

(SHOW CAUSE NOTICE BEFORE ADMISSION)
IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THURSDAY, THE TWENTY NINTH DAY OF DECEMBER TWO THOUSAND AND
TWENTY TWO

:PRESENT:
THE HONOURABLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION NO: 46387 OF 2022

Between:

1. Devath Sreenu @ Devath Tanu Sri, D/o. Devath Kishan
2. Kotem Sravan Kumar @ Kotem Shravya Sri D/o.Kotem Swamy
3. Meghavath Nanda @ Meghavath Nandini,, D/o.Meghavath Gopa
4. Adabathula Rajasekhar @ Adabathula Lovely,, D/o.Adabathula Mallaiah.
5. Vadthya Sarita @ Vadthya Akhilesh Rajputh,, S/o.Vadthya Ramulu.

Petitioners

AND

1. The State of Telangana, Rep. by its Chief Secretary, Secretariat Buildings, Hyderabad, Telangana
2. The State of Telangana,, Rep. by its Principal Secretary, Home Department, Secretariat Buildings, Hyderabad, Telangana
3. Telangana State Level Police Recruitment Board,, Rep. by its Chairman, State of Telangana, Lakdikapul Road, Opp. Ravindra Bharathi, Red hills, Lakdikapool, Hyderabad, Telangana - 500 004
4. Director General of Police,, State of Telangana, Lakdikapul Road, Opp. Ravindra Bharathi, Red hills, Lakdikapool, Hyderabad, Telangana - 500 004

Respondents

WHEREAS the Petitioners above named through their Advocate M/s A SATYASIRI, presented this Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus, declaring the action of the Respondents herein

- A. in not including a 'third gender' category in the impugned Notifications issued vide Rc.No.41/ Rect./ Admn.1/ 2022 dated 25-04-2022, Rc.No.42/ Rect./ Admn.1/2022 dated 25-04 2022, Rc.No.45/ Rect./ Admn.1/ 2022 dated 28-04-2022 , Rc.No.48/ Rect./ Admn.1/ 2022 dated 28-04-2022, as unconstitutional, illegal, contrary to the judgment of the Hon'ble Supreme Court in NALSA v. Union of India and Others.
- B. in failing to provide reservation for Transgenders, horizontally, and placing them on par with other candidates in the same caste group, as violative of Articles 14 and 16(1), contrary to the judgment of the Hon'ble Supreme Court in NALSA v. Union of India Others, which directed the Respondent State to provide reservation in public employment

- C. in depriving of relaxations and concessions offered to female candidates in physical endurance test and physical efficiency test to the Petitioners 1 to 4, who recognize themselves as third Gender as arbitrary, illegal, unreasonable, apart from infringing on their fundamental rights under Article 16(1) of the Constitution of India.
- D. Consequentially direct the Respondents to consider the Petitioners as a separate category of third gender and relax the conditions of physical endurance test for the Petitioners and declare them eligible to give the final test and further direct them to provide horizontal reservations to the Petitioners in compliance with the established principles and direction of Hon'ble Supreme Court to provide reservations in public employment;

AND WHEREAS the High Court upon perusing the petition and affidavit filed herein and upon hearing the arguments of M/s A SATYASIRI, Advocate for the Petitioners and GP for Home, who took notice on behalf of the Respondent Nos.2 to 4, directed issue of notice to the Respondents herein to show cause as to why this WRIT PETITION should not be admitted.

You viz:

1. The Chief Secretary, Secretariat Buildings, State of Telangana, Hyderabad, Telangana
2. The Principal Secretary, Home Department, State of Telangana, Secretariat Buildings, Hyderabad, Telangana
3. The Chairman, Telangana State Level Police Recruitment Board, State of Telangana, Lakdikapul Road, Opp. Ravindra Bharathi, Red hills, Lakdikapool, Hyderabad, Telangana - 500 004
4. Director General of Police, State of Telangana, Lakdikapul Road, Opp. Ravindra Bharathi, Red hills, Lakdikapool, Hyderabad, Telangana - 500 004

are directed to show cause on or before 18-01-2023 to which date the case stands posted as to why in the circumstances set out in the petition and the affidavit filed therewith (copy enclosed) this WRIT PETITION should not be admitted.

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondent No.3 to permit the Petitioners to give the final exam in relation to their applications regarding the impugned notifications dated 25-04-2022 and 28-04-2022 pending disposal of WP No. 46387 of 2022, on the file of the High Court.

IA NO: 2 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to reserve 5 seats in the impugned notifications dated 25-04-2022 and 28-04-2022 without filling the same for the benefit of the Petitioners, pending the disposal of WP No. 46387 of 2022, on the file of the High Court.

IA NO: 3 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to conduct a physical measurements test, physical endurance test and physical efficiency test for the Petitioner 1 to 4 in a separate category before the final exam with relaxed requirements, pending disposal of WP No. 46387 of 2022, on the file of the High Court.

The Court made the following:

ORDER:

Notice before admission.

Heard learned counsel for the petitioners and learned Assistant Government Pleader for Home.

The petitioners approached the Court seeking the main prayer as follows:

“To issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus, declaring the action of the Respondents herein

A) In not including a 'third gender' category in the impugned Notifications issued vide Rc.No.41/Rect./Admn.1/2022 dated 25-04-2022, Rc.No.42/Rect./Admn.1/2022 DATED 25.04.2022, Rc.No.45/Rect./Admn.1/2022 dated 28-04-2022, Rc.No.48/Rect./Admn.1/2022 dated 28-04-2022, as unconstitutional, illegal, contrary to the judgment of the Hon'ble Supreme Court in NALSA v. Union of India and Others.

B) In failing to provide reservation for Transgenders, horizontally, and placing them on par with other candidates in the same caste group, as violative of Articles 14 and 16(1), contrary to the judgment of the Hon'ble Supreme Court in NALSA v. Union of India Others, which directed the Respondent State to provide reservation in public employment.

c) In depriving of relaxations and concessions offered to female candidates in physical endurance test and physical efficiency test to the Petitioners 1 to 4, who recognize themselves as "third Gender" as arbitrary, illegal, unreasonable, apart from infringing on their fundamental rights under Article 16(1) of the Constitution of India.

d) Consequently direct the respondents to consider the petitioners as a separate category of "third gender" and relax the conditions o physical endurance test for the petitioners and declare them eligible to give the final test; and further direct them to provide horizontal reservations to the petitioners in compliance with the established principles and direction of Hon'ble Supreme Court to provide reservations in public employment.”

The Transgender persons (Protection of Rights) Act, 2019, Act No.40 of 2019, in particular, Sections 8 and 9 reads as under:

"8. Obligation of appropriate Government.-

(1) The appropriate Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society.

(2) The appropriate Government shall take such welfare measures as may be prescribed to protect the rights and interests of transgender persons, and facilitate their access to welfare schemes framed by that Government.

(3) The appropriate Government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory.

(4) The appropriate Government shall take steps for the rescue, protection and rehabilitation of transgender persons to address the needs of such persons.

(5) The appropriate Government shall take appropriate measures to promote and protect the right of transgender persons to participate in cultural and recreational activities.

9. Non-discrimination in employment.-No establishment shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues."

The Transgender Persons (Protections of Rights) Rules, 2020, in particular, Para 7 reads as under:

"7. The appropriate Government shall notify the general category transgender persons in other backward classes so as to enable them to avail the benefits of vertical reservation provided for the other backward classes.

Provided nothing in this sub-rule shall deny the benefits to transgender persons to belonging to the scheduled caste and scheduled tribe under the vertical reservation or to the persons with disability, ex-servicemen and sportspersons under the horizontal reservation."

The judgment of the Apex Court dated 15.04.2014 reported in (2014) 5 SCC 438 in National Legal Services Authority Vs Union of India and Others, in particular, Paras 50, 61, 135, 135.1, 135.2, 135.3, 135.4, 135.5, 135.6, 135.7, 135.8, 135.9, 136 and 137 reads as under:

"50. Social exclusion and discrimination on the ground of gender stating that one does not conform to the binary gender (male/female) does prevail in India. Discussion on gender identity including self-identification of gender of male/female or as transgender mostly focuses on those persons who are assigned male sex at birth, whether one talks of hijra transgender, woman or male or male to female transgender persons, while concern voiced by those who are identified as female to male transsexual persons often not properly addressed. Female to male unlike hijra/transgender persons are not quite visible in public unlike hijra/transgender persons. Many of them, however, do experience violence and discrimination because of their sexual orientation or gender identity.

61. Article 14 of the Constitution of India states that the State shall not deny to "any person" equality before the law or the equal protection of the laws within the territory of India. Equality includes the full and equal enjoyment of all rights and freedom. Right to equality has been declared as the basic feature of the Constitution and treatment of equals as unequals or unequals as equals will be violative of the basic structure of the Constitution. Article 14 of the Constitution also ensures equal protection and hence a positive obligation on the State to ensure equal protection of laws by bringing in necessary social and economic changes, so that everyone including TGs may enjoy equal protection of laws and nobody is denied such protection. Article 14 does not restrict the word "person" and its application only to male or female. Hijras/transgender persons who are neither male/female fall within the expression "person" and, hence, entitled to legal protection of laws in all spheres of State activity, including employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizen of this country.

135. We, therefore, declare:

135.1. Hijras, eunuchs, apart from binary genders, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by Parliament and the State Legislature.

135.2. Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.

135.3. We direct the Centre and the State Governments to take steps to treat them as Socially and Educationally Backward Classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.

135.4. The Centre and State Governments are directed to operate separate HIV serosurveillance centres since hijras/transgenders face several sexual health issues.

135.5. The Centre and State Governments should seriously address the problems being faced by hijras/transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal.

135.6. The Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.

135.7. The Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.

135.8. The Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.

135.9. The Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.

136. We are informed an expert committee has already been constituted to make an in-depth study of the problems faced by the transgender community and suggest measures that can be taken by the Government to ameliorate their problems and to submit its report with the recommendations within three months of its constitution. Let the recommendations be examined based on the legal declaration made in this judgment and implemented within six months.

137. The writ petitions are, accordingly, allowed as above."

Letter dated 10.01.2022, of the Deputy Secretary to the Government of India, in particular Para 3(a) refers to identity and Para 3(c) refers to self identity to be respected. Letter of the Deputy Secretary to the Government of India which has been forwarded to all the Chief Secretaries/Administrators of all States and UTs and Director General/IG (Prisons) of all States and UTs, regarding the treatment and care of transgender persons in prisons, in particular, Para 3(a) and Para 3(c) reads as under:

"3(a) Identity: A transgender person shall have the right to be recognized as such, in accordance with the provisions of the Transgender Persons (Protection of Rights) Act, 2019. A person recognized as a transgender person under the provisions of the said Act shall have a right to self-perceived gender identity.

3(c) Self-identity to be respected: Self-identity of transgender persons must be respected at all times in regard to admission procedures, medical examination, search, lodging, clothing, requisitioning of police escorts, treatment and care inside prisons. The prison department may facilitate the process of acquiring the Transgender identity certificate under the provisions of the Transgender Persons (Protection of Rights) Act, 2019, if such a request is made by the person concerned by registering them on the Online National Portal for Transgender Persons to avail welfare measures."

In view of the fact that the petitioners have submitted detailed representation to the 1st respondent explaining their grievances and in particular, the exclusion of transgender persons from the very Application Form dated 28.11.2022 addressed to the Chief Secretary, Government of Telangana and representation dated 18.05.2022 addressed to the Chief Secretary, General Administration Department, the 1st respondent is directed to consider the same, duly taking into consideration the observations of the Apex Court referred to and extracted above and also the relevant provisions i.e., Sections 8 and 9 of the Transgender Persons (Protection of Rights) Act, 2019, Act. 40 of 2019 and also the contents of the letter dated 10.01.2022 and in particular, para 3(a) and para 3(c), within a period of two (02) weeks from the date of receipt of copy of this order and communicate the said decision to the petitioners on all the issues raised in the said representation's dated 28.11.2022 and 12-05-2022.

Post on 18.01.2023 in the motion list.

SD/- C. PRAVEEN KUMAR
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Chief Secretary, Secretariat Buildings, State of Telangana, Hyderabad, Telangana
2. The Principal Secretary, Home Department, State of Telangana, Secretariat Buildings, Hyderabad, Telangana
3. The Chairman, Telangana State Level Police Recruitment Board, State of Telangana, Lakdikapul Road, Opp. Ravindra Bharathi, Red hills, Lakdikapool, Hyderabad, Telangana - 500 004
4. Director General of Police, State of Telangana, Lakdikapul Road, Opp. Ravindra Bharathi, Red hills, Lakdikapool, Hyderabad, Telangana - 500 004 (1 to 4 by RPAD- along with a copy of petition and affidavit)
5. One CC to M/s. A SATYASIRI, Advocate [OPUC]
6. Two CCs to GP FOR GENERAL ADMINISTRATION, High Court at Hyderabad. [OUT]
7. Two CCs to GP FOR Home, High Court at Hyderabad. [OUT]
8. One spare copy

HIGH COURT

SN,J

DATED:29/12/2022

Post on 18.01.2023 in the motion list

NOTICE BEFORE ADMISSION

WP.No.46387 of 2022

DIRECTION

