to issue an interim direction to 2nd respondent to provisionally issue a degree certificate showing the name of the petitioner as Raghav P.R pending decision in the Writ petition.

Dated this the day of January, 2020. Petitioner

Counsel for the petitioner

BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM

Writ Petition (Civil) No.

/2020

Raghav P R

:

Petitioner

Vs

State of Kerala & Anr.

:

Respondents

AFFIDAVIT

I, Raghav P R, S/o Reghulan P.G., Aged 25 years, Veluthadath House Pamboor, Kuttur PO, Thrissur, Kerala- 680013., do hereby solemnly affirm and state as follows:-

1. I am the Petitioner in the above W.P. and am acquainted with the facts of the case. The statement of facts contained in the above writ petition is true to the best of my knowledge, information and belief and that I have not suppressed any material facts.
2. I have not filed any petition seeking similar and identical relief as prayed for in this W.P. The averments of law are made on the advice of my counsel and I believe them to be true, sustainable and sufficient to grant the relief prayed for in the above W.P. (C). The documents produced in the above W.P.(C) are the true copies of the original they represent.

All the facts stated above are true.

Dated this the 17th day of January, 2020.

Deponent

Solemnly affirmed and signed before me
By the deponent, who is personally known
to me, on this the 17th day of January, 2020
in my office at Ernakulam.

Advocate

APPENDIX

Petitioner's Exhibits:

Exhibit-P1 & P1(a):- A copy of the degree certificate and mark list issued by University of Calicut.

Exhibit P2:-A copy of the mark lists and Post Graduate Certificate issued by the Mahatma Gandhi University

Exhibit-P3 & P3(a) :- A copy of the order dated 3/5/2019 and corrected mark list.

Exhibit-P4:- A true copy of the service certificate.

Exhibit-P5:- The true copy of the gazette publication declaring the name and gender change of the petitioner

Exhibit-P6:- A copy of the letter to the University of Calicut requesting the change in name and gender in the degree certificate of the petitioner.

Exhibit-P7:- A true copy of the memo dated 10/05/2019 rejecting the request of the petitioner to change the name and gender by Calicut university.

Exhibit-P8:- A copy of the order initiating the formulation of transgender policy for the university

Exhibit P9:- A copy of PAN card, driving license, passport, aadhar and transgender Identity card.

FORM NO.1A

[Rule 16(6)]

BEFORE THE HIGH COURT OF KERALA

Number of the proceedings : W.P.(C) No. /2020
Name of the parties filing Vakalath : Raghav P.R.
Telephone No.(Land line/mobile) : +918547547083
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Signature of Advocate

