



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE RAVI V HOSMANI

WRIT PETITION NO.14909 OF 2023 (EDN-RES)

BETWEEN:

...PETITIONER

AND

- 1 . STATE OF KARNATAKA,
REP. BY ITS CHIEF SECRETARY,
VIDHANA SOUDHA,
DR. B.R. AMBEDKAR VEEDHI,
BENGALURU - 560 001.
- 2 . STATE OF KARNATAKA,
REP. BY ITS PRINCIPAL SECRETARY,
HIGHER EDUCATION DEPARTMENT,
M.S. BUILDING,
DR. B.R. AMBEDKAR VEEDHI,
BENGALURU-560001.
- 3 . THE NATIONAL LAW SCHOOL OF
INDIA UNIVERSITY
REP. BY ITS VICE CHANCELLOR,
TEACHERS COLONY,





GNANABHARATHI ROAD,
BENGALURU - 560 072.

4 . THE NATIONAL LAW SCHOOL OF
INDIA UNIVERSITY
REP. BY ITS ACADEMIC DEAN AND
LLB CHAIRPERSON,
TEACHERS COLONY,
GNANABHARATHI ROAD,
BENGALURU - 560 072.

...RESPONDENTS

[BY SMT. MAMATHA SHETTY, AGA FOR R1 & R2 (PH);
SRI ADITYA NARAYAN, ADVOCATE FOR R3 & R4 (VK
FILED) A/W GPA COPY FOR R3 (PH)]

THIS WP IS FILED UNDER ARTICLES 226 & 227 OF THE
CONSTITUTION OF INDIA, PRAYING TO QUASH THE DECISION
OF THE R-3 NOT OFFERING ADMISSION TO THE PETITIONER,
AS CONTAINED IN THE PETITIONERS SCORE CARD ISSUED BY
R-3 (PLACED AS ANNEXURE-L); DIRECT TO R-3 TO PROVIDE
ADMISSION TO THE PETITIONER IN THE 3-YEAR L.L.B.
COURSE FROM THE 2023-24 ACADEMIC YEAR; DIRECT TO THE
RESPONDENTS TO IMPLEMENT THE KARNATAKA STATE POLICY
ON TRANSGENDERS, 2017 (PLACED AS ANNEXURE-T) AND
PROVIDE RESERVATION TO TRANSGENDER PERSONS,
INCLUDING THE PETITIONER IN THE R-3 UNIVERSITY.

THIS PETITION HAVING BEEN HEARD AND RESERVED
FOR ORDERS ON 28.11.2024, THIS DAY, THE COURT
PRONOUNCED THE FOLLOWING:



CORAM: HON'BLE MR JUSTICE RAVI V HOSMANI

CAV ORDER

This writ petition is filed seeking for following reliefs:

- 1) *Issue an appropriate writ, order or direction to quash the decision of the respondent no.3 not offering admission to the petitioner, as contained in the Petitioner's Score Card issued by respondent no.3 (placed as Annexure-L); vide application no.LLB-23-3076.*
- 2) *Issue an appropriate writ, order or direction to respondent nos.3 to provide admission to the petitioner in the 3-year LLB., Course from the 2023-24 academic year;*
- 3) *Issue an appropriate writ, order or direction to the respondents to implement the Karnataka State Policy on Transgenders, 2017 (placed as Annexure-T) and provide reservation to transgender persons, including the Petitioner, in the Respondent No.3 University;*
- 4) *Issue any other order or orders as the Hon'ble Court may deem fit to grant in the facts and circumstances of the case including the costs of this writ petition, to meet the ends of justice.*

2. Sri Clifton D. Rozario learned counsel appearing for Smt.Shilpa Prasad, advocate for petitioner submitted, petitioner obtained Bachelor of Arts Degree from Mahatma Gandhi University and Master of Arts in Development Studies from TATA Institute of Social Sciences. It was submitted, during year 2015, petitioner realized, she was a female to male transgender person ('**TG**' for short). Accordingly, an Affidavit of



Declaration was sworn to on 20.11.2018 as per Annexure-A and change of name was gazetted in May, 2019 as per Annexure-B, whereunder, petitioner adopted new name as '*Esvi Anbu Kothazham*'. By a subsequent affidavit sworn to on 06.08.2022 before Notary Public, name was changed to *Mugil Anbu Vasantha* due to adoption of change of gender from 'female' to 'transgender'. Said change was also gazetted during August, 2022 as per Annexure-D. Consequent changes were also effected in Aadhaar Card, PAN Card etc.

3. It was submitted on 16.01.2023, respondent no.3 - National Law School of India University ('**NLSIU**' for short) issued notification calling for application for admission to LLB Course. As petitioner intended to study same, application along with documents on 22.03.2023 as per Annexure-H was filed and appeared in NLSAT exams. As per Annexure-L, petitioner secured cumulative score of 96.25 (Part-A + Part-B). Despite said score, petitioner was denied admission.

4. Therefore, a representation dated 12.06.2023 as per Annexure-N was submitted for review of decision denying admission. Petitioner brought to notice of NLSIU about requirement for providing reservation to TGs as per decision of



Hon'ble Supreme Court in **NALSA v. Union of India** reported in **(2014) 5 SCC 438** and observations made by High Court of Madras in **S. Tharika Banu v. Secretary to Government (W.P.no.26628/2017** and connected cases disposed of on **29.11.2017**).

5. Further representations were made on 19.06.2023 as per Annexure-P and Q. Despite receipt, no action was taken. It was submitted, respondent no.1 - State had adopted Karnataka State Policy on Transgenders, 2017 - Annexure-T (hereinafter referred to as '**TG Policy**'), which at paragraph no.1.4, contemplated support measures such as scholarships etc. Likewise, in paragraph no.9.3 under heading 'Schemes for Education', education grants following norms for grant of scholarships to OBC students was contemplated. Even provision for fee-waiver, free text books, free hostel accommodation and other facilities at subsidised rates was contemplated. But, no avail to petitioner. Therefore, petitioner filed this petition.

6. It was submitted this Court by interim order dated 22.08.2023, directed NLSIU to admit petitioner in three year LL.B Course for academic year 2023-24, if petitioner was eligible, subject to out come of writ petition. It was submitted,



W.A.no.1025/2023 filed challenging above interim order was dismissed on 04.09.2023.

7. It was submitted, though petitioner was granted admission as directed and petitioner managed to pay Rs.50,000/- on 29.08.2023, demand was made for balance fee of Rs.3,25,500/-. Unable to pay remaining amount, petitioner filed application for financial assistance under NLSIU Financial Aid Scheme on 30.08.2023. In meanwhile, NLSIU expressed intention to cancel admission.

8. Therefore, petitioner filed I.A.no.2/2023 for direction to NLSIU to comply with interim order dated 22.08.2023 and to take decision on request for financial aid. Application was appended with petitioner's representations dated 23.08.2023, 24.08.2023 & 25.08.2023 along with replies dated 28.08.2023, 29.08.2023 & 30.08.2023. Even petitioner's E-mail to Office of Student Affairs dated 01.09.2023 was also produced.

9. It was submitted, in its objection to I.A.no.2/2023, NLSIU had merely stated, application for financial aid was not supported with adequate documentation. After calling upon for



production and considering same, Financial Aid Committee decided to grant partial financial aid. Same was communicated by E-mail dated 27.09.2023 - Annexure-R4 followed by demand for balance amount. It was submitted, furnishing of details of banks and financial institutions, which had tie-up with NLSIU for educational loan would be of no use herein, as petitioner was unable to comply with requirements stipulated by Banks. Said difficulties arose primarily due to fact that petitioner was TG, who had lost financial and other support from parents and relatives, etc. It was submitted, petitioner was surviving on help from few TG community well-wishers, which was not sufficient to bear exorbitant fees. Entire action of NLSIU was indicative of intention to frustrate petitioner from taking benefit of interim order. Despite same, demand for further documents indicated NLSIU was cold-shouldering request. Therefore, petitioner filed I.A.no.3/2023 for amendment of writ petition for additional facts, grounds and prayer.

10. Narrating above petitioner filed affidavit dated 19.01.2024. In above facts and circumstances, petitioner prayed for allowing writ petition. In support, learned counsel relied on directions issued in **NALSA's** case (supra) 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 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 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 problems faced by transgender community and suggest measures that can be taken by Government to ameliorate their problems and to submit its report with 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."*

11. It was submitted, under similar circumstances, High Court of Uttarakhand in case of **Rano v. State of Uttarakhand**, reported in **2018 SCC OnLine Utt. 1291**, had issued directions to provide for reservation in favour of TGs as follows:

- "8. *The State of Odisha has framed a scheme for Promotion of Transgender Equality & Justice. The scheme speaks of medical assistance to the parents of transgenders. Pre and Post Matric Scholarship, Personality Development, Skill Upgradation Training, Self Employment, role of District Administration, role of block/ULB Administration and Budget Provision & Utilization. Accordingly, the writ petition is disposed of by issuing following mandatory directions:—*
- A. *The Senior Superintendent of Police, Dehradun is directed to provide necessary protection to petitioners in both petitions.*
 - B. *We direct State Government to provide reservation in admission in educational institutions and for public appointments to transgenders by framing a scheme within a period of six months from today.*
 - C. *State Government is directed to frame various social welfare schemes/programmes for betterment of transgenders within a period of six months from today.*
 - D. *State Government is also directed to create public awareness to enable transgenders to come into the main stream and also to take measures to regain their respect and place in the society.*
 - E. *State Government is also directed to frame a scheme of housing for transgenders giving suitable accommodation to them within six months from today.*
 - F. *State Government is also directed to provide financial assistance to parents of transgenders and to give*



scholarship to transgenders upto post-graduate level in order to assimilate them in the main stream.

- G. State Government is directed to constitute a welfare board for upliftment of transgenders in State of Uttarakhand, within a period of six months from today. Representation shall be given to transgenders in board.*
- H. State Government is also directed to provide free medical access to transgenders in all the hospitals.*
- I. We also direct that transgenders shall have free access to public institutions, public places, playgrounds, roads including educational institutions, malls, market places, hospitals, hotels, restaurants etc.*
- J. The respondent-State is also directed to provide separate toilets to transgenders in every public utility buildings including hospitals, bus stations, railway stations etc. within a period of six months from today.*
- K. We direct State Government to ensure that no transgender is separated from the parents and family and we also suggest State Government to frame law/scheme to ensure that no transgender is separated from the parents/guardians and family within a period of three months from today.*
- L. Criminal cases shall be registered against persons who forcibly remove transgender from their parents/guardians and family.*
- M. All transgenders in State of Uttarakhand are ordered to be registered by District Magistrates to recognize them as such.*
- N. There shall not be any discrimination to transgenders qua employment or occupation. They should not be treated unfairly. They have absolute right, as enshrined under Article 21 of the Constitution of India to maintain privacy and to live with dignity."*

12. It was submitted, even if it were contention of respondents that number of transgender persons in State was minimal, High Court of Madras in **S. Tamilselvi v. State**,



reported in **2022 SCC OnLine Mad. 4879**, issued directions as follows:

"28. Assuming that, the reason cited by the respondents for not giving the special reservation for transgender, because, only minimal transgenders are living in the State and therefore if a particular percentage of seats for transgender category is reserved, sometimes that may not be taken by the transgender for want of candidates is concerned, atleast a provisional note could have been made that, even though special reservation has not been made horizontally for transgender candidates if there is any transgender candidate who makes application and would be otherwise eligible to be considered on merits that is the minimum eligibility mark obtained by the transgender candidate, that candidate would be treated as a special candidate under the special category of transgender or third gender and accordingly transgender candidate would be considered for admission. Atleast this kind of special note could have been appended to the notifications or prospectus issued by the respondent, even that kind of special note was missing in the said notification/prospectus."

13. He also relied on interim order dated 20.06.2023 passed by Hon'ble High Court of Telangana in **W.P.no.15117/2023 (Dr.Koyyala Ruth John Pail v. Union of India)**. Reliance was also placed on decision of High Court of Calcutta in **WPA no.9187/2020** disposed of on **02.02.2021 (Mx.Sumana Pramanik v. Union of India)**, wherei, it was held non-grant of reservation, age relaxation and fee concession in Joint CSIR-UGC NET Examination was patently violative of Article 14 and 21 of Constitution of India and directions issued for provision of same for category of transgenders along with other reserved category. It was



submitted in view of above, petitioner for granting similar directions as in above cases by allowing writ petition.

14. On other hand, Sri K.G.Raghavan, learned Senior Counsel appearing for Sri Aditya Narayan, advocate for NLSIU sought to oppose writ petition. It was submitted, petitioner was not entitled either for main or interim reliefs, as Central or State Governments had not framed any law after decision in **NALSA's** case (supra).

15. It was submitted, NLSIU was a premier educational institution in Law offering various courses with fees stipulated for each of them commensurate to expenditure involved. It was submitted, selection of students for admission was based on cumulative score in NLSAT-LLB test and all candidates applying for said examination would be well aware of fee structure for each course at time of filing application. Therefore, being well aware of fee structure, petitioner had appeared for test. Neither at time of filing application nor at time of appearing for test, petitioner had expressed any difficulty in so far as fees.

16. It was submitted, selection of candidates for admission to LL.B course by NLSIU was by applying common



yardstick. After results, petitioner was placed at sl.no.62 in order of merit under general category. Last selected candidate under said category was at sl.no.40. Therefore, petitioner did not qualify after cut-off. Petitioner was admitted in pursuance of interim order granted herein.

17. It was submitted, on selection through NLSAT exams, candidates were required to file application and pay fees before being permitted to attend classes. In view of failure to pay fees, petitioner was not permitted to attend classes. It was submitted, as per standards fixed under Rule 12 of Bar Council of India Rules, minimum attendance was mandatory to be eligible for LL.B Exams. It was submitted as Course had commenced on 21st August, 2023, and without paying fee could not be permitted to attend classes, even if petitioner were to come forward to pay fees or succeed in this writ petition, petitioner would not be eligible for Exams. Therefore, petition was rendered academic.

18. It was also submitted, admittedly, petitioner was employed before admission to University. Therefore, petitioner's claim for financial assistance would not be tenable. In any case, University had lent available support to petitioner



as per existing policies. It had provided Laptop, stipend of Rs.27,000/- and reimbursement of interest on educational loan for a period of 3 years.

19. In reply to contention that NLSIU was inimical to transgender persons, it was submitted, NLSIU had adopted various measures for transgender persons to create level playing field. As part of its inclusive measures, it was maintaining gender neutral toilets, special counseling support for students who need gender related or gender transition counseling, implementation of gender-neutral anti-sexual harassment code, encouraging gender-neutral salutations, hosting QAMRA (Queer Archive for Memory Reflection and Activism), besides being in final stages of formulating a new gender equality code to respond to all forms of discrimination and provide inclusive and supportive educational environment.

20. It was submitted, provisions of Transgender Persons (Protection of Rights) Act, 2019, and Transgender Persons (Protection of Rights) Rules, 2020, did not mandate or provide reservation for transgender persons and only contemplated adoption of measures to ensure access,



inclusiveness and prevent discrimination. It was submitted, measures adopted were far and above requirements of law.

21. It was submitted, petitioner contends that as per Section 10 of National Law School of India University Act, 1986, Executive Council has power to prescribe reservation in admissions. Therefore, unless decision is taken by Executive Council, University cannot prescribe reservation for transgender. To substantiate submission, reliance was placed on decision in ***Master Balachandar Krishnan v. State of Karnataka***, reported in **ILR 2021 Kar. 1245**, wherein it was held:

"196. In view of the above, we arrive at the following conclusions:

- (1) The role of BCI, BCI Trust and the Society in the establishment and functioning of the respondent/Law School is significant and pervasive and the respondent-State has been only a facilitator in granting the respondent/Law School deemed University status through the Act.*
- (2) The State Legislature has no power or authority under the Act to direct the respondent/Law School to provide reservations for students in view of the limited role of the State under the Act. Hence, the impugned Amendment by insertion of sub-Section (3) of Section 4 of the Act is declared illegal.*
- (3) The impugned Amendment in sub-Section (3) of Section 4 of the Act is contrary to the scheme of the Act and powers vested in the authorities recognized under the Act which makes the respondent/Law School an autonomous and independent body free from State's control. Hence, the*



impugned Amendment which encroaches upon the power of the authorities under the Act is contrary to the Act.

- (4) Clause 2.1 of the Notification dated 04.08.2020 issued by the respondent/Law School providing horizontal reservation to an extent of 25% of the total seats by a revised seat matrix by following the aforesaid amendment is illegal and hence quashed.*
- (5) Further, the respondent/Law School has no authority to award 5% concession of marks on the last cut off score in the General merit category for the "students of Karnataka" as defined in the explanation to the Amending Section and hence, Clause 2.2 of the Notification dated 04.08.2020 is quashed.*
- (6) Recognising the fact that respondent/Law School in an autonomous entity, any form of reservation for students to be admitted to it shall be provided by the Executive Council of the Law School bearing in mind the fact that it is an institution of national importance.*
- (7) The category of students namely "Students of Karnataka" for whom reservation horizontally to an extent of 25% of the seats has been made has no nexus to the objects sought to be achieved and is hence, in violation of Article 14 of the Constitution.*
- (8) Further, institutional preference being the basis of reservation and the criteria mentioned in the explanation to the impugned amendment in sub-Section (3) to Section 4 of the Act to identify the beneficiary namely, "students of Karnataka" cannot be operationalised in its present form.*
- (9) However, we clarify that the increase in the intake capacity made by the respondent/Law School by Clause (1) of Notification dated 04.08.2020 is not interfered with. But, the revised seat matrix incorporating the impugned reservation is quashed.*
- (10) The respondent/Consortium shall publish the results of the CLAT examination in terms of reservation made prior to the impugned amendment bearing in mind the increase in the intake capacity insofar as respondent/Law School is concerned.*



- (11) *Consequently, the respondent/Law School shall follow the seat matrix issued de hors the impugned reservation for students of Karnataka, bearing in mind the increased intake capacity and the reservation made for the Scheduled Castes and Scheduled Tribes and for persons with disability.*
- (12) *I.A. No. 1 of 2020 in Writ Petition No. 8788 of 2020 is disposed of. Applicant in the said I. A. in Writ Petition No. 8788 of 2020 is permitted as an intervenor in these proceedings. But, I. A. No. 2 of 2020 in Writ Petition No. 8788 of 2020, I.A. No. 1 of 2020 in Writ Petition No. 8951 of 2020 and I.A. No. 1 of 2020 in Writ Petition No. 9145 of 2020 by the applicants are dismissed. The above is by separate order.*
- (13) *Writ Petition No. 8788 of 2020 filed by a student who had applied pursuant to the notification issued on 01.01.2020 by the respondent/Consortium to appear in CLAT is allowed and disposed in the aforesaid manner.*
- (14) *Writ Petition No. 8951 of 2020 and 9145 of 2020 are allowed in the aforesaid terms."*

22. To support submission that there cannot be a prayer for providing reservation, reliance was placed on decision in case of **State of Punjab v. Anshika Goyal**, reported in **(2022) 3 SCC 633**:

"9. While answering the aforesaid issue, few decisions of this Court referred to hereinabove are required to be discussed:

9.1. In Gulshan Prakash v. State of Haryana, (2010) 1 SCC 477, it was observed by this Court that there cannot be any mandamus by the Court to provide for a reservation for a particular community. In the case before this Court, the State of Haryana did not provide any reservation for SC/ST/backward community at the postgraduate level. A conscious decision was taken by the State of Haryana not to provide for reservation at the postgraduate level. The same was challenged and to that this Court has observed that there cannot be any mandamus by the Court as claimed. In the aforesaid decision, it was further observed and held that Article 15(4) of the Constitution is an



enabling provision and the State Government is the best Judge to grant reservation for SC/ST/backward categories at postgraduate level. Any policy and the decision of the State not to make any provision for reservation at postgraduate level suffers from no infirmity. It was further observed that every State can take its own decision with regard to reservation depending on various factors. At this stage, it is to be noted that it was also submitted before this Court that since the Government has decided to grant reservation for SC/ST/backward class communities in admission at MBBS level i.e. undergraduate level and therefore the State has to provide for reservation at postgraduate level also. To that, this Court observed that since the Government had decided to grant reservation for SC/ST/backward categories in admission at MBBS level i.e. undergraduate level, it does not mean that it is bound to grant reservation at the postgraduate level also.

9.2. *In Central Bank of India v. SC/ST Employees Welfare Assn. [Central Bank of India v. SC/ST Employees Welfare Assn., (2015) 12 SCC 308] , while considering the issue of providing reservation in favour of SC/ST category persons in the promotion and when Articles 15 and 16 of the Constitution of India were pressed into service, this Court observed and held that though Articles 15 and 16 empower the State to take an affirmative action in favour of the SC/ST category persons by making reservations for them in the employment of the Union or the State, they are only enabling provisions which permit the State to make provision for reservation of these category of persons. It was further observed that insofar as making of provisions for reservation in matters of promotion to any class/classes of post is concerned, such a provision can be made in favour of SC/ST category employees if in the opinion of the State they are not adequately represented in services under the State. It is observed that therefore power lies with the State to make a provision but, at the same time, courts cannot issue any mandamus to the State to necessarily make such a provision. In para 26, it was observed and held as under : (SCC p. 325)*

"26. In the first instance, we make it clear that there is no dispute about the constitutional position envisaged in Articles 15 and 16, insofar as these provisions empower the State to take affirmative action in favour of SC/ST category persons by making reservations for them in the employment in the Union or the State (or for that matter, public sector/authorities which are treated as State under Article 12 of the Constitution). The laudable objective



underlying these provisions is also to be kept in mind while undertaking any exercise pertaining to the issues touching upon the reservation of such SC/ST employees. Further, such a reservation can not only be made at the entry level but is permissible in the matters of promotions as well. At the same time, it is also to be borne in mind that clauses (4) and (4-A) of Article 16 of the Constitution are only the enabling provisions which permit the State to make provision for reservation of these category of persons. Insofar as making of provisions for reservation in matters of promotion to any class or classes of post is concerned, such a provision can be made in favour of SC/ST category employees if, in the opinion of the State, they are not adequately represented in services under the State. Thus, no doubt, power lies with the State to make a provision, but, at the same time, courts cannot issue any mandamus to the State to necessarily make such a provision. It is for the State to act, in a given situation, and to take such an affirmative action. Of course, whenever there exists such a provision for reservation in the matters of recruitment or the promotion, it would bestow an enforceable right in favour of persons belonging to SC/ST category and on failure on the part of any authority to reserve the posts, while making selections/promotions, the beneficiaries of these provisions can approach the Court to get their rights enforced. What is to be highlighted is that existence of provision for reservation in the matter of selection or promotion, as the case may be, is the sine qua non for seeking mandamus as it is only when such a provision is made by the State, a right shall accrue in favour of SC/ST candidates and not otherwise."

- 9.3. *In Suresh Chand Gautam [Suresh Chand Gautam v. State of U.P., (2016) 11 SCC 113] , writ petitions were preferred before this Court under Article 32 of the Constitution of India for issuance of a direction in the nature of a mandamus commanding the State/States to enforce appropriately the constitutional mandate as contained under the provisions of Articles 16(4-A), 16(4-B) and 335 of the Constitution, or in the alternative, directing the respondents to constitute a committee or appoint a commission chaired either by a retired Judge of the High Court or the Supreme Court in making survey and collecting necessary qualitative data of the Scheduled Castes and the Scheduled Tribes in the services of the State for granting reservation in promotion in the light of direction given by this Court in M.Nagaraj v. Union of India [M. Nagaraj v. Union of India, (2006) 8 SCC 212] .*



Refusing to grant such reliefs in exercise of powers under Article 32 of the Constitution of India and after referring to the decision of this Court in Census Commr. v. R. Krishnamurthy [Census Commr. v. R. Krishnamurthy, (2015) 2 SCC 796] , this Court has observed that no writ of mandamus of such a nature can be issued. While refusing to issue a writ of mandamus of such a nature, in para 49, it was observed and held as under : (Suresh Chand Gautam case [Suresh Chand Gautam v. State of U.P., (2016) 11 SCC 113], SCC pp. 145-46):

"49. Recently in Census Commr. v. R. Krishnamurthy [Census Commr. v. R. Krishnamurthy, (2015) 2 SCC 796] a three-Judge Bench while dealing with the correctness of the judgment [R. Krishnamurthy v. Census Commr., WP No. 10090 of 2010, decided on 12-5-2010 (Mad)] of the High Court wherein the High Court had directed that the Census Department of the Government of India shall take such measures towards conducting the caste-wise census in the country at the earliest and in a time-bound manner, so as to achieve the goal of social justice in its true sense, which is the need of the hour, the court analysing the context opined thus : (R. Krishnamurthy case [Census Commr. v. R. Krishnamurthy, (2015) 2 SCC 796], SCC p. 806, para 25)

"25. Interference with the policy decision and issue of a mandamus to frame a policy in a particular manner are absolutely different. The Act has conferred power on the Central Government to issue notification regarding the manner in which the census has to be carried out and the Central Government has issued notifications, and the competent authority has issued directions. It is not within the domain of the court to legislate. The courts do interpret the law and in such interpretation certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court may also fill up the gaps in certain spheres applying the doctrine of constitutional silence or abeyance. But the courts are not to plunge into policy-making by adding something to the policy by way of issuing a writ of mandamus.'

We have referred to the said authority in Census Commr. case [Census Commr. v. R. Krishnamurthy, (2015) 2 SCC 796 : (2015) 1 SCC (L&S) 589] as the Court has clearly held that it neither legislates nor does it issue a mandamus



to legislate. The relief in the present case, when appositely appreciated, tantamounts to a prayer for issue of a mandamus to take a step towards framing of a rule or a regulation for the purpose of reservation for the Scheduled Castes and the Scheduled Tribes in matter of promotions. In our considered opinion, a writ of mandamus of such a nature cannot be issued."

9.4. *In the recent decision in Mukesh Kumar [Mukesh Kumar v. State of Uttarakhand, (2020) 3 SCC 1] , again it is reiterated by this Court that no mandamus can be issued by the Court directing the State Government to provide for reservation. It was further observed that even no writ of mandamus can be issued directing the State to collect quantifiable data to justify their action not to provide for reservation. It was observed that even if the under-representation of Scheduled Castes and Scheduled Tribes in public services is brought to the notice of the Court, no mandamus can be issued by the Court to the State Government to provide for reservation. While holding so, in para 18, it was observed and held as under : (SCC pp. 12-13)*

"18. The direction that was issued to the State Government to collect quantifiable data pertaining to the adequacy or inadequacy of representation of persons belonging to Scheduled Castes and Scheduled Tribes in government services is the subject-matter of challenge in some appeals before us. In view of the law laid down by this Court, there is no doubt that the State Government is not bound to make reservations. There is no fundamental right which inheres in an individual to claim reservation in promotions. No mandamus can be issued by the Court directing the State Government to provide reservations. It is abundantly clear from the judgments of this Court in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217] , Ajit Singh (2) [Ajit Singh (2) v. State of Punjab, (1999) 7 SCC 209], M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212] and Jarnail Singh [Jarnail Singh v. Lachmi Narain Gupta, (2018) 10 SCC 396] that Articles 16(4) and 16(4-A) are enabling provisions and the collection of quantifiable data showing inadequacy of representation of Scheduled Castes and Scheduled Tribes in public service is a sine qua non for providing reservations in promotions. The data to be collected by the State Government is only to justify reservation to be made in the matter of appointment or promotion to public posts, according to Articles 16(4) and 16(4-A) of the Constitution. As such, collection of data



regarding the inadequate representation of members of the Scheduled Castes and Scheduled Tribes, as noted above, is a prerequisite for providing reservations, and is not required when the State Government decided not to provide reservations. Not being bound to provide reservations in promotions, the State is not required to justify its decision on the basis of quantifiable data, showing that there is adequate representation of members of the Scheduled Castes and Scheduled Tribes in State services. Even if the under-representation of Scheduled Castes and Scheduled Tribes in public services is brought to the notice of this Court, no mandamus can be issued by this Court to the State Government to provide reservation in light of the law laid down by this Court in C.A. Rajendran [C.A. Rajendran v. Union of India, AIR 1968 SC 507] and Suresh Chand Gautam [Suresh Chand Gautam v. State of U.P., (2016) 11 SCC 113]. Therefore, the direction given by the High Court that the State Government should first collect data regarding the adequacy or inadequacy of representation of Scheduled Castes and Scheduled Tribes in government services on the basis of which the State Government should take a decision whether or not to provide reservation in promotion is contrary to the law laid down by this Court and is accordingly set aside. Yet another direction given by the High Court in its judgment dated 15-7-2019 [Vinod Kumar v. State of Uttarakhand, 2019 SCC OnLine Utt 1536], directing that all future vacancies that are to be filled up by promotion in the posts of Assistant Engineer, should only be from the members of Scheduled Castes and Scheduled Tribes, is wholly unjustifiable and is hence set aside.”

10. *Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has committed a grave error in issuing a writ of mandamus and directing the State Government to provide for 3% reservation/quota for sportspersons, instead of 1% as provided by the State Government. A conscious policy decision was taken by the State Government to provide for 1% reservation/quota for sportspersons. A specific Order dated 25-7-2019 was also issued by the State Government. Therefore, the High Court has exceeded its jurisdiction while issuing a writ of mandamus directing the State to provide a particular percentage of reservation for sportspersons, namely, in the present case, 3% reservation instead of 1% provided by the State Government, while exercising powers under Article 226 of*



the Constitution of India. Therefore, the impugned common judgment and order [Anshika Goyal v. State of Punjab, 2019 SCC OnLine P&H 6235] passed by the High Court insofar as directing the State to provide for 3% reservation for sportspersons and/or provide for a sports quota of 3% in the government medical/dental colleges is unsustainable and the same deserves to be quashed and set aside."

23. It was further submitted attempt to nullify selection process for admission in NLSIU by referring to direction issued in **NALSA's** case (supra) would not stand legal scrutiny as such prayer in absence of steps by State have been held untenable in **Matam Gangabhavani v. State of A.P.**, reported in **2022 SCC OnLine AP 200**, as follows:

"54. One of the contentions of the petitioner is that, when the petitioner is a transgender and the Hon'ble Supreme Court issued guidelines in National Legal Services Authority v. Union of India (referred supra) to take steps to provide reservations to transgenders in employment directing the Centre and State Governments to take steps to treat the transgenders 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. Thus, the direction is only to take steps to provide all kinds of reservation in case of admission in educational institutions and in public appointments, treating them as Socially and Educationally backward Classes of citizens. But, social reservations are vertical, whereas, reservations based on gender are horizontal. If, the reservations are provided treating this petitioner as socially and educationally backward, the present reservations if taken together, it exceeds more than 50%. In India, the extent of reservation to be made is primarily a matter for the State to decide, subject, of course, to judicial review of equality in Article 16(1) or Article 335 meaningless. Thus, the reservation of more than 50 per cent of the vacancies as they arise in any year or a 'carry forward' rule which has the same effect, will be outside the protection of Article 16(4). The normal rule is that the reservation under Article 16(4) should not exceed 50 per



cent of the appointments or posts to be made in a particular year. Taking consideration of the fact situation prevailing in the State on the reservations, it is for the State to take appropriate action in terms of the directions issued by the Hon'ble Apex Court in Para 135.3 of National Legal Services Authority v. Union of India (referred supra).

... ..

75. No doubt, no reservation is provided to transgenders/transmale/transfemale, but direction was issued by the Hon'ble Apex Court in National Legal Services Authority v. Union of India (referred supra) to both 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. Therefore, the direction issued by the Hon'ble Supreme Court is only to the extent of taking steps to treat transgenders as socially and educationally backward classes of citizens, but not for creating reserving particular percentage of posts to transgenders. Therefore, as on date, no steps were taken by the State Government for creating reservation to transgenders on the basis of their social and educational backwardness (vertical reservation), but, based on the subsisting rules of reservation in the State services, the notification impugned in the writ petition was issued. When the Notification was issued strictly adhering to the subsisting rules, the notification cannot be declared as illegal and arbitrary. Even to construe that the second respondent violated the direction issued by the Hon'ble Apex Court in National Legal Services Authority v. Union of India (referred supra), the direction is only to take steps for providing reservation to transgenders based on their social and educational backwardness. Though, it appears to be in the nature of directions, the State is under the obligation to implement it, they did not take any steps till date. After the judgment of Hon'ble Apex Court in National Legal Services Authority v. Union of India (referred supra), the Transgender Persons (Protection of Rights) Act, 2019 was enacted by the Central Government and Rules were framed thereunder, but, none of these Acts provided any reservation to transgenders, except providing access to employment. Therefore, in the absence of any steps taken by the State, failure of its instrumentalities to provide reservation to transgenders does not make the notification impugned in this writ petition invalid. Hence, I find no ground to declare the notification impugned in this writ petition as illegal or arbitrary, in view of the judgment of the Apex Court in National Legal Services



Authority v. Union of India (referred supra) to take steps to provide reservation to transgenders, more particularly, no steps were taken till date. At best, such failure may attract contempt being filed before the competent court, but this Court cannot declare such Notification as illegal and arbitrary, on the basis of such contention. Hence, I find no ground to grant the above relief, while rejecting the contention of this petitioner. Accordingly, Point nos.1 & 2 are answered.

24. It was submitted, since petitioner had applied and appeared in entrance Exams, without invoking claim for reservation in favour of TGs, petitioner would be estopped from questioning selection process after participation, by relying on decision in case of **Sweety Nagar v. State of Haryana**, reported in **2022 SCC OnLine P&H 91**, wherein it is held:

"7. The petitioner having applied for the post of LDC, it is not believable that she did not know that her application had been submitted as a General category candidate and not under BCB category. The reasoning given by her that she belongs to rural area, where the application forms are submitted online by Computer Operators and the Computer Operator had inadvertently submitted her application under General Category instead of under BCB category, is least convincing. The petitioner having applied as a General category candidate, taken up the written examination as such besides participating in the process for scrutiny of documents, it is not believable that she did so without realizing that she was appearing as a General category candidate and not a candidate belonging to BCB category. She could not be so naive and simpleton so as to act in such a manner. Her representation for change of category was rightly rejected. The order dated 13.7.2021 passed in that regard is quite detailed and well reasoned and no ground is made out to take a different view in the matter. In the order, the factual and judicial position on the subject has been discussed, while concluding that no change of category can be allowed at this stage. It has been specifically mentioned that in the advertisement for the posts, terms and conditions of recruitment process were clearly mentioned advising the candidates to go through



the same carefully before filling up the online application form and then to check up the filled up application form to ensure the correctness of information and uploaded documents before finally submitting the application. It is clearly mentioned that no request for change of any particular of the application form would be entertained by the HSSC. It was also informed that in case the candidate feels that he/she has filled up the form erroneously, then he or she should fill up a fresh online application form along with fresh requisite fee before the closing date. The candidates applying under SC/BCA/BCB etc. categories were required to upload supporting certificate from competent authority and submit the same when called upon to do so by HSSC. The petitioner had admittedly not uploaded BCB certificate what to talk of applying under that category. It was further mentioned in the advertisement that during scrutiny of documents only those documents, which were uploaded by the candidate would be considered. In this case, the petitioner had not uploaded her BCB certificate, therefore, the same could not be taken into consideration. In the order, judgment passed by this Court with regard to category change in CWP No. 15110-2016 titled as Shashi v. State of Haryana decided on 22.5.2018 has been referred to and operative part thereof has been reproduced, which is as under:

Perusal of the advertisement (Annexure P-1) clearly shows that a candidate can apply only once for a particular category of post advertised. It also makes it clear that no offline form is to be accepted. Another condition included in the advertisement is that incomplete application form would be rejected. Thus, a candidate is required to be very circumspect while filling the application. Although the petitioner may have obtained the EBPG certificate before the extended date of submitting applications, she cannot take benefit thereof as she had applied under the general category. Had she applied for the EBPG category and had failed to attach the certificate alongwith the application, the case may have been different. The Division Bench judgment of this Court in Usha Dhillon (supra) does not support the case of the petitioner as in the said case the computer had committed a mistake and the same was permitted to be corrected. The judgment of the Supreme Court in J&K Public Service Commission (supra) makes it clear that once a candidate has chosen a particular category, he cannot change the same at a later date.

... ..



10. In the order, it has been mentioned that final result has been declared on 3.4.2021, that means the selection process is over. If the writ petition is accepted that would unsettle the entire process. The petitioner herself having applied under the General category and taken part in the selection process as a General category candidate, however, being unsuccessful to get sufficient marks, wants to change the category to BCB for getting herself selected. Such type of hopping of category in such a manner can certainly be not allowed. As regards, the judgment referred to by learned counsel for the petitioner i.e. *Asif Ali Khan v. State of Rajasthan*, S.B. Civil Writ Petition No. 9455/2019, that had different facts. As per the facts of that case, the category indicated at the time of filling up online application form was by mistake and the petitioner had not taken any advantage of the same and when the mistake was detected, he was permitted to change the category so as to take the type test and final result had not been declared in that case. However, here the plea taken up by the petitioner that the category indicated at the time of filling up of online application form as General was by mistake has not been found to plausible and convincing. The petitioner had taken up the test and participated in the election process as a General category candidate, the final result in the matter has since been declared, therefore, the petitioner has not been found entitled to change her category to BCB so as to take advantage of reservation."

25. For similar proposition, reliance was also placed on decisions in case of **J & K Public Service Commission v. Israr Ahmad**, reported in **(2005) 12 SCC 498** and on **Rajasthan v. Neetu Harsh**, reported in **(2021) 11 SCC 383**.

26. In any case, plea for financial assistance was not supported by pleadings or prayer. Therefore, same cannot be urged during arguments. It was submitted, in view of above, writ petition lacked merit and sought for its dismissal.



27. Smt.Mamata Shetty, learned Additional Government Advocate appearing for respondent no.1 - State submitted petitioner herein was seeking admission to 3 years LL.B. Course at NLSIU under transgender quota by seeking for direction for fixation of quota for Transgenders, after having applied and failed at securing admission under GM category. Petitioner is blaming his failure on respondents by alleging failure to fully implement provisions of Transgender Persons (Protection of Rights) Act, 2019, and Transgender Persons (Protection of Rights) Rules of 2020.

28. Though, petitioner was alleging respondents no.1 and 2 had failed to implement TG Policy. But, said policy did not contemplate any enforceable right. Therefore, allegation against non-implementation would be untenable.

29. Insofar as prayer for fixation of reservation in favour of transgenders, for admission in NLSIU, it was submitted, in view of decision by Division Bench of this Hon'ble Court, in **Master Balachandar Krishnan's** case (supra), wherein it was held, State has a limited role under NLSIU Act, as NLSIU was an autonomous and independent body free from control of State Government. It was submitted order of Division



Bench was subject matter of SLP (C) no.14508-14510/2020 and pending consideration before Hon'ble Supreme Court. Therefore, at this juncture, State could not prescribe any reservation in favour of transgenders.

30. It was however submitted, State Government was taking steps to implement Transgender Persons (Protection of Rights) Act, 2019, as well as Transgender Persons (Protection of Rights) Rules of 2020 throughout State of Karnataka. It was submitted, State Government had notified Karnataka Civil Services (General Recruitment) (Amendment) Rules, 2021 on 06.07.2021 providing horizontal reservation for transgender persons in public employment under sub-rule (1D) of Rule 9 of Karnataka Civil Services (General Recruitment) Rules, 1977. For said reasons, sought dismissal of writ petition.

31. By filing rejoinder statement, petitioner sought to controvert assertion by respondent University that petitioner was seeking to introduce different cause by filing application for amendment. It was submitted, requirement of need for financial aid was existing due to factors such as homelessness, disownment by family, extended period of unemployment, rampant discrimination in employment and in public life



associated with TGs. It was submitted, details of financial aid policy of NLSIU were not in public domain. Infact only after receipt of admission letter and deposit of Rs.50,000/- raised through loans and when petitioner was unable to arrange for remaining amount of fees, petitioner requested financial assistance that financial aid policy was made available.

32. Only then, it was noted that policy does not contemplate circumstances affecting TGs nor was it flexible, but more in nature of providing information to avail loan. Thus, admission process of NLSIU was insensitive to specific needs of TGs, which would be violative of guarantees under Articles 14, 15, 19 and 21 read with Article 38, 39 and 46 of Constitution of India, 1950. It was submitted, High Court of Allahabad in case of **Atish Kumar v. Union of India** in Writ C.no.14955/2019 disposed of on 11.05.2022 had held contention of lack of funds by Government was not justified to deny grant of scholarships. It was submitted, principle enunciated by Hon'ble Supreme Court in **DS Nakara & Ors. v. Union of India & Ors.**, reported in **1983 (1) SCC 305**; **Smt.Poonamal & Ors. v. Union of India & Ors.**, reported in **1985 (3) SCC 345**; **Murlidhar Dayandeo Kesekar v. Vishwanatha Pandu**



Barde & Anr., reported in **1995 Supp. (2) SCC 549** and in **Secy., Haryana SEB v. Suresh**, reported in **1999 (3) SCC 601**, was that *equality is not mere legal equality, its existence depends not merely on absence of possibilities, but on presence of abilities*. And that those who have been disadvantaged by existing social conditions should be given more benefits by altering ways of distribution. Reference was also made to decision of Hon'ble Supreme Court in **Kumari Srilekha Vidyarthi v. State of UP & Ors.** reported in **1991 (1) SCC 212**, wherein it was held that all powers possessed by public authorities, howsoever conferred are possessed solely in order they may be issued in public good.

33. It was submitted rights of TGs to study law was not only affected by failure to provide reservation as directed in NALSA case, but also compounded by stipulating need for filing affidavit undertaking that admission would be subject to outcome of decision in W.P.no.1023/2016 pending before Supreme Court insisted upon by KSLU. On importance of right to education, especially legal education, petitioner relied on observation of High Court of Kerala in **Pattaka Suresh Babu**



v. State of Kerala & Ors. (2023) in Crl.M.A.no.3/2023 in

Crl.Appeal no.740/2018:

"9. Education is the most potent mechanism for the advancement of an individual. International treaties specify the aims of education as promoting personal development and respect for human rights and freedoms, enabling individuals to participate effectively in a free society and fostering understanding, friendship and tolerance. The right to education has been formally recognized as a human right in the Universal Declaration of Human Rights in 1948 and has since been affirmed in global human rights treaties, including the 1960 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention Against Discrimination in Education and the 1966 International Covenant on Economic, Social and Cultural Rights, Article 13(1) of which recognizes 'the right of everyone to education'.

10.The prisoners' right to education is a human right grounded in the right to dignity. A prisoner has as much a right to pursue study as a person free from the confines of jail. The aims of imprisonment include reformation and rehabilitation apart from deterrence. Education can contribute to a sense among prisoners that they remain a part of the wider community.

34. Insofar as stand of University that it has taken affirmative action to remove un-equalities and as its own reservation policy and financial aid policy, but same cannot be faulted merely on ground that they do not specifically cater to petitioner request. In this regard reliance was placed on decision of **S.Tharika Banu** case (*supra*):

"9.Instead of living normal stigmatic life as a transgender (person) and in spite of undergoing various insults and even assaults, harassments in the hands of some unruly elements, when they come forward to get education, the same has to be encouraged and based on



technicalities, the transgender persons coming forward to join educational institutions should not be driven out.

10. The legal status of Transgender persons emanates from the judgment of the Hon'ble Supreme Court in National Legal Services Authority v. Union of India and others reported in 2014(5) SCC 438. Before the said judgment, the transgenders did not have any recognition even as human being as they have been undergoing insults, assaults, harassments both psychologically and physiologically. Their pain, agony and suffering have not been felt by others and their plight have not been recognized by any of the parties. It is only the Court which has taken care of the transgenders and gave appropriate directions in the year 2014."

35. It was submitted, in **W.P.no.6967/2022** disposed of on 08.04.2024 (**Rakshika Raj v. State of Tamil Nadu and Ors.**) and in **WP no.27090/2024** disposed of on 11.09.2024 (**A. Nivetha v. Secy. to Govt. (Health and Family Welfare Department)**), High Court of Madras upheld need for horizontal reservation for TGs. It was submitted, failure to provide reservation for TGs as directed in NALSA's case (supra) entitled petitioner for issuance of positive directions as done by High Court of Calcutta in **WPA no.21508/2023** disposed of on 14.06.2024 (**Mrinal Barik v. State of WB and Ors.**), where in exercise of extraordinary jurisdiction conferred under Article 226 of CoI, Secretary, West Bengal Board of Primary Education was directed to arrange for interview and counseling



of petitioner therein as a special case and recruit her as an Assistant Teacher in primary section, by appropriate relaxation.

36. In view of above, since NLSIU had failed to provide reservation for TGs and absence of measures of providing financial assistance would render such reservation nugatory, petitioner prayed for allowing writ petition by issuing appropriate positive directions.

37. Heard learned counsel and perused writ petition records.

38. From above, petitioner's grievance in this writ petition appears to be two fold; *firstly*, inaction of respondents to provide reservation for TGs in admission to Courses of study offered by NLSIU and *secondly*, inaction to provide financial assistance to TGs for pursuing studies (in case of petitioner, since Rs.50,000/- was paid, for waiver sought for remainder of fees).

39. Claim for reservation in favour of TGs stems from following directions in **NALSA's** case (supra):

"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.

(emphasis supplied)

40. And in **Rano's** case (supra):

B. Directing State Government to provide reservation in admission in educational institutions and public appointments to TGs by framing scheme within six months;

(emphasis supplied)

41. And in **Mx.Sumana Pramanik's** case (supra)

where non grant of reservation, age relaxation and fee concession in Joint CSIR-UGC NET Examination to TG candidates was held to be patently violative of Article 14 and 21 of CoI:

Likewise in paragraph no.9.3 under heading 'Schemes for Education', education grants following norms for grant of scholarships to OBC students was contemplated. Even provision for fee-waiver, free text books, free hostel accommodation and other facilities at subsidised rates was contemplated.

While insofar as claim for financial assistance, petitioner seeks to rely on direction issued in Rano's case (supra):

F. State Government is also directed to provide financial assistance to parents of transgenders and to give scholarship to transgenders upto post-graduate level in order to assimilate them in main stream;

(emphasis supplied)

42. It is seen first two prayers sought by petitioner have been rendered infructuous due to interim order granted



on 22.08.2023 and admission granted by NLSIU. However, after securing admission, petitioner claims to have faced difficulty for payment of fees and prays for directions for fee waiver as decisions relied upon. In view of above, it would be useful to refer to case law on TGs.

Insofar as reservation for admissions for TGs:

43. In case of **S. Tharika Banu v. Secretary to Govt.**, reported in **2017 SCC OnLine Mad 10220**, petitioner a TG had passed +2 examination and applied for Bachelor of Siddha Medicine and Surgery course. But, application was not considered either under SC category or under TG category. Therefore, selection list was challenged. Taking note of fact that there was failure to carryout directions issued by Hon'ble Supreme Court in NALSA's case, High Court of Madras found fit to issue positive directions as follows:

"Petitioner's claim for admission to the BSMS course cannot be denied on eligibility marks of 50%. Though said fact holds good for only for "males" and "females". In prospectus, it has not been spoken about transwoman or transgender. Therefore, leniency should be shown to the transgender person, who is longing for an admission into the Siddha College. Therefore, 50% of minimum marks applicable to the male and female students cannot be made applicable to the transgenders. The respondents are guilty of not implementing the order of the Hon'ble Supreme Court and this Court, by providing a separate reservation for them.



Further observed that one seat was already reserved by an interim order passed by this Court on 11.10.2017. It is not as if many transgender persons have applied for seats. Only on very rare occasions, this kind of claims would be made and that has to be considered with compassion and benevolence. At the risk of repetition, this Court declares that the petitioner is entitled to a seat in BSMS."

44. In **S. Tamilselvi's** case (supra), petitioner, a TG had applied for Diploma in Nursing Course for Women as TG candidate. Though, admission process contemplated reservations for Most Backward Classes, no separate reservation was provided for TGs. On being unsuccessful, petitioner filed W.P.no.24750 of 2020, wherein by order dated 18.09.2018 respondents were directed to keep one seat vacant in Diploma in Nursing Course for Women for academic year 2018-2019 under special category as Transgender. After passing said course, petitioner applied for Post Basic B.Sc. (Nursing). However was considered as female candidate instead of TG candidate. Challenging same petition was filed. As there was no provision for reservation in favour of TGs, High Court of Madras by following NALSA's case issued following directions:

- (I) *petitioner as third gender/transgender in a special category i.e. transgender category for purpose of admission to course concerned for which the present merit list has been issued by the 3rd respondent only for female and male candidates.*



(II) *petitioner, if any other transgender candidate made application for the very said course, a separate category of merit list shall be prepared by the 3rd respondent consisting of only the transgender candidates and based on the inter se merit among the transgender candidates, if more than one candidate is available i.e. more than the petitioner, based on the inter se merit admission shall be given to those transgender candidates.*

(III) *The needful as indicated above shall be immediately undertaken by the respondents especially the 3rd respondent and accordingly the selection shall go on including the name of the petitioner under the special category i.e. transgender category."*

Decisions for Reservations for TGs in Employment

45. W.P.no.31091 of 2013 disposed of on 05.07.2016 **(Swapna v. The Chief Secretary)**, Division Bench of Madras High Court directed State Government to look into question of post or percentage based reservation in educational institutions and public employment for transgender persons in furtherance of NALSA judgment.

46. In **Mrinal Barik's** case (supra), petitioner was TG had earlier approached Court in WPA 415 of 2023 for seeking reservation in employment, by order dated 19.04.2023, directed to provide reservation as per judgment of NALSA was issued. When petitioner was not called for interview even after passing eligibility test, petition was filed. High Court of Calcutta, following directions in **NALSA's** case directed Chief



Secretary of Government of West Bengal to ensure 1% reservation for TGs, in all public employments under State by exercising extraordinary jurisdiction. It also issued positive directions to Government to arrange for interview and counseling of petitioner as a special case and to recruit her as an Assistant Teacher in primary section.

47. In **Rakshika Raj v. State of T.N.**, reported in **2024 SCC OnLine Mad 1624**, High Court of Madras was faced with challenge against provision for vertical reservation for TGs, it was held:

"Once gender identity was given horizontal reservation, it follows that transgender community, being a socially and educationally backward community discriminated on basis of gender identity, should also be entitled to similar reservation. It had accordingly directed state to provide horizontal reservation to petitioner as separate gender."

48. In **K. Prithika Yashini v. Chairman, Tamil Nadu Uniformed Services Recruitment Board**, reported in **2015 SCC OnLine Mad 11830**:

"When, petitioner a male to female TG had participated in selection for post of Sub-Inspector, petitioner's candidature was considered under male and was non-selected. Taking note of fact that there were no other TG candidate appointed, High Court



of Madras, directed recruitment of petitioner with following observation:

13. There can be various physical changes and mental effects arising from the situation in which the petitioner finds herself. The respondent failed to provide for the third gender in the application Form and thus, the petitioner had to rush to the Court to assert her rights. The next stage was to find out as to what bench mark should apply to the petitioner and thus, benefit was given to the petitioner accordingly, in which she was successful. We do not think that in the physical endurance test, a difference of 1.11 seconds should come in the way of the petitioner in being considered for recruitment. We hasten to add that she will have to meet the bench mark of the recruitment process, but the case cannot be knocked out in the middle, as was sought to be done by the respondent.

*14. There is stated to be no other transgender as a candidate in the selection for recruitment as Sub Inspector, an aspect conceded by the learned Additional Advocate General. Thus, even if one person is recruited under this category, it would be the petitioner. The counter-affidavit of the respondent shows that there are two other transgenders serving as police constables and the petitioner would be really the third one. **The social impact of such recruitment cannot be lost sight of, which would give strength to the case of transgenders. The petitioner must reach the finishing line and not be stopped and disqualified in the middle.***

15. We are sure that by the time the next recruitment process is carried out, the respondent would have taken corrective measures for including the third gender as a category.

16. We are, thus, of the view that the petitioner is entitled to be recruited to the post of Sub Inspector and for declaration of her result with the hope that she would carry out the duties with dedication and commitment to advance the cause of other transgenders."



(emphasis supplied)

49. Similarly in **R. Anushri v. T.N. Public Service Commission**, reported in **2024 SCC OnLine Mad 2211**, where a TG candidate had questioned non-inclusion of TG category in employment notification for Civil Services Examination, following decision in NALSA's case, it was held:

"9. Though the above said National Legal Service Authority case came to be decided by the Hon'ble Supreme Court as early as 15.04.2014, still neither the State government, nor the Central Government has come forward to formulate a uniform mode of employment opportunities to be provided for the transgenders. In many of the cases, the guidelines issued by the Hon'ble Supreme Court in the aforesaid paragraphs in NALSA case has been misconstrued. The Hon'ble Supreme Court has directed the Centre and the State Governments to take steps to treat transgender as socially and educationally backward class of the citizens and extend all kinds of reservation in case of admission in educational institution and for public appointments. This direction has been misconstrued at many times by the State governments and the agencies of State Governments by placing a transgender under most backward community or to the caste whichever advantageous to the transgender. This was not the intention of the Hon'ble Supreme Court while delivering the judgment referred supra. The Hon'ble Supreme Court has only directed to extend the benefits that are extended to backward class communities to the transgender, at no point of time, the Hon'ble Supreme Court has directed the State and the Central Government to place the transgender under backward class or most backward class category.

10. Moreover, the Hon'ble Supreme Court has clearly expressed that the transgenders should be treated as unique and the transgenders should not



be treated one among the male or female. In fact, when the State of Punjab had placed all the transgenders under male category, the Hon'ble Supreme Court has held such action as illegal and unsustainable. This is evident in Paragraph No. 76 the aforesaid NALSA Judgment and the same is extracted as follows:—

"76. Article 14 has used the expression "person" and the Article 15 has used the expression "citizen" and "sex" so also Article 16. Article 19 has also used the expression "citizen". Article 21 has used the expression "person". All these expressions, which are "gender neutral" evidently refer to human-beings. Hence, they take within their sweep Hijras/Transgenders and are not as such limited to male or female gender. Gender identity as already indicated forms the core of one's personal self, based on self identification, not on surgical or medical procedure. Gender identity, in our view, is an integral part of sex and no citizen can be discriminated on the ground of gender identity, including those who identify as third gender."

When that being so, the question of treating the transgenders either as male, or female is unsustainable and even more under any one community is also not sustainable.

11. Coming back to the present case, in Notification dated 27.04.2017, in the General Information Serial Number 5 (B), the rule of reservation of appointment is made applicable separately to each posts divisions. 20% of all vacancies in direct recruitment have been given on 10/20 preferential basis to the persons studied in Tamil medium, the same way reservations to ex-servicemen is made applicable, as per Section 27 (C) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016, and 10% of vacancies out of 30% of vacancies set apart for women applicants in direct recruitment are reserved for destitute widows. Apart



from this, 3% of reservation for differently abled persons.

12. It is clear that the entire notification does not specify any reservations or treating the transgender as a separate category as directed by the Hon'ble Supreme Courts as well as this Court in very many cases. Thus it is very clear that the respondents have not recognised the rights of the transgender, despite there being several judgments directing them to treat the transgender as a separate category. In fact, it would be appropriate to extract the observation made by the Hon'ble Division Bench of this Court in Writ Appeal No. 330 of 2018 dated 22.02.2018, wherein at Paragraph Nos. 5 and 6, it is held as follows:—

"5. Even as we pass the above order, we are inclined to observe as follows:—

From the submission of Ms. Narmadha Sampath, learned Additional Advocate General-VIII, we gather that it is following observation in paragraph 67 of the judgment of Hon'ble Supreme Court in National Legal Services Authority v. Union of India [(2014) 5 SCC 438] which has led Government of the State to include transgenders in the list of Most Backward Classes (MBC) in G.O.(Ms). No. 28, Backward Classes, Most Backward Classes and Minorities Welfare (BCC) Department, dated 06.04.2015. We reproduce paragraph 67 in the aforesaid judgment:—

"TGs have been systematically denied the rights under Article 15(2), that is, not to be subjected to any disability, liability, restriction or condition in regard to access to public places. TGs have also not been afforded special provisions envisaged under Article 15(4) for the advancement of the socially and educationally backward classes (SEBC) of citizens, which they are, and hence legally entitled and eligible to get the benefits of SEBC. State is bound to



take some affirmative action for their advancement so that the injustice done to them for centuries could be remedied. TGs are also entitled to enjoy economic, social, cultural and political rights without discrimination, because forms of discrimination on the ground of gender are violative of fundamental freedoms and human rights. TGs have also been denied rights under Article 16(2) and discriminated against in respect of employment or office under the State on the ground of sex. TGs are also entitled to reservation in the matter of appointment, as envisaged under Article 16(4) of the Constitution. State is bound to take affirmative action to give them due representation in public services."

Similarly G.O.(Ms). No. 567, Home (Police VI) Department, dated 02.08.2016 states that a transgender candidate, who applies as Third Gender, shall be eligible for appointment in the vacancies reserved for women candidates as well as vacancies under the general category. This is presented as a concession shown to transgenders and has missed the observation in the order of Hon'ble Supreme Court in National Legal Services Authority v. Union of India [(2014) 5 SCC 438] in paragraph 135, particularly 135(3), which reads thus:—

"13.3. 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".

6. A wholesome reading of the judgment of the Apex Court in National Legal Services Authority v. Union of India [(2014) 5 SCC 438] reveals that after the abject neglect and gay abandon of the Third sex over the centuries finally has dawned upon the world community. Through the judgment,



the Supreme Court has impressed upon the Nation the need to undo the wrong silently suffered by the Third Gender of the human race, which has for far too long been oppressed, suppressed and left depressed. If the judgment of the Hon'ble Supreme Court is seen in such light and if the intent behind the same is to be carried forward, then we see absolutely no reason why reservations in age permissible to destitute widows and Ex-Servicemen and the like should not be extended also to transgenders. This observation would be applicable in equal measure to each and every concession, relaxation of conditions made in any form of public employment. In other words, the aim of Government should be upliftment of the Third gender in every manner possible. We, strongly would recommend the adoption of such a course and earnestly hope that this State be the forerunner in placing those who have too long been tread upon as the least among us, as the first among equals."

Though the State Government has passed several notifications subsequent to the orders passed by the Hon'ble Supreme Court as well as this Court, but, till date, the State Government is still under the confusion and perpetuating the confusion by placing the transgender either in the female or male category along with the caste they belong.

13. In the present case, the petitioner has been placed in the scheduled caste woman category and denied the permission to upload the certificate for verification, as she had scored lesser than the cut-off mark prescribed for schedule caste woman. This approach of the first respondent denying the petitioner to upload her certificate on the basis that she has scored lesser mark than the cut of Mark prescribed for schedule caste woman category is unsustainable. When the notification issued by the first respondent has not categorised transgender as



a special category, the question of transgender being categorised under woman category is unsustainable and against the order passed by the Hon'ble Supreme Court and this Court.

14. When a specific question has been posed by this Court to the learned counsels appearing on the side of the 2nd and 3rd respondents as to what steps have been taken by the Government after the verdict of the Hon'ble Supreme Court and Judgments render by the Hon'ble Division Bench of this Court, the learned counsel appearing on the side of the 2nd and 3rd respondents stated that most of the directions issued by the Hon'ble Supreme Court and the Hon'ble Division Bench of this Court has been complied with by passing several government orders in favour of the transgender, however, regarding the transgender being treated as a separate category is not yet been formulated by any law by the government. At present, the third genders are given age relaxation similarly applicable to scheduled caste shall apply to the transgender candidates and no special privilege is granted to the transgender by treating them as one under the special category.

15. It is to be noted that if there has to be a special reservation, as directed by the Hon'ble Supreme Court provided to the transgender certainly, the petitioner would have found a way to lead a life as any other citizen of this country legitimately had the respondents have considered her under special category. The denial to consider the petitioner under a special category is against the direction issued by the Hon'ble Supreme Court and there cannot be any reason for not doing so. Every denial of opportunity to a transgender that too when there are very minimal number of transgenders, who are educationally qualified, the said denial would pull back the transgender to live in abnormal life is what we see in the society. It is for the Government to improve the quality of their living by providing sufficient opportunity to the transgender in education and employment avenues. Only this would create a balance in the society as far as the transgenders are concerned.



16. It is also to be noted that the transgenders are placed in the caste in which they are born and treated in the said category. This is of no use and detrimental to their development, the transgenders are to be treated as a special category only irrespective of their caste and gender (either Thirunangaiyar or Thirunambi).

17. Therefore this Court has no hesitation to hold that the petitioner is entitled to get special reservation on par with other special category candidates. In view of situation prevailing as far as treating the transgender as a special category, this Court is inclined to issue the following directions to the 2nd and 3rd respondents.:-

(i) The second respondent is directed to treat the transgenders under special category and not to treat them under female or male category in all education and employment avenues.

(ii) In every employment and educational avenues, the Government shall prescribe separate norms for transgenders which shall be below the norms prescribed for male and female candidates.

(iii) Further, the second respondent shall ensure by directing all the recruiting agencies to specify transgender as special category and prescribe separate norms for their cut-off mark, the age relaxation that are extended to other special categories shall also be extended to the transgender irrespective of their caste in future employment and educational avenues. The transgender at no point of time in future shall be clubbed under male or female categories.

18. At this juncture, it is brought to the notice of this Court that the notification, which is impugned in this Writ Petition is of the year 2017-2018 all the



vacancies are filled and at present, notification number 3/2022 dated 23/2/2022 has been issued, wherein applications are invited for the post which include in the combined civil service examination, which are for interview and non-interview Post group-II and Group-11 A services under various categories for recruiting the post included in combine civil service examination are underway and the recruiting process is ongoing.

19. In view of the abovesaid detailed discussions and considering the fact that since the petitioner has scored the eligible cut-off mark under the special category in notification No. 10/2017 dated 27/4/2017, the first respondent shall permit the petitioner to upload documents for certificate verification under the notification number 3/2022 in non interview post forthwith, as the counselling for the above said notification, viz., 3/2022 is scheduled on 22.06.2024. It is made clear that for the notification No. 3/2022, if there are more number of transgenders, the petitioner having applied for Notification 2017 should be given first preference along with other transgenders."

50. In **Shanavi Ponnusamy v. Ministry of Civil Aviation**, reported in **2022 SCC OnLine SC 1581**, petitioner, a TG applied for selection as Cabin Crew in Air India under female category as no separate category for TGs was provided. On non-consideration of candidature, writ petition was filed, wherein it was held:

"7. Transgender persons routinely face multiple forms of oppression, social exclusion and discrimination, especially in the field of healthcare, employment and education. Gender diverse persons, including transgender persons, continue to face barriers in accessing equal employment opportunities, especially in the formal sector, due to



the operation of gender stereotypes. Gender stereotypes in the workplace disproportionately impact transgender persons for not subscribing to societal norms about appropriate 'feminine' and 'masculine' appearances and mannerisms.

8. Bearing the provisions of the 2019 Act and NALSA judgment (supra) in mind, it is necessary for the Central Government, in consultation with the National Council, to devise a policy framework in terms of which reasonable accommodation can be provided for transgender persons in seeking recourse to avenues of employment in establishments covered by the provisions of the 2019 Act. The enactment by Parliament embarks a watershed in the evolution of the rights of transgender persons. The provisions of the 2019 Act need to be implemented in letter and spirit by formulating appropriate policies. The Union Government must take the lead in this behalf and provide clear guidance and enforceable standards to all other entities, including, those of the Union Government, State Governments and establishments governed by the 2019 Act."

Measures taken by Governments for providing financial aid to TGs:

51. It was reported in Press Media that Government of Maharashtra has offered free education to TGs upto PG levels, a direction accepted even by aided and affiliated Universities¹. Similarly, Karnataka State Open University, Mysuru² and Dr.Babasaheb Ambedkar Open University³, (established by

¹http://timesofindia.indiatimes.com/articleshow/105774121.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

² https://kswdc.karnataka.gov.in/uploads/media_to_upload1655970330.pdf.

³ <https://baou.edu.in/>



Government of Gujarat) have also announced to provide fee exempted education to TG in all courses offered by them.

52. Even Department of Social Justice of Union Government has announced payment of scholarship amount of Rs.13,500/- for eligible TG candidates as post-matric/prematric scholarship⁴.

53. Under E.G.O(Rt) No 145/2018 (S.J.D) dated 20.03.2018, Government of Kerala has made budgetary allocation of Rs.35,00,000/- for providing scholarship to transgenders in 4th Std, 7th Std, 10th Std., Higher Secondary, for providing shelter homes during educational period, training for employment etc⁵. Even National Human Rights Commission has issued several directions to Central Government⁶ including:

"Transgender students should not be discriminated against in higher studies, and suitable provision for providing financial assistance to them for pursuing degree/ diploma/ PG courses may be ensured. Provision of scholarship and free education for Transgender students also be formulated"

⁴ <https://socialjustice.gov.in/writereaddata/UploadFile/39621727941984.pdf>

⁵ https://sjd.kerala.gov.in/scheme-info.php?scheme_id=NzI

⁶ <https://nhrc.nic.in/media/press-release/nhrc-issues-advisory-ensure-welfare-transgender-persons>



54. In view of above, what would emerge is that taking note of default/lack of steps taken by State/Centre and their Authorities to give effect to directions issued by Hon'ble Supreme Court in **NALSA's** case (supra) even after lapse of several years, directions as brought out above are liberally issued to favour assimilation of TGs into mainstream of society by providing reservation in admissions into educational institutions as well as in employment as measures of ensuring gender equality.

55. In instant case, petitioner is seeking admission in NLSIU on ground that admission process did not provide reservation for TGs. Though, by interim order, direction was issued to admit petitioner and same was complied albeit after unsuccessfully challenging interim order, petitioner now pleads that without financial assistance reservation for TGs itself would be futile. It is contended that TGs normally suffer homelessness, disownment by family, unemployment and/or discrimination in employment resulting in lack of representation in education, employment as well as in public life. These disabilities have received recognition in **NALSA's** case (supra)



resulting in issuance of necessary directions and measures for addressing same.

56. It is seen petitioner has paid sum of Rs.50,000/- towards part of academic fee on admission to 3 years LL.B Course. But, fees prescribed by NLSIU for 1st year of said Course is Rs.3,75,500/-, which petitioner claims to be unable to pay due to factors affecting TGs. Though, it was contended by petitioner that fee structure or terms of financial aid policy were not disclosed or available in public domain when petitioner had sought admission, it is not in dispute that petitioner has sought financial assistance from NLSIU. In response, NLSIU has stated that it offered financial assistance to extent and as per existing financial aid policy. Thus, NLSIU has not denied need for financial assistance by petitioner. On other hand, it has stated, if existing financial aid policy does not suit petitioner's needs, it cannot be helped.

57. It is however seen NLSIU taking pride in various measures for transgender persons to create level playing field *'to respond to all forms of discrimination and provide inclusive and supportive educational environment'*, in NLSIU, taking note of **NALSA's** case (supra). Strangely, it has not disclosed



whether any steps are in progress or were taken for providing reservation and suitable financial aid policy specifically tailored for TGs. It is also not known whether existing admission process accommodates TGs securing admission or undergoing studies in NLSIU.

58. Therefore, failure of constitutional guarantees of equality of opportunity due to lack of measures/adequate measures for positive discrimination in securing sufficient representation to TGs in educational avenues in NLSIU is evident. This Court in **Sangama and Anr. v. State of Karnataka and Ors.** (W.P.no.8511/2020 disposed of on 02.03.2022), had left it to State Government to provide reservation for TGs in education. Learned AGA has placed on record proposals stated to be under consideration before State Cabinet.

59. Hence, consideration herein is confined to need for issuing directions to NLSIU for providing reservation and financial assistance to TGs for admission to III year LL.B. Course in NLSIU, keeping in mind that petitioner's admission in NLSIU for III year LLB Course during academic year 2023-2024



is spent due to non-payment of fees. But, as petitioner continues to aspire pursuit of said Course and is not shown to be barred, cause of action survives. Therefore, having concluded that present admission and financial aid policy of NLSIU is discriminatory against TGs and thereby deprived them of pursuing LL.B. Courses in NLSIU, objections of NLSIU being technical require to be ignored/waived, in facts and circumstances of present case.

60. In **Mx.Sumana Pramanik's** case (supra), failure to provide reservation and fee concession to TGs noted for issuing directions to provide same by treating TGs as separate categories along with other reserved categories. In **Rakshika Raj** and **A. Nivetha's** cases (supra), need for issuing directions for providing horizontal reservation for TGs after noticing failure to implement directions issued in NALSAs case was examined. Likewise, in **Rano's** case (supra) directions were issued to State taking note of Scheme for '*Promotion of Transgender Equality & Justice*', evolved by State. In **K. Prithika Yashini's** case (supra) representation even by single TG candidate though symbolic would go a long way in providing inclusive and supportive environment [highlighted in **K. Prithika Yashini's**



case (supra)]. Under such circumstances, positive directions were issued for admission of petitioner – TG candidate by holding that academic eligibility prescribed for male and female candidates cannot be applied to TGs, until sufficient number of TG candidates available in **S. Tharika Banu's** case (supra); direction for preparation of separate merit list for TGs and to admit petitioner unless any other TG candidate with higher merit than petitioner were available in **S. Tamilselvi's** case (supra) and general direction issued to Government to look into question of post or percentage based reservation in educational institutions and public employment for transgender persons in furtherance of NALSA judgment in **Swapna's** cases (supra).

61. Though determining specific percentage of reservation for TGs in educational avenues and manner of providing financial assistance would be beyond scope of petition under Art.226 of Constitution of India and same may also require appointing a Commission, this Court deems it appropriate to prescribe interim measures, until NLSIU itself formulates reservation and financial aid for TGs in admission to Courses offered by it including considering complete fee waiver



to promote/secure sufficient number of TG candidates to fill seats reserved for TGs. Hence, following:

ORDER

- i. Writ petition is allowed in part;
- ii. NLSIU is directed to implement directions issued by Hon'ble Supreme Court in NALSA's case by formulating reservation along with measures for providing financial aid to TGs in education before commencement of admission process for next academic year;
- iii. Until then to provide reservation of 0.5% (half the percentage of reservation provided for TGs in employment under State) as interim reservation with fee waiver and for which NLSIU may apply to State/Central Government for appropriate grant.
- iv. To admit petitioner under interim reservation for TGs, if there is no other TG candidate who seeks or is admitted to III year LL.B. Course for current academic year.
- v. In view of fact that interim reservation is necessitated due to failure to carry out directions issued by Hon'ble Supreme Court in NALSA's case, admission of TG candidates to III year LL.B. Course in NLSIU in pursuance of this order shall not be treated



as excess, even if they are in addition to admissions under current admission process, as same will be in force only for current academic year.

- vi. It would also be appropriate to direct State to take note of claims for reservation for TGs in education also and formulate reservation and fee reimbursement policy as contained in para-135.3 in NALSA's case (supra).

Appreciation for assistance rendered by Mr. S.R.Naveen Kumar - Research Assistant, is placed on record.

**Sd/-
(RAVI V HOSMANI)
JUDGE**

Grd/-