

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 9TH DAY OF JULY 2018 / 18TH ASHADHA, 1940

WP (C) .No. 20056 of 2018

PETITIONER(S)

- 1 QUEERALA
AN ORGANISATION FOR KERALA GBTIQ REG. NO.EKM/TC/306/2016,
44/2147, CHURCH ROAD, PALARIVATTOM,
ERNAKULAM, KERALA - 682 025, REPRESENTED BY ITS
FOUNDER MEMBER AND PRESIDENT JIJO KURIAKOSE,
S/O. KURIAKOSE K.K., AGED 34, KALAYIL HOUSE,
MALAM P.O., KOTTAYAM - 686 019.
- 2 ZARA SHEIKHA
D/O. MOOSAKUNJU, AGED 29, MVM HOUSE, MANKADU,
KUMMIL P.O., KADAKKAL, KOLLAM - 691 536, BOARD MEMBER
QUEERALA, AN ORGANISATION FOR KERALA GBTIQ REG.
NO.EKM/TC/306/2016,44/2147, CHURCH ROAD, PALARIVATTOM,
ERNAKULAM, KERALA - 682 025.

BY ADVS.SMT.K.K.PREETHA
SMT.FERHA AZEEZ
SRI.R.K.PRASANTH

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
SOCIAL JUSTICE (B) DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. THE DIRECTOR
DIRECTORATE OF SOCIAL JUSTICE, VIKAS BHAVAN,
THIRUVANANTHAPURAM - 695 001.
3. THE SECRETARY TO GOVERNMENT OF KERALA
GENERAL EDUCATION (J) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

BY GOVERNMENT PLEADER SMT. B. VINITHA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-07-2018,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1. TRUE COPY OF THE ORDER DATED 6.3.2018 ISSUED BY THE 1ST RESPONDENT

EXHIBIT P2. TRUE COPY OF THE STATE POLICY FOR TRANSGENDERS IN KERALA, 2015 APPROVED AS PER ORDER DATED 22.9.2015

EXHIBIT P3. TRUE COPY OF THE IDENTITY CARD ISSUED BY THE 1ST RESPONDENT TO PRAVEENNATH

EXHIBIT P4. TRUE COPY OF THE IDENTITY CARD ISSUED BY THE 1ST RESPONDENT TO SHARIN ANTONY

EXHIBIT P5. TRUE COPY OF THE REPRESENTATION DATED 18.5.2018 SUBMITTED BEFORE THE 2ND RESPONDENT

RESPONDENTS EXHIBITS: NIL

//TRUE COPY//

PA TO JUDGE

sab

ANU SIVARAMAN, J.

W.P.(C) No.20056 of 2018

Dated this the 9th day of July, 2018

J U D G M E N T

This writ petition is filed with the following prayers:

"i) To issue a writ of certiorari or other appropriate writ or order quashing Ext. P1 to the extent of granting special sanction to enter the third option of 'transgender' in the SSLC Book, if that person has undergone SRS;

ii) To issue a writ of mandamus or other appropriate writ or order directing the respondents to implement Ext. P2 State Policy for Transgenders in Kerala 2015 and the dictum laid down by the Hon'ble Supreme Court in NALSA Vs. Union of India [2014(2)KLT 378(SC)] in its letter and spirit;

iii) To issue a writ of mandamus or other appropriate writ or order directing the 1st respondent to re-issue Exts. P3 and P4 identity cards indicating the gender identity of the transgender person forthwith;

iv) To issue a writ of mandamus or other appropriate writ or order directing the 1st respondent to issue transgender certificate and identity cards to the transgender persons in accordance with Ext. P2 State Policy for Transgenders in Kerala 2015 and the dictum laid down by the Hon'ble Supreme Court in NALSA Vs. Union of India [2014(2) KLT 378 (SC)];

v) To issue a writ of mandamus or other appropriate writ or order directing the 2nd respondent to consider and dispose of Ext. P5 with notice and opportunity of hearing to the petitioners forthwith or within such time as this Hon'ble Court may deem just and proper in the interest of justice; "

2. Heard the learned counsel for the petitioners and the learned Government Pleader.

3. It is submitted by the learned counsel for the petitioners that the directions issued in Exhibit P1 as also

the identification being done as is evident from Exhibits P3 and P4 are against the findings and the observations made by the Apex Court in the decision reported in ***National Legal Services Authority v. Union of India (2014 (2) KLT 378 (SC)***. It is stated that Exhibit P1 provides that only those persons who have undergone sex change surgery would have their gender recorded as 'Transgender' in their identification. The learned counsel for the petitioners would contend that this is a clear violation of the guidelines laid down in the judgment of the Apex Court as referred to above. It is further stated that Exhibits P3 and P4 are also not in accordance with the directions issued by the Apex Court.

4. Petitioners have approached the 2nd respondent with Exhibit P5 representation pointing out these aspects. However, since Exhibit P1 is a Government Order, I am of the opinion that Exhibit P5 representation preferred by the petitioners is liable to be considered by the Government in its Social Justice Department.

5. In the above view of the matter, there will be a direction to the 2nd respondent to forward Exhibit P5 to the 1st respondent. The 1st respondent shall thereupon issue

notice to the petitioners and any other affected parties by issuing public notice, if necessary and hear them and pass appropriate orders on Ext.P5, in accordance with law. The binding decision of the Apex Court shall also be considered before orders are passed, as directed above. Necessary action shall be taken within a period of four months from the date of receipt of a copy of this judgment.

The writ petition is ordered accordingly.

SD/-

**ANU SIVARAMAN
JUDGE**

sab