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BOMBAY HIGH COURT ON RIGHTS OF TRANSGENDER PERSONS

A. Introduction

On April 25, 2023, the Bombay High Court (**HC**) in the case of *X v. The Dean*,¹ directed educational institutions in Maharashtra to permit transgender individuals to change their name and gender in official documents and certificates.

B. Brief Facts

1. In 2013, the petitioner, referred to as 'X' in the order (**X**), received an MA from the Tata Institute of Social Sciences (**TISS**). At that time, X identified as female.
2. In 2015, X adopted a new name and began to identify as transgender. Thereafter, in 2018, they swore an affidavit affirming the change of their gender identity.
3. In 2022, X attempted to change their name for numerological reasons, where an affidavit was prepared to document the change, and it was published in the *Gazette*. Additionally, documents such as the PAN card and Aadhar card were updated to reflect their new name.
4. X's former name and gender identity (as female) were documented on TISS-issued degree certificates and other official papers pertaining to X.
5. X sought for the re-issuance of these documents to accurately reflect their current transgender name and gender identity. X, in their petition, also pointed out that there is no process in place on TISS's website to change an individual's name and gender.

C. HC's Order & Grounds

The HC:

1. Stated that this is a case of “denial of a human being's self-identity and self-identification. That cannot be done and cannot be permitted.”
2. Further stated that TISS cannot be permitted to force upon X, a name, identity, or gender, which they had chosen to reject, in preference of another.
3. Recognised the untenability of TISS requesting that all other personal and identity documents be changed to reflect X's new name and gender, prior to approaching it for the requested changes to those documents. In this regard, it was held that: “It would be a manifest injustice and a complete denial of fundamental rights including the right to privacy and the right to dignity, covered by Article 21 of the Constitution of India, to refuse the Petitioner relief or to accept what [TISS] says that all previous records must now be updated.”
4. Observed that the questions of identity, self-identification, and gender perception do not happen at a biologically definable point in time as they are matters of self-realisation. The HC noted that

¹ *X vs. The Dean and Another* (25.04.2023 - MHOR): MANU/MHOR/23383/2023.

there must be a recognition of X's fundamental rights and held: *“That does not mean that every person who, in exercise of these Article 21 rights, desires the necessary changes to be made must be put through the additional trauma of having to get reissued every single document from birth onwards. What is required is a recognition and acknowledgment of the rights that [X] invokes. The insistence by [TISS] on getting other records changed and on a production of previous documents is not merely obstructive. To our mind, it is in and of itself nothing short of a denial of the Petitioner's fundamental rights under Article 21.”*

5. Acknowledged and recorded in the order that X voluntarily self-identified as transgender and identified with a different name other than what was given to them at birth, and granted relief to X. It held: *“There is absolutely no reason why the online forms on the website of [TISS] and indeed every other educational institution that is or are subject to our writ jurisdiction should not have a form for precisely such changes, i.e., noting a change in name and a change in gender.”*
6. Directed TISS to incorporate changes in their processes, and further directed the Government of Maharashtra (the second respondent) to issue instructions to similar institutions across the state.

D. Comment

Employers and background verification agencies may need to recognize the significance of this HC order.

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