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SC third-gender rap on Centre

Our Legal Correspondent

New Delhi, June 30: The Supreme Court today made it clear that lesbians, gays and bisexuals couldn't be treated as a "third gender" for reservation benefits in education or jobs, as it disposed of a government plea for clarification of an April 2014 judgment.

"We ask why we should not dismiss the petition with costs (fine)," a bench of Justices A.K. Sikri and N.V. Ramana asked additional solicitor general Maninder Singh. "No clarification is required. The application is disposed of."

In a landmark ruling on April 15, 2014, the court had accorded legal recognition to transgenders, commonly known as eunuchs or *hijras*, and said they were entitled to all the fundamental rights, reservation in jobs and education, and separate public toilets.

The NDA government, which came to power about a month later, is yet to enforce the directives and had instead filed an application the same year seeking a clarification on whether the ruling covered lesbians and gays too.

The Centre has also not taken any stand yet on the contentious issue of quashing the penal code's Section 377, which makes any form of unnatural sex a criminal offence.

Today, when the Centre's plea came up for hearing, the bench told additional solicitor general Singh there was no need for a clarification. It said the top court, in its 131-page judgment, had made clear in paragraphs 107 and 109 that its order was restricted to the transgender community, and it was not concerned with the wider meaning of the umbrella expression that includes lesbians, gays and bisexuals.

Senior counsel Anand Grover, who appeared for the transgender community, told the court the Centre's application was aimed at scuttling the implementation of the historic judgment. The bench then disposed of the application.

The April 2014 order applied only to those born with biological features or psychological leanings that conformed to the definition of transgenders or *hijras*. The beneficiaries included those who had undergone or sought sex-change operations, as also those content with merely cross-dressing.

"At the outset, it may be clarified that the term 'transgender' is used in a wider sense in the present age. Even gay(s), lesbian(s) (and) bisexual(s) are included by the descriptor 'transgender'," the then bench of Justice K.S. Radhakrishnan, who has since retired, and Justice Sikri had said.

"However, while dealing with the present issue we are not concerned with this aforesaid wider meaning of the expression transgender," the bench had said.

Paragraph 109 clarified further. "Therefore, we make it clear at the outset that when we discuss about the question of conferring distinct identity, we are restrictive in our meaning which has to be given to the TG (transgender) community i.e. *hijra* etc., as explained above," the bench said.

The judgment had a raft of far-reaching implications for the country's transgender population, which the 2011 census put around 19 lakh.

It upheld the right of transgender persons to decide their self-identified gender and directed the Centre and state governments to grant legal recognition of their gender identity, such as male, female or as third gender. The judgment said governments must treat transgenders as a socially and educationally backward class and reserve jobs and college seats for them.

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