

Ms. X Vs. The State Of Karnataka

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Court : Karnataka

Decided On : Dec-20-2024

Judge : Suraj Govindaraj

Appeal No. : WP 55559/2017

Appellant : Ms. X

Respondent : The State Of Karnataka

Advocate for Def. : Sri. K.N. Nithish

Judgement :

- 1 - NC:

2024. KHC:49110 WP No.55559 of 2017 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE20H DAY OF DECEMBER, 2024 BEFORE THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ WRIT PETITION No.55559 OF2017(GM-RES) BETWEEN: MS. X AGED34YEARS RESIDING AT GULIGA AJJAKALLKARKERA GARDEN NEAR JANATHA KENDRA, BOLAR MANGALORE DAKSHINA KANNADA DISTRICT KARNATAKA-575 001. PETITIONER (BY MS. APARNA MEHROTRA FOR SRI NAVEEN CHANDRA V., ADVOCATE) AND:

1. THE STATE OF KARNATAKA DEPARTMENT OF LAW GROUND FLOOR VIDHANA SOUDHA BENGALURU-560 001 THROUGH THE PRINCIPAL

SECRETARY.

2. THE HEALTH OFFICER/REGISTRAR OF BIRTH AND DEATH CERTIFICATE MANGALURU CITY CORPORATION M.G.ROAD, LALBAUG MANGALURU-575 003. RESPONDENTS (BY SRI MAHANTESH SHETTER, A.G.A., FOR R-1, & SRI K.N. NITHISH, ADVOCATE, FOR R-2) * * * - 2 - NC:

2024. KHC:49110 WP No.55559 of 2017 THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT SECTION 15 OF THE REGISTRATION OF BIRTHS AND DEATHS ACT, 1969 AND RULE 11(4) OF THE KARNATAKA REGISTRATION OF BIRTHS AND DEATHS RULES, 1999 BE READ DOWN SO AS TO INCLUDE ALL VOLUNTARY CHANGES TO NAME AND GENDER IDENTITY IN ONE'S BIRTH CERTIFICATE, AND ETC. THIS WRIT PETITION COMING ON FOR

ORDER

S AND HAVING BEEN RESERVED FOR

ORDER

S ON 0212.2024, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:
CORAM: HON'BLE MR JUSTICE SURAJ GOVINDARAJ CAV

ORDER

1 The petitioner is before this Court seeking for the following reliefs:- i. Declare that Section 15 of the Registration of Births & Deaths Act, 1969 and Rule 11 (4) of the Karnataka Registration of Births and Deaths Rules, 1999 be read down so as to include all voluntary changes to name and gender identity in one's birth certificate. ii. Issue a writ in the nature of mandamus directing the Respondent No.2 to issue to the petitioner a new Birth Certificate reflecting her current name and gender identity' and iii. Grant any other relief, which the Hon'ble Court deems fit in the circumstances of the case in the interests of justice and equity.

2. The petitioner was born as a male on 06.04.1983 and the birth came to be registered on 20.04.1983 with - 3 - NC:

2024. KHC:49110 WP No.55559 of 2017 registration No.557. The petitioner having been diagnosed and found suffering from gender Dysphoria on 16.07.2007 during psychiatric evaluation at the Victoria Hospital, Bangalore, the petitioner having felt like a girl in a man's body. On reassessment being made by the concerned Doctors and authorities, the petitioner underwent sex re- assignment Surgery after due approval. Thereafter, the petitioner changed her name and made various applications for necessary changes of name and gender to be effected in identity documents like Aadhaar Card, driving licence and passport etc., which were so permitted.

3. When the petitioner made an application to respondent No.2 requesting the name and gender of the petitioner to be changed in the birth certificate to reflect her correct name and gender as 'female', respondent No.2 orally informed that Section 15 of The Registration of Births and Deaths Act, 1969 (for - 4 - NC:

2024. KHC:49110 WP No.55559 of 2017 short, 'the Act of 1969'), does not contemplate such a change and/ or a modification to be made in the birth certificate already issued and the only change that could be effected is as regards any erroneous entry made in the birth certificate. It is in that background that the petitioner is before this Court seeking for the above reliefs.

4. Ms. Aparna Mehrotra, learned Counsel appearing for the petitioner submits that the Act of 1969 has not undergone any change, which was required in view of the coming into effect of the Transgender Persons(Protection of Rights) Act, 2019 (hereinafter referred to as 'the Transgender Act'). The rights which have been conferred on Transgender persons under the Transgender Act, have not been suitably incorporated in the Act of 1969, resulting in an anomalous situation, where despite the Transgender Act, permitting the petitioner to avail of a change in the certificate incorporating the change in name and - 5 - NC:

2024. KHC:49110 WP No.55559 of 2017 change in gender, the authorities by contending that Section 15 of the Act of 1969 does not envisage such a situation, have refused to act on the application submitted by the petitioner and in that background, she submits that the reliefs sought for in the petition are required to be granted.

5. Learned Addl. Government Advocate Sri. Mahantesh Shetter appearing for respondent No.1 submits that the Registrar of Births and Deaths can act only in terms of the Act of 1969. The Act of 1969 not providing for change in the name or gender to be made post the entry in the register of births, such a correction in name and gender cannot be effected by the Registrar and it is for that reason, that the application has not been acted upon.

6. Heard Ms. Aparna Mehrotra, learned Advocate for the petitioner, learned Addl. Government Advocate Sri. Mahantesh Shetter, for respondent No.1 and - 6 - NC:

2024. KHC:49110 WP No.55559 of 2017 Sri. K.N. Nithish, learned Counsel for respondent No.2 and perused the papers.

7. The Transgender Persons (Protection of Rights) Act, 2019 [hereunder referred to as Transgender Act]. was enacted and came into effect on 10.01.2020 vide Notification No.S.O.135(E) dated 10th January 2020 published in Gazette of India, Extraordinary, Part II.

8. Transgender Act was promulgated after taking into consideration the lacunae in the applicable laws to recognize, cater to and protect the interests of Transgender persons. Before the Transgender Act, there was only a binary classification of a person as 'male' or 'female', it is only after the Transgender Act came into force, the binary classification gave way to recognition of the third gender namely the 'Transgender'.

9. The Transgender Act has been promulgated to provide for protection of rights to transgender - 7 - NC:

2024. KHC:49110 WP No.55559 of 2017 persons and their welfare and also for matters connected therewith and incidental thereto alongwith various aspects.

10. Sub-section (k) of Section 2 provides for definition of Transgender person which reads as under: (k) "transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Re-assignment Surgery or hormone therapy or laser therapy or such other therapy),

person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta.

11. The above definition would indicate that a person whose gender does not match with the gender assigned to that person at birth and has undergone sex reassignment therapy or the like would be a transgender person whether he is trans-man or trans-woman.

12. In the present case, the petitioner is a trans-woman, who has transitioned from man to woman after going through Sex-Reassignment procedures.-. 8 - NC:

2024. KHC:49110 WP No.55559 of 2017 13. Section 3 deals with prohibition against discrimination which reads as under:

"3. PROHIBITION AGAINST DISCRIMINATION- No person or establishment shall on any of the namely:- (a) the denial, or discontinuation of or unfair treatment in, educational establishments and services thereof; (b) the unfair treatment in, or in relation to, employment or occupation; (c) the denial of, or termination from, employment or occupation; (d) the denial or discontinuation of, or unfair treatment in, healthcare services; (e) the denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public; (f) the denial or discontinuation of, or unfair treatment with regard to the right of movement; (g) the denial or discontinuation of, or unfair treatment with regard to the right to reside, purchase, rent, or otherwise occupy any property; (h) the denial or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office; and (i) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a transgender person may be."

- 9 - NC:

2024. KHC:49110 WP No.55559 of 2017 14. Section 3 of the Transgender Act provides that there shall be no prohibition or discrimination against a transgender

person on the basis of such person being a transgender and by virtue thereof, equal status has been provided to recognise a transgender person vis-a-viz a male or a female. That is to say that any rights that a male or a female may have would also vest with the transgender person and the same cannot be denied barely on account of the person being transgender.

15. Under Section 4, there is a right conferred on the Transgender person for recognition of the identity of such a person as a Transgender which reads as under:

"4. Recognition of identity of transgender person- (1) A transgender person shall have a right to be recognised as such, in accordance with the provisions of this Act. (2) A person recognised as transgender under sub- section (1) shall have a right to self-perceived gender identity".- 10 - NC:

2024. KHC:49110 WP No.55559 of 2017 16. Section 4 provides for the recognition of identity of transgender person providing a right to such person to be recognized as such on the basis of the self- perceived gender identity in terms of sub-section (2) of Section 4.

17. A person when born and the birth certificate is obtained, the entries made in the birth certificate is on the basis of the gender as determined by physical nature as on that date and the name of the person provided and recorded would be the name as may be given by the parent or parents of such person.

18. In the case of a transgender, it is only subsequently that a person realizes that such a person is not a male or female as shown and recognized in the birth certificate, but feels otherwise than a male or a female, inasmuch as, if on birth a person may be classified as a male and if the person was to be of - 11 - NC:

2024. KHC:49110 WP No.55559 of 2017 the opinion that he is a female, then upon obtaining due permission and sanctions, sex reassignment procedures could be carried out to transition that male person to a female and vice versa i.e., if on birth a person may be classified as a female and if the person was to be of the opinion that she is a male, then upon obtaining due permission and sanctions, sex

reassignment procedures could be carried out to transition that female person to a male.

19. Once such transition occurs, Section 5 of the Transgender Act provides for an application for certification of identity to be made in the manner prescribed, which is so prescribed under Rule 3 of The Transgender Persons (Protection of Rights) Rules, 2020 (for short 'the Transgender Rules') and an application in terms of Form-1 is required to be filed in relation thereto.-. 12 - NC:

2024. KHC:49110 WP No.55559 of 2017 20. Section 5 of the Transgender Act is reproduced hereunder for easy reference:

5. Application for certificate of identity.-A transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person, in such form and manner, and accompanied with such documents, as may be prescribed: Provided that in the case of a minor child, such application shall be made by a parent or guardian of such child.

21. Section 6 of the Transgender Act provides for the issuance of a certificate of identity the same is reproduced herein:

"6. Issue of certificate of identity.-(1) The District Magistrate shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed indicating the gender of such person as transgender. (2) The gender of transgender person shall be recorded in all official documents in accordance with certificate issued under sub-section (1). (3) A certificate issued to a person under sub-section (1) shall confer rights and be a proof of recognition of his identity as a transgender person".

22. Rule 3 of the Transgender Rules is reproduced hereunder for easy reference: - 13 - NC:

2024. KHC:49110 WP No.55559 of 2017

"3. Application for issue of certificate of identity under section 6 or section 7.-(1) A transgender person desirous of obtaining a certificate of identity shall make an application as prescribed in Form - 1. (2) The application shall be submitted to the District Magistrate in person or by post till online facilities are developed by the State Government concerned and thereafter the application shall be made by online only: Provided that the appropriate Government may undertake measures, as it deems appropriate, to facilitate the submission of applications for certificate of identity by transgender persons living in remote areas or disadvantaged conditions: Provided further that in case of a minor child, such application shall be made by a parent or guardian of such minor child and in the case of a child in need of care and protection, by the competent authority under the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016). (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.

23. Form -1 of the Transgender Rules is reproduced hereunder for easy reference:
Form - 1 - 14 - NC:

2024. KHC:49110 WP No.55559 of 2017 [See rules 2(d), 3(1) and 6(1)]. Application form for issue of transgender certificate of identity under Rule Transgender Persons (Protection of Rights) Rules, 2020 read with Section 6* / 7* of the Transgender Persons (Protection of Rights) Act, 2019 * Strike out whichever is not applicable State Emblem State Government of (name of the State) Office of the District Magistrate Application form for issue of a transgender certificate of identity under Rule Transgender Persons (Protection of Rights) Rules, 2020 (read with Section 6* / 7* of the Transgender Persons (Protection of Rights) Act, 2019 * Strike out whichever is not applicable) 1 Name (i) Given name (in capital letters) (ii) Changed/Chosen name (in capital letters) (iii) Out of (i) and (ii), name to be printed in the certificate of identity and in the identity card 2 Gender (i) Assigned at birth (ii) Requested in the application 3 Date of birth dd/mm/yyyy 4 Educational qualification 4 Present address 6 Permanent address - 15 - NC:

2024. KHC:49110 WP No.55559 of 2017 7 If there is a source of income, the annual income: (i) Under Rs 1,00,000 YES/NO (ii) Between Rs 1,00,001 and 3,00,000 YES / NO (iii) Above Rs 3,00,000 Please specify the amount 8 Do you have any of the following documents?. If so, please submit self- attested photocopies of the certificates stated below. (i) Date of birth certificate (ii) Aadhaar card YES / NO (iii) PAN card YES / NO (iv) Election Voter Identity Card YES / NO (v) Ration card YES / NO (vii) Passport YES / NO (viii) Bank passbook YES / NO (ix) MNREGA Card YES / NO (x) Caste certificate (SC/ST/OBC/Others) YES / NO 9 Medical history (for those applying under section 7 of the Transgender Persons (Protection of Rights) Act, 2019 (i) Have you undergone any medical YES / NO intervention in the context of transgender transition?. (ii) Please give details (iii) Name and complete address of the Hospital or medical institute (iv) Name of the issuing authority along - 16 - NC:

2024. KHC:49110 WP No.55559 of 2017 with the date (v) Any other medical status you would like to share (vi) Have you been issued any certificate of identity under Section 6 and Section 7 under the Act, or any other ID Card issued by the State Authority before the commencement of these Rules?. If so, enclosed the same. 10 Any other information you would like to give 11 Have you attached affidavit prescribed in Form-2 of the Transgender Persons (Protection of Rights) Act, 2019 under Rule- Transgender Persons Protection of Rights) Rules, 2020 12. Have you attached the passport Yes/No size photographs?. Enclosed: documents as mentioned in the application Declaration 1. I declare that the particulars furnished by me are true and correct.

2. Information provided in this application will be treated as confidential and shall not be shared with any person or organisation save the Central and / or State security agencies, any other agency as provided by Law; and for statistical and policy framing purposes. Place: Signature or left hand thumb impression Date: of the applicant given name of the applicant - 17 - NC:

2024. KHC:49110 WP No.55559 of 2017 24. An Affidavit is also required to be filed in terms of Form 2 of the Transgender Rules which is reproduced hereunder for easy reference: Form - 2 [See rules 2(b) and 4(1)]. Format of affidavit to be

submitted by a person applying for certificate of identity for transgender persons under Rule 4 of the Transgender Persons (Protection of Rights) Rules, 2020 read with Section 6 of the Transgender Persons (Protection of Rights) Act, 2019 (Affidavit should be on Non-judicial stamp paper of Rs.10/-) Competent Notary Civil, District (Name of the District), (Name of the State) I, (Name), son/daughter/ward/spouse of (name of the parent/guardian/husband), aged (in completed years), residing at (address), (Tehsil), (District), (State) (Pin code) do hereby solemnly affirm and declare as under:

1. I am currently residing in the above address.
 2. I perceive myself as a transgender person whose gender does not match with the gender assigned at birth.
 3. I declare myself as transgender.
 4. I am executing this affidavit to be submitted to the District Magistrate for issue of certificate of identity as transgender person under Section 6 of the Transgender Persons (Protection of Rights) Act, 2019 under Rule Transgender Persons (Protection of Rights) Rules, 2020. .* strike out whichever is not applicable.
- Deponent - 18 - NC:

2024. KHC:49110 WP No.55559 of 2017 (Signature of the Applicant) Verification I, (Name), hereby state that whatever is stated here in above serial Nos. 1 to 4 are true to the best of my knowledge. Deponent (Signature of the Applicant) Tehsil Date Identified by me Before Me Advocate Notary Public 25. On such an application in Form,-1 being filed, the District Magistrate after considering the details, would issue a certificate of identity as transgender person in terms of Section 6 of the Transgender Act as per Form 3 which is hereunder reproduced for easy reference: Form - 3 [See rules 2(e) and 5(1)]. Form of certificate of identity to be issued by District Magistrate under Rule 5 Transgender Persons (Protection of Rights) Rules, 2020 read with section 6 of the Transgender Persons (Protection of Rights) Act, 2019 1. On the basis of the application dated dd/mm/yyyy to the undersigned it is certified that Shri /Smt./ Km/ Ms (name) - 19 - NC:

2024. KHC:49110 WP No.55559 of 2017 son / daughter / ward of Shri/ Smt. (name of the parent or Guardian) of (complete residential address of the applicant) is a transgender person.

2. His / her birth name is .

3. This certificate is issued in terms of the provisions contained under Rule 5 Transgender Persons (Protection of Rights) Rules, 2020 read with section 6 of the Transgender Persons (Protection of Rights) Act, 2019.

4. It is also certified that Shri/Smt/Km/Ms. is ordinarily a resident at the address given above.

5. This certificate entitles the holder to change name and gender in all official documents of the holder. Date.. Signature of the District Magistrate Place Seal 26. It is this certificate of identity which can be made use of by a transgender for the purpose of effecting such other and further corrections in other identity documents and/or other documents.

27. In this regard, Section 6 of the Transgender Act provides for the recordal of the gender of the transgender person in all official documents in accordance with a certificate issued under sub- section (1) of Section 6, as Per Form 3 thereof, - 20 - NC:

2024. KHC:49110 WP No.55559 of 2017 pursuant to an application made in terms of Form-1 of Rule 3 of the Transgender Rules.

28. Once such a certificate is issued, Section 7 of the Transgender Act provides for a change in gender to be recognized by the issuance of necessary certificates in terms of said provision. Section 7 is reproduced for easy reference.

7. Change in gender.-(1) After the issue of a certificate under sub-section (1) of section 6, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District

Magistrate for revised certificate, in such form and manner as may be prescribed. (2) The District Magistrate shall, on receipt of an application along with the Certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed. (3) 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: - 21 - NC:

2024. KHC:49110 WP No.55559 of 2017 Provided that such change in gender and the issue of revised certificate under sub-section (2) shall not affect the rights and entitlements of such person under this Act.

29. Sub-section (2) of Section 7 provides for a certificate to be issued which in turn would enable such a person to seek for change in name and gender to be effected in all identity documents. A certificate in this regard is to be issued in terms of Form 4 of the Rules which is as under: Form - 4 [See rules 2(e) and 7(1)]. Form of certificate of identity for change of gender to be issued by District Magistrate under Rule 6 of the Transgender Persons (Protection of Rights) Rules, 2020 read with section 7 of the Transgender Persons (Protection of Rights) Act, 2019 1. On the basis of the application submitted to the undersigned along with a medical certificate from the Medical Superintendent or Chief Medical Officer (name of the Hospital and complete address), it is to certify that Shri / Smt./ Km/ Ms. (name) son/ daughter / ward of Shri/ Smt. (name of the parent or Guardian) of (complete residential address of the applicant) has undergone medical intervention to change gender.

2. His/ Her birth name is .

3. This certificate is issued in terms of the provisions contained under Rule 6 of the Transgender Persons (Protection of Rights) Rules, 2020 read with section 7 of the Transgender Persons (Protection of Rights) Act, 2019.-. 22 - NC:

2024. KHC:49110 WP No.55559 of 2017 4. It is also certified that Shri / Smt/ Km/ Ms. is ordinarily a resident at the address given above.

5. This certificate entitles the holder to change name and gender in all official documents of the holder.

6. Such change in name and gender and the issue of this certificate shall not adversely affect the rights and entitlements of the holder of this certificate. Date .. Signature of the District Magistrate: Place . Seal 30. Sub-section (3) of Section 7 provides for a change in the first name in the birth certificate, the second name being the parents' name, cannot be changed.

31. When, Sub-sections (2) and (3) provide for both change in gender and change in first name, the concomitants thereof would be, issuance of a necessary birth certificate under the relevant provision and in this case, Section 15 of the Registration of Births and Deaths Act, 1969.- 23 - NC:

2024. KHC:49110 WP No.55559 of 2017 32. Sub Rule (d) of Rule 2 of the Transgender Rules which defines official documents is reproduced hereunder for easy reference:

2. Definition.- In these rules, unless the context otherwise requires,- (a) Act means the Transgender Persons (Protection of Rights) Act, 2019 (40 of 2019); (d) any official documents include all documents listed in Annexure 1, which the appropriate Government may revise, by notification in the Official Gazette; 33. Annexure 1 which gives a list of all official documents is reproduced hereunder for easy reference: Sl.No.Name of the Official Document 1 Birth Certificate 2 Caste/ Tribe Certificate 3 Any education certificate issued by a school, board, college, university or any such academic institution 4 Election Photo Identity Card 5 Aadhar Card 6 Permanent Account Number (PAN) 7 Driving License 8 BPL ration card 9 Post office bank/Bank pass book with photo 10 Pass port 11 Kisan Pass Book 12 Marriage Certificate 13 Electricity/Water/gas connection paper 14 Property papers, 15 Vehicle registration 16 Service book, employment papers 17 Identity card related to bar, 18 Policy papers - 24 - NC:

2024. KHC:49110 WP No.55559 of 2017 34. Not surprisingly the first of the documents mentioned therein is the Birth Certificate.

35. Rule 5 of the Transgender Rules is reproduced hereunder for easy reference:

5. Issue of certificate of identity for a transgender person under section 6.- (1) The District Magistrate shall issue to the applicant, a certificate of identity in Form-3 following the procedure provided in rules 4 indicating the gender of such person. (2) The said certificate of identity shall be issued within thirty days of receipt of duly filled in application along with the affidavit. (3) The certificate of identity issued under sub-rule(1) shall be the basis to change the gender as well as the name and the photograph, if so necessitated, of the transgender person in all such official documents as provided in Annexure-1, in accordance with the gender specified in the said certificate of identity. (4) The District Magistrate shall, at the time of issuance of the certificate of identity under sub-rule(1), issue a transgender identity card in Form - 5 to the applicant. (5) The appropriate Governments shall maintain a register for the issuance of certificate of identity card and the transgender identity card. (6) The authority that issued the official document, on an application made by an applicant under rule 3, shall change the name or gender or photograph or any of this - 25 - NC:

2024. KHC:49110 WP No.55559 of 2017 information of the applicant in the official documents within fifteen days of making of such application. (7) Any official document wherein gender, name and the photograph of transgender are revised based on the said certificate of identity, shall bear the same serial or reference number as in the original official document of such transgender person who seeks change in the name or gender or both in the official documents: Provided that all benefits that a transgender person was entitled to based on an identity card, if any, issued by a State authority shall continue to be enjoyed by that transgender person based on the certificate of identity issued under these rules.

36. In terms of sub-rule (3) of Rule 5 the certificate of identity issued under sub-rule(1) of Rule 5 shall be the basis to change the gender as well as the name and the photograph, if so necessitated, of the transgender person in all such official documents as provided in Annexure-1, in accordance with the gender specified in

the said certificate of identity, which would include a birth Certificate.

37. Rule 7 of the Transgender Rules reads as under 7. Issue of certificate of identity under section 7- (1) The District Magistrate shall issue a revised certificate of identity in Form - 4 to the applicant seeking change in gender indicating the gender of such a person as male or female, as the case may be.-. 26 - NC:

2024. KHC:49110 WP No.55559 of 2017 (2) The District Magistrate shall issue the revised certificate under sub-rule (1) within fifteen days of its receipt of the application. (3) The certificate of identity issued under sub-rule (1) shall entitle the applicant to record or change the gender, as well as photograph and name, if so necessitated of transgender person in all such official documents provided in Annexure - 1, in accordance with the gender specified in the said certificate of identity as male or female, as the case may be. (4) The District Magistrate while issuing the certificate of identity for change of gender shall simultaneously issue an identity card in Form - 6 to the applicant. (5) The authority that issued the official document, on an application made by an applicant under sub-rule (3), shall change the name or gender or photograph or any of this information of the applicant in the official documents within fifteen days of making of such application. (6) Any official document wherein gender, name or photograph of transgender person is revised based on the said certificate of identity shall bear the same serial or reference number as in the original official document of such transgender person who seeks change in the name or gender or both in the official documents.

38. Again in terms of sub rule (3) of Rule 7 The certificate of identity issued under sub-rule (1) of Rule 7 shall entitle the applicant to record or change the gender, as well as photograph and name, if so necessitated of transgender person in all such official documents provided in Annexure - 1, in accordance - 27 - NC:

2024. KHC:49110 WP No.55559 of 2017 with the gender specified in the said certificate of identity as male or female, as the case may be which would include a Birth Certificate.

39. The Transgender Act being a special enactment, the mandate of a special Act would have to be complied with by General Enactment like the Act of 1969.

40. In terms of the definition of 'Transgender in Section 2 (K) of the Transgender Act and in order to give due effect to the rights recognized under the said act and more particularly to give effect to the right of a Transgender Person to be recognized and identified as such in terms of Section 4 thereof, making of an application for issuance of certificate of identity in terms of Section 5 thereof, issuance of certificate of identity in terms of Section 6 thereof which in turn recognizes the right for change of Gender in terms of Section 7 thereof, requiring a revised certificate of identity being issued.-. 28 - NC:

2024. KHC:49110 WP No.55559 of 2017 41. A birth certificate also being an official document as per Annexure 1 to the transgender rules as defined under sub-rule (c) of Rule 2 and listed under Annexure 1 thereof a revised birth certificate would have to be issued if all the requirements of the Transgender Act are fulfilled.

42. There is an obligation in terms of Section 8 of the Transgender Act on the government to safeguard the interest of the Transgenders, one of the modes and methodologies for such protection being the implementation of the mandate of Section 4 to 7 of the Transgenders Act, the Government would have to carry out necessary amendments to the Act of 1969 and Rules framed thereunder to give effect to the Transgenders Act and establish necessary procedures required to be followed, to give effect to the purpose and intent and mandate of the special laws, namely the Transgender Act.-. 29 - NC:

2024. KHC:49110 WP No.55559 of 2017 43. In that view of the matter, the authority not having acted on the application filed by the petitioner for the reason that Section 15 of the Act of 1969 not providing for the same, the said authority has acted contrary to the rights, which have been recognized under the Transgender Act, by negating the rights of a Transgender recognized under the Transgender Act.

44. No particular fault can be found with the authorities under the Act of 1969 since they are required to act in terms of the statute and they themselves cannot read anything more into the Act. The lacunae was however required to be brought to the notice of the state.

45. The above facts and circumstances require this Court's intervention. Since there is no procedure now in force providing for the correction in the birth - 30 - NC:

2024. KHC:49110 WP No.55559 of 2017 certificate on account of change in gender, until suitable amendments are made to the Act of 1969 and the rules framed thereunder it is declared that it shall be the duty of the Registrar of Births and Deaths to give effect to any certificate issued under Section 6 or 7 of the Transgender Persons(Protection of Rights) Act, 2019 by the issuance of necessary amended/corrected Birth or Death Certificate in terms of the Certificate issued under Section 6 or 7 of the Transgender Act by effecting necessary change in the name and gender of such transperson.

46. In the above circumstances, I pass the following

ORDER

i. Until suitable amendments are made to the Act of 1969 and the rules framed thereunder it shall be the duty of the Registrar of Births and Deaths to give effect to any certificate issued under Section 6 or 7 of the Transgender Persons(Protection of Rights) Act, 2019 by accepting and processing an application filed by a transgender, if accompanied by certificate under section 6 or 7 of the Transgender Act and make such entries in the Register of Births and Deaths and issue necessary birth or Death - 31 - NC:

2024. KHC:49110 WP No.55559 of 2017 certificate with modification made, indicating both the earlier name and the present name with the details of the certificate under Section 6 or 7 being incorporated in the said certificate. ii. Respondent No.2 is directed to process the application of the petitioner in terms of the above within a period of four weeks from now and issue the same. iii. The Law Commission, Government of Karnataka is requested to look into the Transgender

Act and suggest appropriate amendments to the Act of 1969 and the Rules framed thereunder so as to give effect to the Transgender Act in its true letter and spirit, at the earliest. Registrar (Judicial) is directed to forward this order to the Honble Chairperson of the Law Commission of Karnataka. Sd/- (SURAJ GOVINDARAJ)
JUDGE LN List No.:

1. SI No.:

4.

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