

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

THURSDAY, THE 28TH DAY OF NOVEMBER 2024 / 7TH AGRAHAYANA, 1946

WP(C) NO. 29247 OF 2019

PETITIONER :

KABEER C.
AGED 33 YEARS
S/O.SRAJU C,
CHORAMPADATH HOUSE,
PAVUKKONAM POST,
VANIYAMKULAM VIA,
PALAKKAD-679 522.

BY ADVS.
KALEESWARAM RAJ
SRI.VARUN C.VIJAY
KUM.THULASI K. RAJ
SMT.MAITREYI SACHIDANANDA HEGDE

RESPONDENTS :

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF SOCIAL JUSTICE,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 2 DIRECTOR
DEPARTMENT OF SOCIAL JUSTICE,
THIRUVANANTHAPURAM-695 001.
- 3 SECRETARY TO GOVERNMENT
DEPARTMENT OF LAW, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.



W.P.(C).Nos.29247/2019 and 1970/2024

-:2:-

2024:KER:98332

4 SECRETARY TO THE GOVERNMENT
SOCIAL JUSTICE AND EMPOWERMENT DEPARTMENT,
UNION OF INDIA, NEW DELHI

IS IMPEADED AS ADDL.R4 AS PER ORDER DATED 08/12/2021
IN WPC 29247/2019.

5 ORUMA TRANSGENDERS COMMUNITY BASED ORGANISATION
REG. NO.PKD/CA/426/2018, TRANSGENDER CANTEEN,
CIVIL STATION, KAKKANAD-678 001;
REPRESENTED BY ITS SECRETARY MANJU RAJU,
AGED 33 YEARS, FATHER RAJAN, PANNIPERUNTHALA,
THEKKE DESOM, PALAKKAD-678 553

IS IMPEADED AS ADDITIONAL 5TH RESPONDENT AS PER ORDER
DATED 4/3/2022 IN I.A 1/22 IN WPC 29247/2019(S).

BY ADVS.

K.P.PRADEEP
HAREESH M.R.
SANAND RAMAKRISHNAN
NEENA ARIMBOOR
RASMI NAIR T.
T.THASMI
M.J.ANOOPA

SHRI.N.MANOJ KUMAR, STATE ATTORNEY
K.R.RANJITH, GOVERNMENT PLEADER

KRISHNA T C, CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
28.11.2024, ALONG WITH WP(C).1970/2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



W.P.(C).Nos.29247/2019 and 1970/2024

-:3:-

2024:KER:98332

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

THURSDAY, THE 28TH DAY OF NOVEMBER 2024 / 7TH AGRAHAYANA, 1946

WP(C) NO. 1970 OF 2024

PETITIONER:

ANEERA KABEER.C
AGED 38 YEARS
D/O. SRAJU, CHORAMPADTH, VANIAMKULAM,
PAVUKKONAM, VTC: ANANGANADI. P.O.,
EDAKODE, PALAKKAD, KERALA, PIN - 679522

BY ADVS.
PADMA LAKSHMI
MARIYAMMA A.K.
HASEENA T.

RESPONDENTS:

- 1 STATE OF KERALA REPRESENTED BY CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANAMTHAPURAM:695001,
PIN - 695001
- 2 CHAIRMAN
KERALA PUBLIC SERVICE COMMISSION,
PAT TOM PALACE P.O.
THIRUVNAMTHAPURAM, PIN - 695004



W.P.(C).Nos.29247/2019 and 1970/2024

-:4:-

2024:KER:98332

3 SECRETARY TO GOVT.
SOCIAL JUSTICE DEPARTMENT VIKAS BHAVAN,
5TH FLOOR, THIRUVANANTHAPURAM-695033,
PIN - 695033

4 LAW SECRETARY, LAW DEPARTMENT,
LAW DEPARTMENT, ROOM NO:375,
FIRST FLOOR, MAIN BLOCK,
GOVERNMENT SECRETARIAT,
THIRUVANAMTHAPURAM, PIN - 695001

*ADDL.R5 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT,
A-WING, SHASTRI BHAWAN,
NEW DELHI - 110 001.

[ADDL.R5 IS SUO MOTU IMPEADED AS PER ORDER DATED
17.01.2024 IN WP(C) 1970/2024]

BY ADVS.
SHRI N.MANOJ KUMAR, STATE ATTORNEY
K.R.RANJITH, GOVERNMENT PLEADER
KRISHNA T C, CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
28.11.2024, ALONG WITH WP(C).29247/2019, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



W.P.(C).Nos.29247/2019 and 1970/2024

-:5:-

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J U D G M E N T

Dated this the 28th day of November 2024

A.Muhamed Mustaque, J.

Transgenders filed these writ petitions. They seek relief of a writ of mandamus directing the Government of Kerala to provide reservations to transgender persons in education and public employment. The earliest writ petition was filed in 2019. These writ petitions were filed in the light of the declaration of law by the Apex Court regarding the right of transgenders in **National Legal Services Authority v. Union of India and Ors. [(2014) 5 SCC 438]**. This Court passed various interim orders in the earliest writ petition, W.P.(C). No.29247/2019. However, nothing has come out effectively to provide reservations to the transgenders. We also note that the Government has taken various measures to



assist transgenders through different Government orders from 2015 onwards. Yet, the Government failed to evolve policies providing reservations to transgenders.

2. While ordinarily this Court may not interfere in the policy domain of the Government, in cases involving fundamental rights and a clear direction from the Apex Court existing, the judicial role in enforcing such rights become imperative. The continued inaction by the Government, despite clear legal and constitutional obligations, leaves this Court with little choice but to consider issuing appropriate directions to ensure compliance with the constitutional and legal mandate. But in this case, the rights of transgenders have been declared by the Apex Court in the **National Legal Services Authority's** case (supra), declaring the law as follows:

“**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 person's 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.”

3. In the light of the declaration of law, effectuating measures to protect their rights cannot be said to be a matter that completely falls within the domain of the Executive. The law declared by the Apex Court is essential to ensure that transgenders



are equally treated along with other gender groups, to take proactive measures for affirmative action.

4. Innate human differences are a challenge to human civilization. We must be alive to acknowledge that the different groups face structural and societal disadvantages that prevent them from competing on equal footing. It is the mandate of the law that such barriers are dismantled to ensure equal opportunities. If there is a difference existing due to biological reasons or any other reasons like ethnicity, social class, etc., the State is bound to address such differences to bridge the gap and allow the participation of disadvantaged groups along with others.

5. The Parliament understood the significant issue faced by the transgenders in the light of the law declared by the Apex Court in the **National Legal Service Authority's** case (supra). The Parliament accordingly enacted The Transgender Persons (Protection of Rights) Act, 2019. It is appropriate to refer to Section 3 of the above enactment which reads as follows:



“3. Prohibition against discrimination - No person or establishment shall discriminate against a transgender person on any of the following grounds, 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.”

The Government of Kerala also framed rules in accordance with the above enactment in the year 2020 to effectuate the objectives and goals of the statutory provisions.



6. In effect, in the absence of any statutory provisions or executive orders providing for reservation of education in public employment, the agony faced by the transgenders continues and they are not in a position to compete with advantaged groups. Thereby, they have been denied equal opportunity in education and public employment. Education is a fundamental human right. Our Constitution provides equal opportunity as a part of the fundamental rights. Unequals have different sets of backgrounds while competing and they would be denied equal opportunity if the circumstances leading to their inequality are not addressed. Equality is the basic feature of our Constitution.

The petitioners in these cases are aspirants of public employment. In none of the public employment notifications, a reservation is made for transgenders. The transgenders are marginalised. Their inclusion in education and public employment is imperative for development. Their voices are not heard in public employment. They also need to move forward. In the light of the



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Apex Court judgment in **National Legal Service Authority's** case (supra), the Government cannot delay the implementation of their rights in providing reservations to them. In such circumstances, we are of the view that the Government shall implement measures to provide reservations to transgenders within six months from the date of receipt of a copy of this judgment.

The writ petitions are disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

Sd/-

P. KRISHNA KUMAR, JUDGE

ms



APPENDIX OF WP(C) 1970/2024

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE TRANSGENDER IDENTITY CARD
ISSUED BY THE DISTRICT
MAGISTRATE/COLLECTOR, PALAKKAD
- Exhibit P2 TRUE COPY OF THE IDENTITY CARD ISSUED BY
GOVERNMENT OF KERALA
- Exhibit P3 TRUE COPIES OF THE B.A DEGREE CERTIFICATE
ISSUED BY THE UNIVERSITY OF CALICUT
- Exhibit P4 TRUE COPIES OF THE B.ED DEGREE CERTIFICATES
ISSUED BY THE UNIVERSITY OF CALICUT
- Exhibit P5 TRUE COPY OF THE M.ED CERTIFICATE
- Exhibit P6 TRUE COPY OF THE RESERVATION RULE FOLLOWED
BY THE KERALA PUBLIC SERVICE COMMISSION
- Exhibit P7 TRUE COPY OF THE NOTIFICATION FOR CATEGORY
NO.517/2019 ISSUED BY THE KERALA PUBLIC
SERVICE COMMISSION
- Exhibit P8 TRUE COPY OF THE SUPREME COURT JUDGMENT IN
NALSA V. UNION OF INIDA(AIR 2014 SC 1863)
- Exhibit P9 TRUE COPY OF THE NOTIFICATION FOR CATEGORY
NO.203/2021 ISSUED BY THE KERALA PUBLIC
SERVICE COMMISSION
- Exhibit 10 TRUE COPY OF THE TRANSGENDER PERSONS
(PROTECTION OF RIGHTS) ACT, 2019
- Exhibit 11 TRUE COPY OF THE LETTER GIVEN TO THE
DISTRICT LEGAL SERVICES AUTHORITY, PALAKKAD
DISTRICT ON 14/12/2021



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RESPONDENT EXHIBITS

- EXHIBIT R1 (a) TRUE COPY OF THE G.O. (Ms.) No. 153/2018/HEDN
DATED 03.07.2018**
- EXHIBIT R1 (b) TRUE COPY OF THE G.O. (Ms.) No. 172/2023/HFWD
DATED 27.07.2023**
- EXHIBIT R1 (c) TRUE COPY OF THE G.O. (Ms.) No. 61/2015/SJD
DATED 22.09.2015**
- EXHIBIT R1 (d) TRUE COPY OF THE MINUTES OF MEETING HELD ON
20.09.2023.**



APPENDIX OF WP(C) 29247/2019

PETITIONER'S EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE G.O. DATED 22.9.2015
ISSUED BY THE SECRETARY, DEPARTMENT OF
SOCIAL JUSTICE.
- EXHIBIT P2 TRUE COPY OF THE STATE POLICE FOR THE
TRANSGENDERS IN KERALA.
- EXHIBIT P3 TRUE COPY OF THE G.O. DATED 03.07.2018.
- EXHIBIT P4 TRUE COPY OF THE REPORT TITLED 'SKILLING
FOR LIVELIHOOD OPPORTUNITIES FOR
TRANSGENDERS IN INDIA'.
- EXHIBIT P5 TRUE COPY OF THE TRANSGENDER IDENTITY CARD
OF THE PETITIONER ISSUED BY THE 1ST
RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE JUDGMENT OF THE MADRAS
HIGH COURT IN WRIT PETITION NO.15046/15
DATED 03.11.2015.
- EXHIBIT P7 TRUE COPY OF THE 'TRANSGENDER SURVEY KERALA
2014-15.
- EXHIBIT P8 TRUE COPY OF THE JUDGMENT OF THE MADRAS
HIGH COURT IN THARIKA BANU V. SECRETARY TO
GOVERNMENT, HEALTH AND FAMILY WELFARE AND
OTHERS (W.P.NO.26628/17).

RESPONDENTS' ANNEXURES

- Annexure R1(a) True copy of the G.O.(Rt) No.612/2019/SJD
dated 29.09.2019 along with English
Translation
- Annexure R1(b) True copy of the report