

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 08<sup>TH</sup> DAY OF OCTOBER 2013

BEFORE

THE HON'BLE MR. JUSTICE A.S.BOPANNA

WRIT PETITION NO.32978 OF 2013 (GM-RES)

BETWEEN:

SHRI.VINOD.H.N.  
AGE: 29 YEARS,  
S/O SHRI NINGAPPA,  
HAVING HIS PERMANENT RESIDENCE AT,  
HOCHIHALLI VILLAGE, KADUR TALUK,  
CHICKMAGALUR DISTRICT

PRESENTLY RESIDING AT,  
NO.290, BHEEMANKUPPE CROSS,  
BENCHAKELLU, RAMOHALLI POST,  
DODDALLADA MARA ROAD,  
BANGALORE-5600060

...PETITIONER

(BY MS.MAIFREYI KRISHNAN, ADV. FOR  
SRI CLIFTON D ROZARIO, ADV.)

AND:

1. STATE OF KARNATAKA,  
REP BY ITS CHIEF SECRETARY,  
VIDHANA SOUDHA,  
BANGALORE-560001.
2. DEPT. OF PUBLIC INSTRUCTIONS,  
REPRESENTED BY ITS  
PRL. SECRETARY OF PRIMARY AND  
SECONDARY EDUCATION,  
6<sup>TH</sup> FLOOR, M.S.BUILDING,  
BANGALORE-560001.
3. DEPARTMENT OF HIGHER EDUCATION,  
REP BY ITS PRINCIPAL SECRETARY,

6<sup>TH</sup> FLOOR, M.S.BUILDING,  
BANGALORE-560001.

4. DEPT. OF COLLEGIATE EDUCATION,  
REP BY ITS COMMISSIONER,  
2<sup>ND</sup> FLOOR, DTE BUILDING,  
PALACE ROAD,  
BANGALORE-560001.

5. DEPT. OF FOOD AND CIVIL SUPPLIES,  
REP BY ITS PRINCIPAL SECRETARY,  
VIKASA SOUDHA,  
BANGALORE-560001.

6. STATE CHIEF ELECTION OFFICER,  
KARNATAKA,  
NIRVACHANA NILAYA,  
MAHARANI COLEGE CIRCLE,  
SESHARDRI ROAD,  
BANGALORE-560001.

... RESPONDENTS

(BY SRI.E.S.INDIRESH, HCGP, FOR R1-5,  
SRI K.N.PHANINDRA, ADV. FOR R-6)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India praying to issue a writ in the nature of mandamus directing the respondents to effect change in name and sex in the official records of the petitioner and specifically to the 1) R-2 to effect change in name and sex of the petitioner in the primary and secondary school records of the petitioner and etc.,

This Petition coming on for Preliminary Hearing in 'B' Group this day, the Court made the following:-

**ORDER**

The petitioner is before this Court seeking for the following reliefs:

- a) 2<sup>nd</sup> respondent to effect change in Name and Sex of the petitioner in the primary and secondary school records of the petitioner.
- b) 3<sup>rd</sup> respondent to effect change in Name and sex of the petitioner in the high school records of the petitioner.
- c) 4<sup>th</sup> respondent to effect change in Name and Sex of the petitioner in the PUC and college records of the Petitioner.
- d) 5<sup>th</sup> respondent to effect change in Name and Sex of the petitioner in the ration card, being Annexure-A.
- e) 6<sup>th</sup> respondent to effect change in Name and Sex of the petitioner in the election card, being Annexure-B.

2. The petitioner is stated to be a resident of Hochihalli Village, Kadur Taluk, Chikamagalur District being born on 25.06.1985. He was born with the medical condition known as *Severe Perianal Hypospadiasis* (intersex variance). In that regard, the petitioner is stated to have undergone necessary medical procedures and in that regard, the petitioner is presently seeking that the name and sex of the petitioner be changed in the appropriate documents. Presently he wants the name to

be indicated as shown in the instant petition and the sex to be shown as 'male'. In so far as the relief presently sought, the relevant respondents have been impleaded and appropriate prayer has been made against the said respondents. Since the entries in the school records would be the basis for all other further entries to be made in the other documents, the respondents herein would have to consider these aspects of the matter at the outset and based on such entries, the petitioner would be entitled to rely on the same for future entries to be sought from such other authorities.

3. The petitioner, in that regard, has presently relied on the medical reports at Annexures-P and Q. Based on the same, the representations which were made to the respondents are also produced along with the petition at Annexures-X to AC. Considering the nature of the request made in the said representations and also taking note of the case put forth by the petitioner, I am of the opinion that the details therein need not be adverted to, to come to a conclusion as to whether the petitioner is entitled to

seek for such relief in a writ petition of the present nature. Similar issue infact has arisen before a Hon'ble Division Bench of the High Court of Gujarat in the case of 'MULLA FAIZAL @ FAZILABANU SULEMAN IBRAHIM v. STATE OF GUJARAT AND ORS.' The said case was disposed of by the Hon'ble Division Bench by the order dated 16.02.2000. On taking note of similar contentions, the Court concluded thus:

“8. Since the respondent-authorities, who are in charge of maintenance of Register of Births, have been enjoined with a duty to entertain applications for correction of entries in the Register and can for that purpose make necessary enquiries, the learned single Judge was not right in relegating the appellant to a remedy of civil suit for seeking a declaration regarding his sex. In our considered opinion, the authorities, under the provisions of Section 15 read with Rule 12 of the Rules framed thereunder, are duty-bound in law to make necessary enquiries, and if necessary, to obtain medical opinion to grant change of entry in the birth register regarding the sex of the appellant and to issue to him a corrected Birth

certificate. We find absolutely no legal impediment in the same and the reliance on the letter quoted above is totally misplaced. The said letter does not at all apply to the case like the present one. Here the change in the entries in the Register is sought not on the basis of change of sex, but on the basis that the appellant was born as a natural male although with some deformity in his sexual organ. It would not be proper for the Court to relegate the appellant to an onerous remedy of civil suit even if that be held to be available to him.

9. As a result of the discussion aforesaid, we allow this appeal, set aside the order of the learned single Judge dated 17.02.1999 and allow the Special Civil Application. The respondents are directed to hold an enquiry on the application made by the appellant for change of entry of sex in the Register of Births. The appellant shall be given a notice by the respondents for appearance before them, with all documentary and oral evidence, to substantiate his claim for change of entry regarding his sex in the Register of Births. Let the respondents complete the enquiry within a reasonable period of three months from the

date of service on them of a copy of this judgment and pass consequential orders of granting change in the entry regarding sex in the Register of Births and issue certificate on the said entry to the appellant, if he is able to substantiate his claim before the authorities. Let the order be obeyed within the time allotted by this Court and without any further delay. Direct service is permitted.”

4. A perusal of the same would indicate that in the circumstance as arisen in the present case, it is for the authorities before whom such request is made by the petitioner to make necessary enquiries keeping in view the medical records relied on by the petitioner and thereafter make such entries.

5. Therefore, in the instant case, the prayer as sought by the petitioner to direct the respondents to the extent of considering the representations of the petitioner will have to be accepted. Accordingly, the respondent Nos.1 to 5 herein are directed to consider the representations made by the petitioner along with the

necessary documents and on enquiry the necessary changes in the appropriate registers and the other documents maintained by the respondents shall be carried out on satisfaction of the case put forth by the petitioner. Considering that such decision would have to be taken by the respondents within a time frame, the petitioner shall now file one more set of the representations and the supporting documents along with a copy of this order with the respective respondents from whom the petitioner seeks relief. The said respondents shall look into the same and come to a conclusion in the manner as indicated as expeditiously as possible but not later than three months from the date on which the representations are submitted.

With the above directions, the petition stands disposed of. Consequently, IA.1/2013 also stands disposed of.

**SD/-  
JUDGE**

RV