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Judgment Sheet

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

W.P. No.31581/2016.

Mian Asia Vs. Federation of Pakistan etc.

JUDGMENT

Date of hearing	25.09.2017.
Petitioner by	Mr. Muhammad Mahtab Chughtai, Advocate for the petitioner.
Respondents by:	Mr. Hamid Rafique, Advocate for the respondent NADRA. Mian Muhammad Javaid, AAG-Pk.

ABID AZIZ SHEIKH, J. This constitutional petition has been filed for issuing direction to the respondents to issue new computerized national identity card (CNIC) to the petitioner on account of expiry of previous CNIC.

2. Relevant facts are that petitioner being transgender, was previously issued CNIC with father name as Muhammad Yousaf who was “GURU” of the petitioner. Said Muhammad Yousaf passed away on 14.01.2005. Petitioner applied for renewal of the CNIC, however, the said renewal was declined by the respondents on the ground that petitioner could not provide the name of his father and name of his “GURU” in parent column is not acceptable.

3. Learned counsel for the petitioner submits that petitioner and many other transgenders have been abandoned

by their families are not aware about their parentage, therefore, on this ground alone, they cannot be deprived of their fundamental rights to be citizen of Pakistan and issuance of their CNICs. Learned counsel further submits that petitioner and many other transgenders were brought up by their “GURUS”, therefore, their names instead of unknown parents should be included in CNIC. On the other hand, initially the stance taken by the respondents was that because petitioner and many other transgenders/eunuchs cannot provide name of their parents, therefore, they cannot be issued CNIC.

4. The grievances of the member of Transgenders Community is for seeking declaration of their gender identity. Seldom Society realize or cares to realize the trauma, agony and pain which the members of the Transgender Community undergo, nor appreciates the innate feelings of the Transgender Community, especially of those whose mind and body disown their biological sex. It is known fact that society often ridicules and side lines transgender community in all walks of life.

5. This unwilling mind set of society has historical back ground. At the time of British Colonial rule, the Criminal Tribes Act, 1871 (Act) was introduced to declare eunuchs

(transgenders), a criminal tribe. The preamble of the Act read as under:-

“Whereas it is expedient to provide for the registration, surveillance and control of certain criminal tribes and eunuchs; it is hereby enacted as follows:-

1. This Act may be called :The Criminal Tribes Act, 1871, and it shall come into force on the passing thereof.”

The Act provided for the registration, surveillance and control of certain criminal tribes and eunuchs and had penalized eunuchs, who were registered, and appeared to be dressed or ornamented like a woman, in a public street or place, as well as those who danced or played music in a public place. Such persons also could be arrested without warrant and sentenced to imprisonment up to two years or fine or both. Under the Act, the local Government had to register the names and residence of all eunuchs residing in that area as well as their properties, who were reasonably suspected of kidnapping or castrating children, or of committing offences under Section 377 of the Indian Penal Code (IPC), or of abetting the commission of any of the said offences. Under the Act, the act of keeping any body under 16 years in the charge of a registered eunuch was an offence punishable with imprisonment up to two years or fine and the Act also denuded the registered eunuchs of their civil rights

by prohibiting them from acting as guardians to minors, from making a gift deed or a will, or from adopting a son.

6. The Act was not only to attack the dignity of transgenders community, degrading them in social echelons but also to eventually force them to adopt begging and other questionable professions. After British Colonial rule, the Act was repealed in August, 1949, however, the damage done to transgenders remained irreparable. The transgenders lost social respect and various stereo types have been built to humiliate and discount the transgenders community.

7. Finally in Year 2009, the august Supreme Court of Pakistan took up the matter in its original jurisdiction in Civil Petition No.43 of 2009 and directions were passed from time to time to recognize the dignity of transgenders and declaring them third gender entitled for equal protection under Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 (Constitution). The apex Court noted that transgenders have been neglected on account of gender disorders in their bodies. They have been denied the right of inheritance as they were neither sons nor daughters who could inherit under Islamic Law and sometime even families intentionally disinherit transgender children. To eliminate this gender based ill-treated discrimination against transgenders, the august Supreme Court in Dr. Muhammad Aslam Khaki and another

vs. Senior Superintendent of Police (Operation), Rawalpindi and others (2013 SCMR 187) directed Provincial and Federal Governments to protect transgenders identification, right to inherit property, right to education and right to life which include employment and quality of life.

8. The matter again brought to the notice of honourable Supreme Court of Pakistan in Dr. Muhammad Aslam Khaki and others vs. SSP (Operations) Rawalpindi and others (PLD 2013 SC 188), when the transgenders were not issued National Identify Cards by NADRA. In compliance of directions issued by apex Court, the NADRA made arrangements to issue CNIC to transgenders and honourable Supreme Court in said judgment reiterated that transgenders be treated equally as other citizens.

9. With above background of the matter, this Court during these proceedings apprised NADRA authorities that transgenders/eunuchs being citizens of this country are also entitled for same respect, dignity and fundamental rights as are available to the other segments of the society. This Court also apprised the policy makers that in case any transgender/eunuch is not able to provide name of his father, being abandoned by his family, it cannot be a sole ground not to issue him CNIC and to deprive him from his fundamental right of being a citizen of this country. In consequence of

these proceedings, the concerned policy makers (NADRA) finally framed policy dated 21.08.2017 (Policy) to issue CNIC to the transgenders/eunuchs with unknown parentage.

The said policy is reproduced hereunder:-

***“To: All RHOs
ID: Media & Communication
IOD
Info: Chairman Sectt
Legal Dte
Vigilance Dte***

Subject: ISSUANCE OF CNIC TO EUNUCHS.

1. *In compliance of Lahore High Court Order in Writ Petition No.31581/2016, following procedure for issuance of CNICs to Eunuchs has been approved by Competent Authority:-*

a. ***Eunuchs with known Parents:*** *Cases may be dealt as per Registration Policy as it covers processing of CNICs of Eunuchs with known Biological Parentage.*

b. ***Eunuchs with Unknown Parentage:***

i. *As a first step, already registered Eunuchs whosever are willing shall get themselves registered as “Guru” in NADRA database.*

ii. *Guru registration will be carried out at HQ NADRA through a module already being used for registration of Orphanages.*

iii. *Procedure for Guru Registration:*

(a) *Copy of CNIC alongwith an affidavit of Rs.20/- attested by Magistrate Class I shall be submitted by the individual (Format attached).*

(b) *After scrutiny, RHO will forward said documents to HQ NADRA by registration of GURU.*

iv. *Just like orphans with unknown parentage, CNIC of Eunuchs with unknown parentage will be processed by selecting random parents name from database. Registered Guru will be the head of*

applicant (Eunuch) and will give Biometric verification. Biometric witness of another person (any valid CNIC holder) also be obtained.

- v. *Vigilance Deptt will conduct post-verification.*
- vi. *Post Verification data analysis will be carried out after every six month. Final decision shall be made after one year experience and result revealed by post verification and data analysis.*

2. For Media & Communication Department Only: *Please launch awareness campaign for GURU registration through media.*

3. *Forwarded for information/compliance, please.*

**Director (Ops)
(Sohail Mehmood)”**

10. Under the aforesaid policy, the transgenders/eunuchs with unknown parentage will be provided CNIC after fulfilling the procedure prescribed under the policy. The learned counsel for the petitioner submits that under the policy, the grievance of the petitioner has been redressed and he has already been issued CNIC. This Court appreciates the efforts of the policy makers to address this issue and redress the problem and grievance of the petitioner and many other transgenders/eunuchs. However because contents of the policy are not under challenge, therefore, any observation in this judgment will not immune the policy from future judicial review.

11. Gender identity is one of the most fundamental aspect of life which refer to a person intrinsic sense of being

male, female or transgender. Everyone is entitled to enjoy all human rights without discrimination on the basis of gender identity. Everyone has the right to recognition everywhere as a person before the law. This is high time to change mindset of the society and to realize that a person of diverse gender identity shall also enjoy legal capacity in all aspects of life. The transgenders/eunuchs are as respectable and dignified citizens of this country as any other person and they are also entitled for all fundamental rights including right of education, property and right of life which include quality of life and livelihood. They cannot be deprived of their rights including right to obtain CNIC or citizenship for mere reason that they are transgenders/eunuchs and do not know the whereabouts of their parents, without any fault of their own. The public functionaries and policy makers are expected to be more sensitive toward restoring dignity of transgender community rather adding to their existing plight.

12. In view of above discussion, **this writ petition is allowed** in terms stipulated above.

13. Before parting with the judgment, needless to say that copy of this judgment alongwith copy of policy be forwarded to all concerned including the Federal as well as Provincial Secretary Law, to circulate it widely within the entire country so as to ensure that maximum members of transgenders

community be benefited. Chairman PEMPRA shall also ensure that clause 2 of the policy for launching awareness campaign be implemented through all modes of communication.

(ABID AZIZ SHEIKH)
JUDGE

Approved for Reporting.

JUDGE

Riaz Ahmad